

Expert Legal Opinion

By Honorary Professor in International Copyright

Dr. Jørgen Blomqvist

June 17, 2016

Prepared for:

International Corporation of Assigned Names and Numbers (“ICANN”);

Alliance of Music Communities Representing over 95% of Global Music Consumed (“Music Community”); and

DotMusic Limited (“DotMusic”)

Expert Legal Opinion on ICANN’s .MUSIC Community Priority Evaluation Report for DotMusic’s Application with ID: 1-1115-14110 by:

Dr. Jørgen Blomqvist

Honorary Professor in International Copyright, Ph.d

Faculty of Law

Centre for Information and Innovation Law (CIIR)

University of Copenhagen

Studiestraede 6

1455 Copenhagen K

Denmark

Email: Contact Information Redacted

Website: <http://jura.ku.dk/ciir/english/news/blomqvist>

Table of Contents

About Honorary Professor Dr. Jørgen Blomqvist.....	3
Selected Publications by Honorary Professor Dr. Jørgen Blomqvist.....	4
The Relevant Facts.....	7
Background on ICANN.....	7
The Government Advisory Committee (“GAC”)	9
The ICANN New gTLD Program.....	9
ICANN’s New gTLD Program Committee (“NGPC”) of the Board.....	10
GAC Advice on the New gTLDs	10
GAC Consensus Advice and ICANN Board NGPC Resolutions on .MUSIC string	11
The Community Priority Evaluation (“CPE”)	11
The DotMusic Application Materials and .MUSIC CPE Process.....	15
Independent Expert Testimonies	25
The Independent Nielsen QuickQuery Poll	26
Answers to CPE Clarifying Questions (“CQ”)	26
The .MUSIC CPE Report for DotMusic’s Community-based Application.....	28
The Reconsideration Request.....	28
About Copyright, Copyright Law, International Copyright Conventions/Treaties and Collective Rights Management	30
Expert Legal Opinion.....	39
CPE Section on Community Establishment.....	39
CPE Section on Nexus between Proposed String and Community	46
CPE Section on Support (under Community Endorsement).....	47
Conclusion.....	49

About Honorary Professor Dr. Jørgen Blomqvist

Dr. Jørgen Blomqvist is the Honorary Professor of International Copyright at the University of Copenhagen. He teaches international intellectual property law and undertakes research in the interpretation of the core international conventions on copyright and related rights, the Berne Convention for the Protection of Literary and Artistic Works and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Formerly, Dr. Jørgen Blomqvist was Director, Copyright Law Division, at the World Intellectual Property Organization (“WIPO”) and he is continuously active in international development cooperation undertaking various ad-hoc assignments from WIPO, the European Commission and the Danish Patent and Trademark Office. In addition he is Secretary of the Danish Copyright Association and the Danish Group of the International Literary and Artistic Association (“ALAI”).

Dr. Jørgen Blomqvist has worked with copyright since 1976. From 1976 to 1990 as Secretary of the Copyright Law Review Commission under the Ministry of Culture, he played a central role in the preparation of the comprehensive law reform of 1995, and for a number of years he was also Legal Advisor and Deputy General Manager of KODA, the organization managing the performing rights of composers, writers and music publishers. He obtained his Ph.D in 1987 on a groundbreaking thesis on transfer of copyright ownership. In 1992 he was employed by the WIPO, a United Nations specialized agency in Geneva, from which he recently retired as Director of the Copyright Law Division.

Dr. Jørgen Blomqvist is counted among the leading experts in international copyright in the world, and he has in-depth experience with the substance of the international norms and their political background and development as well as with development cooperation in the field. Dr. Jørgen Blomqvist was awarded the 2015 Kockvedgaard Prize, which is awarded every two years by the Danish Association for Entertainment and Media Law for outstanding contributions to the subject area of entertainment and media law, and for his Ph.D thesis he was awarded the 1988 Gad’s Lawyers Prize. Dr. Jørgen Blomqvist has also authored the book “Primer on International Copyright and Related Rights.”¹

¹ See <http://www.amazon.com/Primer-International-Copyright-Related-Rights/dp/1783470968>

Selected Publications by Honorary Professor Dr. Jørgen Blomqvist

2016

[Immaterielret og international frihandel \[Intellectual Property and International Free Trade\].](#) / Blomqvist, Jørgen

In: UfR, litterær afd., Vol. 2016, 18.03.2016, p. 166-174

The article describes the movement of international intellectual property law from multilateral WIPO treaties towards regional, bi- and plurilateral trade agreements. Based on the TPP Agreement it discusses the influence of international trade law on the international protection of intellectual property.

[Om fortolkning af Bernerkonventionen. Er Bernerkonventionen et maksimalistisk instrument? \[Interpretation of the Berne Convention. Is the Berne Convention a Maximalistic Instrument?\]](#) / Blomqvist, Jørgen

Liber Amicorum Jan Rosén. ed. / Gunnar Karnell; Annette Kur; Per Jonas Nordell; Daniel Wesman; Johan Axhamn; Stephan Carlsson. Visby, Sweden : Eddy.se AB, 2016. p. 153-167.

Based on the reference to protection “in as effective and uniform a manner as possible” in the Preamble of the Berne Convention, it has been claimed that the Berne Convention must be interpreted in such a way that it aims for the highest possible level of protection. That is not correct. When analyzing the wording of the Convention in its context it becomes clear that the reference is to the level of protection that the contracting parties were able to agree on. Accordingly, a balanced interpretation of the Convention is called for.

2015

[Denmark.](#) / Blomqvist, Jørgen

Copyright Throughout the World. ed. / Silke von Lewinski. Vol. 1 Rel. 7. ed. Eagan, MN : Thomson Reuters, 2015. p. 13.1-13.56.

[Indledning \[Introduction\].](#) / Blomqvist, Jørgen

Ophavsret og kulturarv: Bidrag til udvikling af kulturarvsjuraen. [Copyright and Cultural Inheritance: Contributions to the Development of the Law on Cultural Inheritance.] Ed. / Helle Porsdam; Erland Kolding Nielsen; Mia Rendix. Copenhagen : Det Kongelige Bibliotek, 2015. p. 9-11.

2014

[Primer on International Copyright and Related Rights.](#) / Blomqvist, Jørgen
Cheltenham UK/Northampton, Massachusetts USA : Edward Elgar Publishing,
Incorporated, 2014. 288 p.

The international law on copyright and related rights is comprehensive and complex, spanning over a large number of different treaties which have been compiled and amended over more than 125 years. This book gives a concise, but comprehensive introduction to the rules and their rationales. Its thematic approach makes it equally valuable to the student and the practitioner who needs both an introduction to and overview over the international law in the field. The book explains all treaties relevant today, from the 1886 Berne Convention to the WIPO Marrakesh Treaty of 2013 (288p).

2013

[Denmark.](#) / Blomqvist, Jørgen

Copyright throughout the World. ed. / Silke von Lewinski. Vol. 1 2013. ed. Eagan, MN, USA : Thomson Reuters, 2013. p. 13.1-13.97.

Chapter 13 on Danish copyright law in this seminal loose-leaf edition, edited by Silke von Lewinski and published by West.

2011

[Ophavsretsloven af 1961 i dens internationale sammenhæng \[The 1961 Danish Copyright Act Seen in its International Context\].](#) / Blomqvist, Jørgen

In: N I R, Vol. 2011, No. 6, 2011, p. 526-536.

A lecture held at the celebration of the 50th Anniversary of the Danish Copyright Act, analyzing both the international inspiration which helped form the Act and its own influence on foreign and international legislation.

International ophavsret [European and International Copyright]. / Schønning, Peter; Blomqvist, Jørgen

København : Djøf / Jurist- og Økonomforbundet, 2011. 502 p.

A commentary to the European Directives on copyright and related rights and a systematic description of the international conventions in the field.

[The Consistency of Mandatory Exceptions Treaties with International Conventions in the Field of Copyright and Related Rights.](#) / Blomqvist, Jørgen

Paper delivered at the 2011 ALAI Study Days in Dublin, publication by ALAI Ireland pending, available at <http://www.alaidublin2011.org/wp-content/uploads/2011/08/Jorgen-Blomqvist.pdf>.

2009

Reflections on Article 15(4) of the Berne Convention. / Blomqvist, Jørgen

In: Emlékkönyv Ficsor Mihály 70. születésnapja alkalmából, Barátaiktól [publication in honor of Dr. Mihály Ficsor at his 70th birthday], Szent István Társulat, Hungary, 2009, p. 54 - 63

2004

The Future of the Berne Convention and the International Cooperation on Copyright and Related Rights. / Blomqvist, Jørgen

In: Autorių teisės į literatūros, mokslo ir meno kūrinius, Vilnius 2004, p. 10 – 16

1992

Non-voluntary Licensing in the Field of Radio, Television and Cable Distribution

In: AIPJ vol 1992, p. 94 – 109.

Copyright and Software Protection as viewed from the "traditional" Side of Copyright

RIDA 1992, p. 2 – 50.

1987

Overdragelse af ophavsrettigheder [Transfer of Copyright Ownership]. / Blomqvist, Jørgen

An analysis of the legal concepts of transfer and licensing of copyright and related rights and a study of the interpretation of the scope of transferred or licensed rights. Thesis. Copenhagen, Jurist- og Økonomforbundets Forlag 1987.

The Relevant Facts

Background on ICANN

1. The Internet Corporation for Assigned Names and Numbers (“ICANN”) was formed in 1998.² As set forth in its Bylaws, ICANN’s mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems. In particular, ICANN coordinates (i) the allocation and assignment of the three sets of unique identifiers for the Internet, which are Domain names (forming a system referred to as ‘DNS’); Internet protocol (‘IP’) addresses and autonomous system (‘AS’) numbers; and Protocol port and parameter numbers; (ii) the operation and evolution of the DNS root name server system; and (iii) policy development reasonably and appropriately related to these technical functions.”³
2. ICANN “is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes.” ICANN “is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501 (c)(3) of the Internal Revenue Code of 1986.” ICANN shall “pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol (‘IP’) address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system (‘DNS’), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).”⁴ ICANN operates “for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, [ICANN] shall cooperate as appropriate with relevant international organizations.”⁵
3. ICANN’s Core Values “guide the decisions and actions of ICANN: (1) Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet; (2) Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to those matters within ICANN’s mission requiring or significantly benefiting from global coordination; (3) To the extent feasible

² ICANN, *What Does ICANN Do?* <https://www.icann.org/resources/pages/what-2012-02-25-en>

³ ICANN Bylaws, <https://www.icann.org/resources/pages/governance/bylaws-en#I>, Article I, Section § 1

⁴ ICANN Articles of Incorporation, <https://www.icann.org/resources/pages/governance/articles-en>, Article 3

⁵ ICANN Articles of Incorporation, <https://www.icann.org/resources/pages/governance/articles-en>, Article 4

and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties; (4) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making; (5) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment; (6) Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest; (7) Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process; (8) Making decisions by applying documented policies neutrally and objectively, with integrity and fairness; (9) Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected; (10) Remaining accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness; and (11) While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments’ or public authorities’ recommendations.”⁶ According to its Bylaws, ICANN “shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.”⁷ Furthermore, ICANN’s Bylaws state that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”⁸

4. ICANN is comprised of the Board of Directors,⁹ Staff,¹⁰ the Ombudsman,¹¹ the Nominating Committee,¹² three Supporting Organizations,¹³ four Advisory Committees¹⁴ and group of technical expert advisors.¹⁵

⁶ ICANN Bylaws, <https://www.icann.org/resources/pages/governance/bylaws-en#I>, Article I, Section § 2 (emphasis added)

⁷ ICANN Bylaws, Article II *Non-Discriminatory Treatment*, <https://www.icann.org/resources/pages/governance/bylaws-en#II>, Section § 3

⁸ ICANN Bylaws, Article III *Transparency*, Purpose, <https://www.icann.org/resources/pages/governance/bylaws-en#III>, Section § 1

⁹ ICANN Bylaws, Article VI *Board of Directors*. <https://www.icann.org/resources/pages/governance/bylaws-en#VI>; ICANN, *Board of Directors*. Retrieved on May 4th, 2016 from <https://icann.org/resources/pages/board-of-directors>

¹⁰ ICANN, *ICANN Staff*, <https://www.icann.org/en/about/staff>

¹¹ ICANN Bylaws, Article V *Ombudsman*. <https://www.icann.org/resources/pages/governance/bylaws-en#V>; ICANN, *The ICANN Ombudsman*. <https://www.icann.org/ombudsman>

¹² ICANN Bylaws, Article VII *Nominating Committee*, <https://www.icann.org/resources/pages/governance/bylaws-en#VII>; ICANN, *ICANN Nominating Committee*. <https://www.icann.org/resources/pages/nomcom-2013-12-13-en>

¹³ See ICANN Bylaws: Article VIII, *Address Supporting Organization* (“ASO”), <https://www.icann.org/resources/pages/governance/bylaws-en#VIII> and <https://aso.icann.org>; Article IX, *Country Code Names Supporting Organization* (“CCNSO”), <https://www.icann.org/resources/pages/governance/bylaws-en#IX> and <http://ccnso.icann.org>; and Article X, *Generic Names Supporting Organization* (“GNSO”), <https://www.icann.org/resources/pages/governance/bylaws-en#X> and <http://gnso.icann.org/en>

¹⁴ See ICANN Bylaws: Article XI, *Advisory Committees* (See <https://www.icann.org/resources/pages/governance/bylaws-en#XI>): the Governmental Advisory Committee (“GAC”), <https://gacweb.icann.org>; the Security and Stability Advisory Committee (“SSAC”), <https://www.icann.org/groups/ssac>; the Root Server System Advisory Committee (“RSSAC”),

The Government Advisory Committee (“GAC”)

5. GAC “consider[s] and provide[s] advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.”¹⁶ GAC is comprised of “162 governments as Members and 35 Intergovernmental Organizations (‘IGOs’) as Observers.”¹⁷ ICANN’s Bylaws have special provisions concerning interaction between the Board and the GAC: “The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”¹⁸

The ICANN New gTLD Program

6. ICANN “has as its mission to ensure a stable and unified global Internet. One of its key responsibilities is introducing and promoting competition in the registration of domain names, while ensuring the security and stability of the domain name system (‘DNS’). In 2005, ICANN’s Generic Names Supporting Organization (‘GNSO’) began a policy development process to consider the introduction of new gTLDs, based on the results of trial rounds conducted in 2000 and 2003. The GNSO is the main policy-making body for generic top-level domains, and encourages global participation in the technical management of the Internet. The two-year policy development process included detailed and lengthy consultations with the many constituencies of ICANN’s global Internet community, including governments, civil society, business and intellectual property stakeholders, and technologists. In 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs, with certain allocation criteria and contractual conditions. After approval of the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. This work included public consultations, review, and input on multiple draft versions of the Applicant Guidebook (‘AGB’). In June 2011, ICANN’s Board of Directors approved the Guidebook and authorized the launch of the New gTLD Program. The program’s goals include enhancing competition and consumer choice, and

<https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en>; and the At-Large Advisory Committee (“ALAC”), <https://atlarge.icann.org>

¹⁵ See ICANN Bylaws, Article XI-A *Other Advisory Mechanisms*,

<https://www.icann.org/resources/pages/governance/bylaws-en#XI-A>; Also see *ICANN Groups*,

<https://www.icann.org/resources/pages/groups-2012-02-06-en>

¹⁶ See ICANN Bylaws: Article XI, *Advisory Committees*,

<https://www.icann.org/resources/pages/governance/bylaws-en#XI>, Section § 2.1.

¹⁷ ICANN GAC, <https://gacweb.icann.org/display/gacweb/How+to+become+a+GAC+member>

¹⁸ See ICANN Bylaws: Article XI, *Advisory Committees*, Section § 2.1.j

enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and internationalized domain name ('IDN') top-level domains. The application window opened on 12 January, 2012, [and closed on 12 April, 2012.] ICANN received 1,930 applications for new gTLDs. On 17 December, 2012, ICANN held a prioritization draw to determine the order in which applications would be processed during Initial Evaluation and subsequent phases of the program. These applications were processed by ICANN staff and evaluated by expert, independent third-party evaluators according to priority numbers.”¹⁹

ICANN’s New gTLD Program Committee (“NGPC”) of the Board

7. On April 12, 2012, the ICANN Board established the New gTLD Program Committee (“NGPC”) delegating to the Board NGPC “all legal and decision making authority of the Board relating to the New gTLD Program.”²⁰ The NGPC handled all gTLD-Program matters for the Board until the NGPC was decommissioned on October 22, 2015.²¹

GAC Advice on the New gTLDs

8. Section 3.1 of ICANN’s Applicant Guidebook describes the GAC’s special advisory role of giving public-policy advice: “3.1 *GAC Advice on New gTLDs* - ICANN’s Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues. The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities. GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors. The GAC can provide advice on any application... ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts [...]”²²
9. Section 5.1 of ICANN’s Applicant Guidebook states that ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.²³

¹⁹ ICANN, *About The Program*, <https://newgtlds.icann.org/en/about/program>; Application filing deadline was on April 12, 2012. See <https://www.icann.org/news/announcement-2012-03-29-en>

²⁰ ICANN Approved Board Resolutions (2012.04.10.01 to 2012.04.10.04), April 10, 2012. See <https://www.icann.org/resources/board-material/resolutions-2012-04-10-en>

²¹ ICANN Approved Board Resolutions (2015.10.22.15), October 22, 2015. See <https://www.icann.org/resources/board-material/resolutions-2015-10-22-en#2.c>

²² AGB, § 3.1, pp. 3-2 to 3-3. See <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

²³ AGB, § 5.1, p.5-4. See <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

GAC Consensus Advice and ICANN Board NGPC Resolutions on .MUSIC string

10. The ICANN Board NGPC accepted consensus GAC Category 1 Advice that .MUSIC is a “string that is linked to regulated sector” that “should operate in a way that is consistent with applicable laws.”²⁴ In effect, ICANN’s resolution for “GAC Category 1 Advice Implementation” established the .MUSIC string and its associated community (as a whole) are linked to a regulated sector that coheres to international copyright law, united under international treaties, agreements and conventions.²⁵
11. The ICANN Board NGPC also accepted consensus GAC Advice to give “preferential treatment for all applications which have demonstrable community support,” “to protect the public interest and improve outcomes for communities” and to take “better account of community views and improving outcomes for communities.”²⁶

The Community Priority Evaluation (“CPE”)

12. The AGB provided detailed instructions to gTLD applicants and set forth the procedures as to how new gTLD applications were evaluated. The AGB provided that new gTLD applicants may designate their applications as either standard or community based, *i.e.*, “operated for the benefit of a clearly delineated community.”²⁷ Applicants for community-based gTLDs were expected to, among other things, “demonstrate an ongoing relationship with a clearly delineated community” and “have applied for a gTLD string strongly and specifically related to the community named in [their] application.”²⁸ If two or more applications were for identical or “confusingly similar” new gTLDs and complete all preliminary stages of evaluation, they are placed in a “contention set.”²⁹ An applicant with a community-based application that is placed in a contention set may elect to proceed with Community Priority Evaluation (“CPE”) for that application.³⁰ If the applicant elected to proceed to CPE, the application is forwarded to an independent, third-party provider for review.³¹
13. ICANN solicited Comparative Evaluation Panel Expressions of Interest (“EOI”) in 2009 from firms interested in providing an independent, third-party panel capable of

²⁴ ICANN Board Letter to GAC, June 23, 2015. See <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2 and Annex 5, p.8

²⁵ See ICANN GAC Category 1 Safeguards at <https://newgtlds.icann.org/en/applicants/gac-advice/cat1-safeguards>; Also see ICANN GAC Category 1 Advice Implementation, New gTLD Advisory (Advisory number: R1-A01-0051), 19 March 19, 2014, <https://newgtlds.icann.org/en/applicants/advisories/gac-cat1-advice-19mar14-en>

²⁶ See GAC Singapore Communiqué,

<https://gacweb.icann.org/download/attachments/27132037/Final%20Communiqué%20-%20Singapore%202014.pdf?version=2&modificationDate=1396429776778&api=v2> Section 3, ¶1a, p.4; Also see Annex 1 to NGPC Resolution 2013.09.10.NG03 – Scorecard in Response to GAC Durban Communiqué, ICANN Resolutions, <http://icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>, Register #17 (2013-07-18 – Community Applications (Communiqué §7.b.i)) and Register #18 (2013-07-18 – Community Applications (Communiqué §7.b.ii.a)), p.7

²⁷ AGB, § 1.2.3.1. See <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

²⁸ *Ibid*, § 1.2.3.1

²⁹ *Ibid*, § 4.1

³⁰ *Ibid*, § 4.2

³¹ See <http://newgtlds.icann.org/en/applicants/cpe>

performing the Community Priority Evaluation process. The consulting firm would contractually agree: (i) that the panel had “significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined community plays an important role;”³² (ii) that “the evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination;”³³ and (iii) provide ICANN with a “statement of the candidate’s plan for ensuring fairness, nondiscrimination and transparency.”³⁴

14. ICANN’s staff selected The Economist Group’s Economist Intelligence Unit (“EIU”) to conduct Community Priority Evaluations in 2011.³⁵ The EIU agreed in the ICANN-EIU Statement of Work (“SOW”) contract that its activities will be bound by ICANN’s governance requirements and governance processes. ICANN’s Core Values were contractually imposed on the EIU through ICANN Bylaws.³⁶ The SOW stated that the Panel must “ensure that the evaluations are completed consistently and completely in adherence to the Applicant Guidebook” and follow “evaluation activities based on ICANN’s gTLD Program Governance requirements to directly support the Program Office governance processes.”³⁷ The Consulting Agreement also required the panel to “document their evaluation activities and results and provide a summary of the analysis performed to reach the recommended result” by (i) “document[ing] the evaluation and analysis for each question to demonstrate how the Panelist determined a score for each question based on the established criteria;” (ii) “provid[ing] a summary of the rationale and recommended score for each question;”³⁸ (iii) and “providing ad-hoc support and documentation as requested by ICANN’s Quality Control function as part of the overall gTLD evaluation quality control process” including “access to work papers as required verifying Panel Firm’s compliance.”³⁹
15. The CPE Panel Process Document required that “all EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures. EIU evaluators are highly qualified and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.”⁴⁰

³² New gTLDs: Call for Applicant Evaluation Panel Expressions of Interest (“EOI”), Comparative Evaluation Panel, <https://www.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf>, p.5

³³ Ibid, p.5

³⁴ Ibid, p.6

³⁵ See <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>

³⁶ Governance Documents include ICANN’s Bylaws and Articles of Incorporation. See <https://icann.org/resources/pages/governance/governance-en>.

³⁷ EIU Contract and Statement of Work (“SOW”) with ICANN, <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>, March 12, 2012 Statement of Work No:[2], p.8

³⁸ Ibid, p.5

³⁹ Ibid, p.12

⁴⁰ EIU Panel Process document, <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, p.2

16. The CPE Guidelines required that “the panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined community plays an important role. The provider must be able to convene a panel capable of evaluating applications from a wide variety of different communities. The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and [...] The panel must be able to document the way in which it has done so in each case. EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to applications. All applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.”⁴¹
17. Once an applicant submits its materials in support of CPE, a panel constituted of EIU experts (known as a “CPE panel”) evaluates the application.⁴² The CPE panel evaluates the application against the CPE criteria, using the CPE Guidelines as additional guidance, which include scoring rubrics, definitions of key terms, and specific questions to be scored.⁴³ If the application is found to meet the CPE criteria set forth in the AGB—meaning that the CPE panel awards the application at least 14 out of 16 possible points on those criteria—the application will prevail in CPE.⁴⁴ If an application prevails in CPE, it (and any other community based applications in the contention set that prevail in CPE) will proceed to the next stage of evaluation.⁴⁵ Other standard applications in a contention set will not proceed if the community-based application(s) have achieved priority,⁴⁶ an outcome based on the principles and policy implementation guidelines of the GNSO that applications representing communities be awarded priority in string contention.⁴⁷
18. The CPE are set forth in Module 4 of the AGB. There are four principal criteria, each worth a possible maximum of 4 points: Community Establishment, the Nexus between

⁴¹ CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.22

⁴² See Community Priority Evaluation Panel and Its Processes, <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

⁴³ Ibid; CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

⁴⁴ See AGB, § 4.2.2. The four CPE criteria are: (i) community establishment; (ii) nexus between proposed string and community; (iii) registration policies; and (iv) community endorsement. Each criterion is worth a maximum of four points, See AGB, § 4.2.3

⁴⁵ AGB, § 4.2.2

⁴⁶ AGB, § 4.2.2

⁴⁷ ICANN Board Rationales for the Approval of the Launch of the New gTLD Program , <https://icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf>, p.94; ICANN’s 2007 Recommendations and Principles for launching the New gTLD Program provided that “where an applicant lays any claim that the TLD is intended to support a particular community, that claim will be taken on trust, with the following exceptions: (i) the claim to support a community is being used to gain priority for the application [...] Under [this] exception[...], Staff Evaluators will devise criteria and procedures to investigate the claim.” <http://gns0.icann.org/en/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>, Implementation Guidelines (IG H), Mission and Core Values (CV 7-10), p.6; Also see <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

Proposed String and Community, Registration Policies and Community Endorsement.⁴⁸
An application must receive a total score of at least 14 points in order to prevail.

19. The first criterion is Community Establishment, which is comprised of two main sub-criteria: 1-A Delineation (worth 2 points) and 1-B Extension (worth 2 points). According to the AGB, “community” implies “more of cohesion than a mere commonality of interest” with (i) “an awareness and recognition of a community among its members;” (ii) an “understanding of the community’s existence prior to September 2007;” and (iii) “extended tenure or longevity—non transience—into the future.” Under the 1-A Delineation sub-criterion, the Community’s membership definition is evaluated to determine whether the Community is “clearly delineated [‘Delineation’], organized [‘Organization’], and pre-existing [‘Pre-Existence’].” Delineation requires “a clear and straightforward membership definition” and an “awareness and recognition of a community (as defined by the applicant) among its members.” Organization requires “documented evidence of community activities” and “at least one entity mainly dedicated to the community” (as defined by applicant). Pre-existence requires that the Community defined by the applicant “must have been active prior to September 2007.” Under the I-B Extension sub-criterion, the Community (as defined by applicant) must be of “considerable size [‘Size’] and longevity [‘Longevity’].” Size requires that the “community is of considerable size.”⁴⁹ Longevity requires that the community (as defined by applicant) “was in existence prior to September 2007.”⁵⁰ According to the AGB: “With respect to ‘Delineation’ and ‘Extension,’ it should be noted that a community can consist of [...] a logical alliance of communities (for example, an international federation of national communities of a similar nature).”⁵¹
20. The second criterion is the Nexus between Proposed String and Community, which is comprised of two main sub-criteria: 2-A Nexus (3 points possible) and 2-B Uniqueness (1 point). With respect to “Nexus,” for a score of 3, “the essential aspect is that the applied-for string is commonly known by others as the identification / name⁵² of the community” i.e. “[t]he string matches the name of the community.”⁵³ Uniqueness means that the “[s]tring has no other significant meaning beyond identifying the community described in the application.”⁵⁴ According to the AGB: “With respect to ‘Uniqueness,’ ‘significant meaning’ relates to the public in general, with consideration of the community language context added. ‘Uniqueness’ will be scored both with regard to the community context and from a general point of view.”⁵⁵

⁴⁸ AGB, Section 4.2.3, pp.4-9 to 4-19

⁴⁹ AGB, “‘Size’ relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers,” p.4-11

⁵⁰ AGB, “‘Longevity’ means that the pursuits of a community are of a lasting, non-transient nature,” p.4-12

⁵¹ AGB, p.4-12

⁵² AGB, “‘Name’ of the community means the established name by which the community is commonly known by others,” p.4-13

⁵³ AGB, p.4-12

⁵⁴ AGB, p.4-13

⁵⁵ AGB, p.4-14

21. The third criterion is the Registration Policies. There is 1 point possible for each sub-criterion: 3-A Eligibility, 3-B Name selection, 3-C Content and Use and 3-D Enforcement.⁵⁶
22. The fourth criterion is Community Endorsement, which has two sub-criteria, each worth 2 points: 4-A Support and 4-B Opposition. According to the AGB: “Support” means that the “Applicant is, or has documented support from, the recognized⁵⁷ community institution(s) / member organization(s).”⁵⁸ According to the AGB: “With respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions / organizations. In such cases there must be documented support from institutions / organizations representing a majority of the overall community addressed in order to score 2.”⁵⁹ According to the AGB: With respect to “Opposition,” 2 points are awarded if there is “no opposition of relevance.”⁶⁰ Also, “to be taken into account as relevant opposition [...] objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.”⁶¹

The DotMusic Application Materials and .MUSIC CPE Process

23. DotMusic with Application ID 1-1115-14110 was invited to CPE on July 29, 2015.⁶² DotMusic accepted ICANN’s invitation, electing to have its .MUSIC community-based Application evaluated by the EIU CPE Panel (the “Panel”).⁶³ According to DotMusic’s Application Materials:
- a. The Mission and Purpose is: “Creating a trusted, safe online haven for music consumption and licensing; Establishing a safe home on the Internet for *Music Community* (“Community”) members regardless of locale or size; Protecting intellectual property and fighting piracy; Supporting Musicians’ welfare, rights and fair compensation; Promoting music and the arts, cultural diversity and music education; Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional Advisory Committee Board working in the Community’s best interest. The global Music Community includes both commercial and non-commercial stakeholders;⁶⁴
 - b. According to DotMusic’s Application, the “Community” was defined in 20A: “The Community is a strictly delineated and organized community of individuals,

⁵⁶ AGB, pp. 4-14 to 4-16

⁵⁷ AGB, “‘Recognized’ means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community,” pp. 4-17 to 4-18

⁵⁸ AGB, p.4-17

⁵⁹ AGB, p.4-18

⁶⁰ AGB, p.4-17

⁶¹ AGB, p.4-19

⁶² See ICANN CPE microsite, <https://newgtlds.icann.org/en/applicants/cpe>

⁶³ See DotMusic’s .MUSIC Application Details on ICANN’s website, <https://gtdresult.icann.org/applicationstatus/applicationdetails/1392>

⁶⁴ See .MUSIC Application, 18A. Also see 20C, <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1392?t:ac=1392> (emphasis added)

- organizations and business, a “logical *alliance* of communities of a similar nature (“COMMUNITY”)), that relate to music: the art of combining sounds rhythmically, melodically or harmonically;”⁶⁵
- c. According to DotMusic’s Application, community establishment was described in 20A: “DotMusic will use clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria “aligned with the community-based Purpose” and mitigate anti-trust and confidentiality / privacy concerns by protecting the Community of considerable size / extension while ensuring there is no material detriment to Community rights / legitimate interests. Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination;”⁶⁶
 - d. According to the DotMusic Application, evidential examples of music community cohesion were described in 20A: “commonly used [...] classification systems such as ISMN, ISRC, ISWC, ISNI [...]”;⁶⁷
 - e. According to DotMusic’s Application, the size and extensiveness of the community were described in 20A: “The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries [...] with a Community of considerable size with millions of constituents (‘SIZE’);”⁶⁸

⁶⁵ See .MUSIC Application, 20A, para.3 at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392> (emphasis added); Also see DotMusic Public Interest Commitments: “... Community definition of a “logical alliance of communities of similar nature that relate to music” ...” at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, § 5.i, p.2

⁶⁶ See .MUSIC Application, 20A, para.1

⁶⁷ Ibid, 20A, para.3; Also see DotMusic letter submitted to ICANN and the EIU on August 12th, 2015 (See <https://www.icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-2-redacted-12aug15-en.pdf>): “The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173,” footnote 7, p.8; “The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401,” footnote 8, pp.8 to 9; “The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780, footnote 9, p.9; “The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org> and http://www.iso.org/iso/catalogue_detail?csnumber=44292,” footnote 10, p.9; Also see DotMusic Answers to Clarifying Questions, <https://icann.box.com/shared/static/w4r8b711mfs1yww46ey4fa009tkzk8cr.pdf>, pp. 121 to 122 of 993, Exhibit A21

⁶⁸ See .MUSIC Application, 20A, para.4 at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392>

- f. According to DotMusic’s Application, the “Name” of the community defined was described in 20A: “The name of the community served is the ‘Music Community’ (‘Community’);”⁶⁹
- g. According to DotMusic’s Application, the “Nexus between Proposed String and Community” was described in 20A and 20D: “The ‘MUSIC’ string *matches* the name (‘Name’) of the Community and is the established name by which the Community is commonly known by others.”⁷⁰ DotMusic “explain[ed] the relationship between the applied- for gTLD string and the community identified in 20A” in its answer to 20D: “The .MUSIC string relates to the Community by *completely representing* the *entire* Community. It relates to all music-related constituents using an all-inclusive, multi-stakeholder model;”⁷¹
- h. According to the DotMusic Application, DotMusic received “documented support” from multiple organizations representing a majority of the Community, as referenced in 20D: “See 20F for documented support from institutions/organizations representing majority of the Community and description of the process/rationale used relating to the expression of support.”⁷² According to the DotMusic Application Materials and DotMusic’s Support letters, the .MUSIC Application is supported by *multiple* recognized and trusted organizations with members representing over ninety-five percent (95%) of music consumed globally, a *majority* of the overall Music Community defined, the “organized and delineated logical alliance of communities of similar nature that relate to music;”⁷³ and
- i. Documented support from multiple organizations for DotMusic’s .MUSIC community-based Application included the International Federation of Arts Councils and Culture Agencies⁷⁴ (“IFACCA”), the International Federation of Phonographic Industry⁷⁵ (“IFPI”), the International Federation of Musicians⁷⁶ (“FIM”), the

⁶⁹ Ibid, 20A, para.1

⁷⁰ Ibid, 20A, para.3 (emphasis added)

⁷¹ Ibid, 20D, para.1 (emphasis added)

⁷² Ibid, 20D, last paragraph

⁷³ See Support Letters from multiple organizations for DotMusic’s Application at <http://music.us/supporters> and <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>; See over two-thousand (2,000) Support Letters at <https://icann.box.com/shared/static/bg7rpnj9zeg4jvt8ff7qaka2ot7ai4mg.pdf>. (Exhibits A19-1, A19-2 and A19-3) and at <https://icann.box.com/shared/static/s2dab2ba5pf6hx9f1j7cg5x86acnrhli.pdf> (Exhibit A19-4); and <https://gtldcomment.icann.org/applicationcomment/viewcomments>

⁷⁴ IFACCA is the is the only international federation representing a global network of arts councils and government ministries of culture with national members from over 70 countries covering all continents. See <http://ifacca.org>

⁷⁵ The IFPI, founded in 1933, is a globally-recognized music organization with official relations with United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status), a globally-recognized international organization with 195 country member states (See <http://en.unesco.org/countries/member-states>); World Intellectual Property Organization (WIPO) (Permanent Observer Status). See <http://ngo-db.unesco.org/r/or/en/1100064188> and http://wipo.int/members/en/organizations.jsp?type=NGO_INT. The IFPI represents the “recording industry worldwide” encompassing 63 countries with IFPI-affiliated national groups or music licensing companies as well as 63 global markets where the IFPI’s member companies operate in. The IFPI represents the majority of music consumed globally. See <http://www.ifpi.org>. The IFPI is also the globally-recognized organization that administers the International Standard Recording Code (ISRC), an international standard code for uniquely identifying sound recordings and music video recordings, which is reciprocally recognized across all segments of the Music Community. See <http://isrc.ifpi.org/en/isrc-standard/structure> and <http://isrc.ifpi.org/en/why-use/benefits>. The IFPI also represents the three major label groups (Universal Music, Sony Music and Warner Music), which “control 78% of the global market.” See Credit Suisse Research and

International Confederation of Music Publishers⁷⁷ (“ICMP”), the International Artist Organisation (“IAO”),⁷⁸ the Featured Artist Coalition⁷⁹ (“FAC”), the International Society for Music Education⁸⁰ (“ISME”), the International Ticketing Association⁸¹ (“INTIX”), the International Association of Music Information Centres⁸² (“IAMIC”), the Worldwide Independent Network⁸³ (“WIN”), the International Music Products

Analytics, Global Music, 25 June 2014. Retrieved May 12, 2016 from https://doc.research-and-analytics.csfb.com/docView?language=ENG&source=emfromsendlink&format=PDF&document_id=1034433411&extdocid=1034433411_1_eng_pdf

⁷⁶ FIM is an international federation of national music communities representing the “voice of musicians worldwide.” The FIM, founded in 1948, is a globally-recognized music community organization with documented official roster consultative status relations with the United Nations Economic and Social Council (“ECOSOC”); the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status); the World Intellectual Property Organization (“WIPO”) (Permanent Observer Status); and the Organisation Internationale de la Francophonie (“OIF”). The FIM is also consulted by the Council of Europe, the European Commission and the European Parliament. FIM is also a member of the International Music Council (“IMC”). See <http://www.fim-musicians.org>

⁷⁷ The ICMP, founded in 1991, is the “global voice for music publishing,” the world trade association representing the interests of the music publishing community internationally. ICMP’s mission is to increase copyright protection internationally, encourage a better environment for business and act as a music community forum for consolidating global positions. See http://www.wipo.int/members/en/organizations.jsp?type=NGO_INT. See <http://www.icmp-ciem.org>. The ICMP is a globally-recognized organization accredited by WIPO as an observer.

⁷⁸ The IAO is the umbrella association for national organizations representing the rights and interests of Featured Artists in the Music Industry. Our principal interests are transparency, the protection of intellectual property and a fair reflection of the value an artist's work generates. The IAO is a not-for-profit organization based in Paris that was officially founded by its six founder-members: FAC (UK), GAM (France), CoArtis (Spain), Domus (Germany), Gramart (Norway) and FACIR (Belgium). See <http://www.iaomusic.org>

⁷⁹ The FAC “represents the interests of Featured Artists within the national, European and International political arenas when relevant issues such as copyright law, music licensing are being debated.” See <http://thefac.org/about>

⁸⁰ The ISME was formed in 1953 by UNESCO “to stimulate music education as an integral part of general education.” The ISME represents an international, interdisciplinary, intercultural music community network striving to understand and promote music learning across the lifespan with presence in over 80 countries covering a network of millions of music community members. The ISME, the “premiere international organisation for music education”... “respects all musics and all culture” and believes that “every individual has a right to music education.” See <http://isme.org/general-information/4-isme-facts>

⁸¹ INTIX is the only international ticketing organization mainly dedicated to ticketing that plays a vital role for the global Music Community by generating over \$20 billion in live music ticket sales every year. INTIX “is the leading forum for ticketing professionals, representing the most comprehensive view of the industry and its practices, products and services. INTIX represents members from over 25 countries.” See <http://intix.org> and <https://icann.org/en/system/files/correspondence/hoffman-to-icann-eiu-05may16-en.pdf>

⁸² IAMIC, formed in 1958, is the only global network of international music information centres that is dedicated to the global music community by means of “facilitating the exchange of knowledge and expertise in the field of music documentation, promotion and information, leading to an increased international cooperation, performance and use of repertoire of music of all genres.” IAMIC is the “only international network of organisations that document, promote and inform on the music of their country or region in a diversity of musical genres.” See <http://iamic.net>

⁸³ WIN, formed in 2006, supports independent music trade associations globally and is a global forum for the professional independent music industry. It was launched in 2006 in response to business, creative and market access issues faced by the independent sector everywhere. For independent music companies and their national trade associations worldwide, WIN is a collective voice. It also acts as an advocate, instigator and facilitator for its membership. WIN exists to support the independent music community through interaction with representative trade organizations and groups, and working directly with international music industry bodies on issues of global significance. See <http://winformusic.org>

Association⁸⁴ (“NAMM”), the International Music Managers Forum⁸⁵ (“IMMF”), Jeunesses Musicales International⁸⁶ (“JMI”), the Independent Music Companies Association⁸⁷ (“IMPALA”), the Recording Industry Association of America⁸⁸ (“RIAA”), the National Music Publishers Association⁸⁹ (“NMPA”), the American Association of Independent Music⁹⁰ (“A2IM”), the Association of Independent Music⁹¹ (“AIM”), the Merlin Network⁹² (“Merlin”), the American Society of Composers, Authors & Publishers⁹³ (ASCAP), the Society of European Stage

⁸⁴ NAMM is a globally-recognized music association formed in 1901 representing the international music products industry and community. NAMM is the not-for-profit association that promotes the pleasures and benefits of making music and strengthens the \$17 billion global music products industry. See <https://www.namm.org>

⁸⁵ The IMMF, formed in 1992, is the umbrella international organization representing entertainment manager members. The IMMF connects music managers around the world to share experiences, opportunities, information and resources. See <http://immf.com>

⁸⁶ JMI is the world’s largest music youth organization covering over 5 million music community members aged 13-30. JMI is the largest youth music non-governmental organization in the world, created in 1945 with the mission to “enable young people to develop through music across all boundaries” powered by its 230 staff members and 2,200 volunteers. See <http://www.jmi.net>. JMI is globally recognized and has consultative status with UNESCO and official roster consultative status relations with the United Nations’ ECOSOC. See <http://ngo-db.unesco.org/r/or/en/1100033233>

⁸⁷ IMPALA was formed in 2000 by prominent independent labels and national trade associations and has over 4,000 members. IMPALA is a non-profit making organization with a scientific and artistic purpose, dedicated to cultural SMEs, the key to growth and jobs in Europe. IMPALA enables the independents to leverage collective strength to punch above their weight. IMPALA’s mission is to grow the independent music sector, promote cultural diversity and cultural entrepreneurship, improve political access and modernize the perception of the music industry. See <http://www.impalamusic.org>

⁸⁸ The RIAA, founded in 1956, is a globally-recognized music association that represents the recording industry in the United States. By “Representing Music,” the RIAA is a trade organization that supports and promotes the creative and financial vitality of the major music companies. The RIAA’s members comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. See <http://www.riaa.com/about-riaa>. The United States is the world’s largest market representing 26% of the entire physical music market and 71% of the digital music market. See Recording Industry Association of Japan Yearbook 2015: IFPI 2013, 2014. Top 20 Markets, p.24. Retrieved May 12, 2016 from <http://www.riaj.or.jp/e/issue/pdf/RIAJ2015E.pdf>. The United States represents 40.6% of global music market share. See 2014 NAMM Global Report at https://www.namm.org/files/ihdp-viewer/global-report-2014/A7352D4907B25A95B2CE27A075D3956F/2014MusicUSA_final.pdf, p.6

⁸⁹ The NMPA, formed in 1917, is the largest U.S. music publishing trade association that “represents the rights of music publishers everywhere and works to protect their intellectual property.” Its mission is to protect, promote, and advance the interests of music’s creators. The NMPA is the voice of both small and large music publishers, the leading advocate for publishers and their songwriter partners in the nation’s capital and in every area where publishers do business. The goal of NMPA is to protect its members’ property rights on the legislative, litigation, and regulatory fronts. The NMPA is an active and vocal proponent for the interests of music publishers in the U.S. and throughout the world. See <https://www.nmpa.org/aboutnmpa/mission.asp>

⁹⁰ A2IM, formed in 2005, represents the Independent music community as a unified voice, representing a sector that comprises over 34.5% of the U.S music industry’s market share and as much as 80% of the music industry’s releases. A2IM represents the Independents’ interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. See <http://a2im.org/about/mission>. A2IM also has Associate Members, such as Apple, Pandora Spotify and YouTube. See <http://a2im.org/groups/tag/associate+members>

⁹¹ AIM is a trade body established in 1999 to provide a collective voice for the UK’s independent music industry. See <http://www.musicindie.com>

⁹² Merlin is the global rights agency for the independent label sector, representing over 20,000 labels from 39 countries. Merlin serves the interests of the global independent music sector. See <http://merlinnetwork.org>

⁹³ ASCAP, formed in 1914, is a membership association of more than 525,000 composers, songwriters, lyricists and music publishers of every kind of music. Through agreements with affiliated international societies, ASCAP also

Authors and Composers⁹⁴ (“SESAC”), Broadcast Music, Inc⁹⁵ (“BMI”), the Nashville Songwriters Association International⁹⁶ (“NSAI”), The Recording Academy,⁹⁷ UK Music,⁹⁸ the British Phonographic Industry⁹⁹ (“BPI”), Bundesverband Musikindustrie¹⁰⁰ (“BVMI”), the Indian Music Industry¹⁰¹ (“IMI”), the Indian Performing Right Society¹⁰² (“IPRS”), the National Association of Recording

represents hundreds of thousands of music creators worldwide. ASCAP protects the rights of ASCAP members by licensing and distributing royalties for the non-dramatic public performances of their copyrighted works. ASCAP’s licensees encompass all who want to perform copyrighted music publicly. ASCAP makes giving and obtaining permission to perform music simple for both creators and music users. See <http://www.ascap.com/about>

⁹⁴ SESAC, founded in 1930, is a leading global performing rights organization representing songwriters and publishers and their right to be compensated for having their music performed in public. SESAC currently licenses the public performances of more than 400,000 songs on behalf of its 30,000 affiliated songwriters, composers and music publishers. See <http://www.sesac.com>

⁹⁵ BMI, founded in 1939, is the largest music rights organization. BMI is the bridge between songwriters and the businesses and organizations that want to play their music publicly. As a global leader in music rights management, BMI serves as an advocate for the value of music, representing more than 8.5 million musical works created and owned by more than 650,000 songwriters, composers and music publishers. BMI’s role is international in scope. The songwriters, composers and BMI represents include individuals from the more than 90 performing rights organizations around the world. See <http://www.bmi.com/about>

⁹⁶ The NSAI is the world’s largest international not-for-profit songwriters’ trade association. The NSAI was established in 1967 and is dedicated to protecting the rights of and serving aspiring and professional songwriters in all genres of music. See <http://www.nashvillesongwriters.com>

⁹⁷ The Recording Academy is a music organization of musicians, producers, recording engineers and other recording professionals dedicated to improving the quality of life and cultural condition for music and its makers. The Recording Academy, which began in 1957, is known for its GRAMMY Awards, the world’s most recognized music award. As the preeminent membership organization for thousands of musicians, producers, songwriters, engineers, and other music professionals, the Recording Academy’s mission is to advance artistic and technical excellence, work to ensure a vital and free creative environment, and act as an advocate on behalf of music and its makers. The Academy’s mission statement is simple, but represents the heart and soul of the organization’s efforts: to positively impact the lives of musicians, industry members and our society at large. See <http://grammy.org/recording-academy>

⁹⁸ UK Music promotes the interests of UK record labels, songwriters, musicians, managers, publishers, producers, promoters and collecting societies through high profile campaigns and events. UK Music represents the AIM, the British Academy of Songwriters, Composers and Authors (“BASCA”), the BPI, the Music Managers Forum (“MMF”), the Music Publishers Association (“MPA”), which includes collection societies Mechanical-Copyright Protection Society Ltd (“MCPS”) and Printed Music Licensing Ltd (“PMLL”), the Music Producers Guild (“MPG”), the Musicians Union (“MU”), the Phonographic Performance Limited, PRS for Music, UK Live Music Group and the FAC. See <http://ukmusic.org/about-us/our-members>. British artists constitute 13.7% of all global music sales and account for one (1) in seven (7) albums purchased by fans around the globe. See <http://billboard.com/biz/articles/6589962/brits-share-of-global-market-hits-five-year-high>

⁹⁹ The BPI represents the UK’s recorded music industry, which includes independent music companies and the UK’s major record companies – Universal Music, Sony Music, and Warner Music. Together, BPI’s members account for 85% of all music sold in the UK. See <http://www.bpi.co.uk>

¹⁰⁰ BVMI represents over 85% of music consumed in Germany, the world’s 3rd largest music market globally. See <http://www.musikindustrie.de>. Also see Recording Industry Association of Japan Yearbook 2015: IFPI 2013, 2014. Top 20 Markets, p. 24. Retrieved May 12, 2016 from <http://www.riaj.or.jp/e/issue/pdf/RIAJ2015E.pdf>

¹⁰¹ IMI, formed in 1936, represents over 75% of all legal music in India. The IMI is the second oldest music industry organization in the world that was involved in protecting copyrights of music producers. See <http://indianmi.org>

¹⁰² IPRS was founded in 1969 and is the representative body of music owners, composers, lyricists (or authors) and the publishers of music and is also the sole authorized body to issue licenses for usage of musical works and literary music in India. The IPRS is a very active member of the Copyright Enforcement Advisory Council set up by the Government of India to advise on copyright issues and their enforcement. See <http://www.iprs.org>

Industry Professionals¹⁰³ (“NARIP”),¹⁰⁴ (“PPL”), the Harry Fox Agency¹⁰⁵ (“HFA”), William Morris Endeavor¹⁰⁶ (“WME”), Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte¹⁰⁷ (“GEMA”), Future of Music Coalition¹⁰⁸ (“FMC”), the Society of Composers, Authors and Music Publishers of Canada¹⁰⁹ (“SOCAN”), Music Managers Forum¹¹⁰ (“MMF”), ReverbNation,¹¹¹ TuneCore,¹¹² Believe Digital,¹¹³ CDBaby,¹¹⁴ TheOrchard,¹¹⁵ LyricFind,¹¹⁶ SonicBids,¹¹⁷

¹⁰³ NARIP promotes education, career advancement and goodwill among record executives. Established in 1998 and based in Los Angeles, NARIP has chapters in New York, Atlanta, San Francisco, Phoenix, Houston, Las Vegas, Philadelphia and London, and reaches over 100,000 people in the music industries globally. See <http://narip.com>

¹⁰⁴ PPL represents Indian music organizations and owns, as assignee, and exclusively controls public performance rights and radio broadcasting rights in more than 500,000 songs (sound recordings) in Hindi, Telugu, Tamil, Bengali, Punjabi, Marathi, Malayalam, Bhojpuri and other Indian languages, including both film and non-film songs such as Ghazals, devotional, folk, pop, classical. See <http://www.pplindia.org>

¹⁰⁵ HFA, founded in 1927, represents over 48,000 affiliated publishers and is the leading provider of rights management, licensing, and royalty services for the U.S. music industry with authority to license, collect, and distribute royalties on behalf of musical copyright owners. In addition, the HFA provides affiliated publishers with the opportunity to participate in other types of licensing arrangements including lyrics, guitar tablatures, background music services and more. See <http://www.harryfox.com>

¹⁰⁶ WME is one of the world’s largest music talent agencies with offices in Beverly Hills, New York City, London, Miami, Nashville, and Dallas. See <http://www.wmeentertainment.com/0/cta/music>

¹⁰⁷ GEMA, founded in 1933, represents the copyrights of more than 69,000 members (composers, lyricists and music publishers) in Germany, as well as over two million copyright holders globally. GEMA is one of the largest societies of authors for musical works in the world with 30 million music works online through cooperation with international partner music organizations operating through a network of databases. See <https://www.gema.de>

¹⁰⁸ The FMC, founded in 2000, is a non-profit music organization with a mission in “supporting a musical ecosystem where artists flourish and are compensated fairly and transparently for their work. FMC works with musicians, composers and industry stakeholders to identify solutions to shared challenges and to ensure that diversity, equality and creativity drives artist engagement with the global music community, and that these values are reflected in laws, licenses, and policies that govern any industry that uses music.” See <http://futureofmusic.org>

¹⁰⁹ SOCAN is a not-for-profit organization that represents the Canadian performing rights of millions of Canadian and international music creators and publishers. SOCAN plays a leading role in supporting the long-term success of its more than 125,000 Canadian members, as well as the Canadian music industry. SOCAN distributes royalties to its members and peer organizations around the world. See <http://www.socan.ca/about>

¹¹⁰ MMF is the world’s largest representative body of artist music managers. See <http://themmaf.net>

¹¹¹ ReverbNation is the world’s largest music-dedicated community covering nearly 4 million musicians and industry individuals and organizations in over 100 countries across all music constituent types. See <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues) and <https://reverbnation.com/fan-promotion> (Fans).

¹¹² TuneCore is the world’s leading digital distributor for online music and video. Founded in 2005, TuneCore offers musicians and other rights-holders the opportunity to place their music into online retailers such as iTunes, Google Play, AmazonMP3, Zune Marketplace, Rhapsody, eMusic, Spotify, and others for sale. TuneCore distributes between 15,000 and 20,000 newly recorded releases a month. TuneCore registers musicians’ songs worldwide in over 60 countries and is affiliated with ASCAP, BMI and SESAC. See <http://www.tunecore.com>

¹¹³ Believe Digital, founded in 2004, is the largest, leading digital distributor and services provider for independent artists and labels. Believe Digital is integrated with over 350 digital music stores in the world, including all major online and wireless digital music stores. Believe Digital’s distribution network includes iTunes, Amazon, Deezer, Google, Spotify, YouTube, Vodafone, Orange and many more. See <http://believedigital.com/network>

¹¹⁴ CD Baby, founded in 1998, is the world’s largest online distributor of independent music, with over 300,000 artists, 400,000 albums and 4 million tracks in its catalog. See <http://www.cdbaby.com>

¹¹⁵ The Orchard was founded in 1997 to foster independence and creativity in the music industry. The Orchard is a music and video distribution company operating in more than 25 global markets. See <http://www.theorchard.com>

¹¹⁶ LyricFind is the world’s leader in legal lyric solutions. Founded in 2004, LyricFind has amassed licensing from over 4,000 music publishers, including all four majors – EMI Music Publishing, Universal Music Publishing Group, Warner/Chappell Music Publishing, and Sony/ATV Music Publishing. LyricFind also built a database of those lyrics

Altafonte,¹¹⁸ the League of American Orchestras,¹¹⁹ BMAT,¹²⁰ INDMusic,¹²¹ the Canadian Musical Reproduction Rights Agency¹²² (“CMRRA”), the Canadian Independent Music Association¹²³ (“CIMA”), StoryAmp,¹²⁴ Americana Music Association¹²⁵ (“AMA”), the Australian Independent Record Labels Association¹²⁶ (“AIR”), Associacao Brasileira da Musica Independente - the Brazilian Association of Independent Music¹²⁷ (“ABMI”), the Archive of Contemporary Music¹²⁸ (“ARC”)

available for licensing and service to over 100 countries. LyricFind tracks, reports, and pays royalties to those publishers on a song-by-song and territory-by-territory basis. See <http://lyricfind.com>

¹¹⁷ Sonicbids, founded in 2001, enables artists to book gigs and market themselves online. It connects more than 450,000 artists with over 30,000 promoters and brands from over 100 different countries and 100 million music fans. See <https://www.sonicbids.com>

¹¹⁸ Altafonte is the leading music distributor for Spanish independent labels and the leading independent digital distribution company in Iberia and Latin America. Altafonte distributes digital and physical music to over 100 platforms worldwide including Apple iTunes, Spotify, Amazon, Google Play, YouTube, Vevo, Shazam, Deezer, Pandora and others. See <http://altafonte.com/en>

¹¹⁹ The League of American Orchestras leads, supports, and champions America’s orchestras and the vitality of the music they perform. Its diverse membership of approximately 800 orchestras totaling tens of thousands of musicians across North America. The League is the only national organization dedicated solely to the orchestral experience, and is a nexus of knowledge and innovation, advocacy, and leadership advancement for managers, musicians, volunteers, and boards. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners. See <http://www.americanorchestras.org>

¹²⁰ BMAT provides global music identification that monitors over 16 million songs and growing in over 3000 radios and televisions across more than 60 countries worldwide. See <http://www.bmat.com>

¹²¹ INDMusic is a global music rights administration network which is YouTube Certified MCN. INDMUSIC, owned by Live Nation (“the largest live entertainment company in the world, connecting nearly 519 million music fans,” Live Nation Annual Report 2014 at http://s1.q4cdn.com/788591527/files/doc_financials/2014/LYV-2014-Annual-Report.pdf, p.2), helps the global music community and its channel partners monetize their content on multiple platforms without sacrificing creative control or rights to their music content. The INDMusic community is composed of over 3.9 million network members and over 1900 channel partners. INDMusic community’s network reach is over 3.5 billion monthly network views. See <http://www.indmusicnetwork.com>

¹²² Founded in 1975, the CMRRA is a music licensing collective representing music rights holders, who range in size from large multinational music publishers to individual songwriters. Together, they own or administer the vast majority of songs recorded, sold and broadcast in Canada. On their behalf, CMRRA issues licenses to individuals or organizations for the reproduction of songs on various media. See <http://www.cmr.ca/cmr/about>

¹²³ CIMA, founded in 1975, is the not-for-profit national trade association representing the English-language, Canadian-owned sector of the music industry. See <http://www.cimamusic.ca/about-cima>

¹²⁴ StoryAmp is the world’s leading music community for music artists, music publicists and music journalists. It provides artists and publicists the opportunity to connect and network with over 7000 music journalists globally. See <https://www.storyamp.com>

¹²⁵ The AMA is a music trade organization whose mission is to advocate for the authentic voice of American Roots Music around the world. The Americana Music Association works behind the scenes to foster an environment for growth: building infrastructure, creating networking opportunities and establishing channels, which allow the music community to work effectively and efficiently. See <http://americanamusic.org/who-we-are>

¹²⁶ AIR is a non-profit, non-government association dedicated to supporting the growth and development of Australia’s independent recording sector. AIR represents Australian owned record labels and independent artists based in Australia. See <http://www.air.org.au>

¹²⁷ ABMI was founded in January 2002. ABMI operates in the Brazilian market and global to promote the production and distribution of independent Brazilian music. Currently, the association represents the majority of record labels in Brazil. See <http://abmi.com.br>

¹²⁸ ARC, founded in 1985, is a not-for-profit archive, music library and research center. ARC contains more than 2.25 million sound recordings and over 22 million songs. ARC has electronically catalogued more than 300,000 sound recordings – more than any other public, university or private library. ARC also houses more than three million pieces of attendant support material including photographs, videos, DVDs, books, magazines, press kits,

Independent Music New Zealand¹²⁹ (“IMNZ”), PledgeMusic,¹³⁰ BureauExport - French Music Export Office,¹³¹ Western Australian Music Association¹³² (“WAM”), the Music British Columbia Industry Association¹³³ (“MusicBC”), Music Austria,¹³⁴ Manitoba Music,¹³⁵ Luxembourg Export Office¹³⁶ (“Music:LX”), Francophonie Diffusion,¹³⁷ the Alberta Music Industry Association¹³⁸ (“Alberta Music”), Pleimo,¹³⁹ Music Centre Slovakia,¹⁴⁰ Queensland Music Network¹⁴¹ (“QMUSIC”), The Northern

sheet music, ephemera and memorabilia. ARC also maintains a variety of informational databases, notably its Music Index of over 52,000 people working in the music industry. See <http://arcmusic.org>

¹²⁹ IMNZ is a non-profit trade association, the New Zealand voice for independent record labels and distributors. Its members release the bulk of New Zealand music, including commercially successful artists as well as niche music genres. IMNZ started in 2001. These labels and distributors collectively represent the majority of all musical acts in New Zealand. See <http://www.indies.co.nz>

¹³⁰ PledgeMusic is leading music global direct-to-fan platform that provides artists and labels with the tools needed to get fans to engage. PledgeMusic provides the artist or label with tools to fund, pre-sell, sell, and release their music while connecting directly with fans. See <http://www.pledgemusic.com>

¹³¹ BureauExport is a French non-profit organization and network created in 1993 that helps French and international music professionals work together to develop French produced music around the world and to promote professional exchange between France and other territories. BureauExport members include labels, publishers, distributors, promoters, artist management offices or ensembles. BureauExport is a global network whose mission is to help French music professionals develop their artists internationally. See <http://www.french-music.org>

¹³² WAM, founded in 1987, is the music body responsible for supporting, nurturing and growing all forms of contemporary music in Western Australia. WAM supports and promotes all forms and levels of Western Australian music, locally, nationally and internationally. See <http://wam.org.au/what-we-do>

¹³³ MusicBC represents the British Columbia music industry. Music BC is the only provincial music association that serves all genres, all territories and all participants in the industry from artists, to managers, agents, broadcasters, recording studios, producers and all other industry professionals. Music BC is a non-profit society established in 1994 dedicated to providing information, education, funding, advocacy, awareness and networking opportunities to develop and promote the spirit, growth and sustainability of the BC Music community. See <http://musicbc.org>

¹³⁴ Music Austria is the professional partner for musicians in Austria. Music Austria was founded in 1994 as an independent, non-profit association by the Republic of Austria to support of contemporary musicians living in Austria with advice and information and the distribution of local music through promotion in Austria and abroad. See <http://www.musicaustria.at>

¹³⁵ Manitoba Music is the hub of Manitoba’s vibrant music community and was established in 2000. Manitoba Music is a member-based, not-for-profit industry association representing over 750 members in all facets of the music industry, including artists and bands, studios, agents, managers, songwriters, venues, promoters, producers, and beyond. Manitoba Music serves all genres, from rock to roots, hip-hop to hardcore, country to classical, and everything in between. See <http://manitobamusic.com>

¹³⁶ Music:LX is a non-profit organization and network created in 2009 with the aim to develop Luxembourg music of all genres around the world and to promote professional exchange between Luxembourg and other territories. Music:LX helps its artists financially with the promotion of releases outside of Luxembourg and international tours and showcases. See <http://www.musiclx.lu>

¹³⁷ Francophonie Diffusion, founded in 1993, promotes artists and music from the Francophone area through a worldwide network of more than 1000 media, festivals and music supervisors worldwide located in 100 countries, provinces or territories. Francophonie Diffusion has been involved for 20 years in the promotion of artists from the Francophone area. See <http://www.francodiff.org/en>

¹³⁸ The Alberta Music, founded in 1980, is a music association dedicated to helping professionals in the music industry to succeed in their careers to “participate and assist in the overall development and improvement of the Alberta and Canadian recorded music industry, especially as it relates to Alberta.” See <http://albertamusic.org/about>

¹³⁹ Pleimo is an international music streaming platform which aggregates bands and music fans around the world. It offers a 360-degree platform for 250,000 artists to manage and promote their music. Music fans can also subscribe and listen to Pleimo’s catalog of over 5,000,000 songs. See <https://www.pleimo.com>

¹⁴⁰ Music Centre Slovakia was established by the Ministry of Culture of the Slovak Republic to encourage Slovak music culture by organizing concerts, bringing pieces of Slovak composers to the stages, publishing sheet music and music books, documenting the music life in Slovakia and promoting Slovak music culture abroad. See <http://hc.sk>

Territory Music Industry Association¹⁴² (“MusicNT”), Music Victoria,¹⁴³ Music South Australia¹⁴⁴ (“Music SA”), Music New South Wales¹⁴⁵ (“MusicNSW”), Music Music/Musique New Brunswick¹⁴⁶ (“MNB”), Associacao de Musicos Artistas e Editoras Independentes - the Portuguese Independent Music Association¹⁴⁷ (“AMAIE”), Music Nova Scotia,¹⁴⁸ Brasil Música & Artes¹⁴⁹ (“BM&A”), Nimbit,¹⁵⁰ MusicTasmania,¹⁵¹ BroadJam,¹⁵² ProPlay,¹⁵³ Dart,¹⁵⁴ Flanders Music Centre,¹⁵⁵

¹⁴¹ QMusic, founded in 1994, is a music association representing Queensland’s music industry. QMusic promotes the artistic value, cultural worth and commercial potential of Queensland music. See <http://qmusic.com.au>

¹⁴² MusicNT supports the growth and development of original contemporary music in the Northern Territory. Music NT represents the Northern Territory’s music industry nationally and internationally. See <http://musicnt.com.au>

¹⁴³ Music Victoria is the independent voice of the Victorian contemporary music industry. An independent, not-for-profit, non-Government organization, Music Victoria represents musicians, venues, music businesses and music lovers across the contemporary music community in Victoria. Music Victoria provides advocacy on behalf of the music industry, actively supports the development of the Victorian music community, and celebrates and promotes Victorian music. See <http://www.musicvictoria.com.au/about>

¹⁴⁴ Music SA was established in 1997 as a not-for-profit organization committed to promoting, supporting and developing contemporary music in South Australia. See <http://www.musicnsa.com.au>

¹⁴⁵ MusicNSW is the peak body representing Contemporary Music in New South Wales. It is not for profit Industry Association set up to represent, promote and develop the contemporary music industry in New South Wales, Australia. MusicNSW exists to support the creative and economic expansion of the NSW contemporary Music Industry through advocacy, resource assistance, activating growth of industry infrastructure, delivery of tailored initiatives and provision of advice and referrals. See <http://www.musicnsw.com/about>

¹⁴⁶ MNB is a provincial music industry association that provides a support network for musicians, managers, and businesses that are involved in the creation of music within the province of New Brunswick. MNB was established in 2006 and is a non-profit association with ties on regional, provincial, and national levels with government agencies and departments who enable lobbying and promoting New Brunswick's music industry and artists whenever possible. MNB’s primary responsibility is to represent the interests of its members and foster the New Brunswick music industry. See <http://musicnb.org>

¹⁴⁷ AMAEI represents the Portuguese music sector. See <http://www.amaei.pt>

¹⁴⁸ Music Nova Scotia, founded in 1989, fosters, develops and promotes the music industry in Nova Scotia. Music Nova Scotia is a music association devoted to advancing the careers of music industry professionals in songwriting, publishing, live performance, representation, production and distribution, and to help ensure that Nova Scotian musicians are heard globally. See <http://www.musicnovascotia.ca>

¹⁴⁹ The BM&A is a non-profit organization, founded in 2001 with the objective of encouraging and organizing the promotion of Brazilian music abroad, working with artists, record companies, distributors, exporters, collection societies and cultural entities. BM&A carries out activities on behalf of the whole sector, including organizing seminars, workshops, international market studies, trade fairs and promotion. See <http://bma.org.br>

¹⁵⁰ Nimbit, founded in 2002, is a music industry direct-to-fan platform. Nimbit provides solutions for thousands of self-managed artists, managers, and emerging labels to grow and engage their fanbase, and sell their music and merchandise online. See <http://nimbit.com>

¹⁵¹ Music Tasmania is the peak body for Tasmania’s contemporary music community supporting and promoting Tasmanian music locally, nationally, and internationally. See <http://www.musictasmania.org>

¹⁵² Broadjam, founded in 1999, is an online music community of over 120,000 musicians from over 150 countries that provides promotional tools and services for independent musicians, the music industry and fans around the world. See <http://www.broadjam.com>

¹⁵³ ProPlay provides recording artists with the opportunity to have their songs play adjacent to the songs of established artists of the same genre on music streaming providers that reach over 100 million music listeners each month. See <http://www.proplay.com>

¹⁵⁴ DartMusic is a music distribution platform dedicated to classical music. DartMusic distributes classical music into major online stores, such as iTunes, AmazonMP3 and others. DartMusic provides global digital distribution to musicians, labels and other rights-holders who work exclusively in classical music. See <http://www.dartmusic.com>

¹⁵⁵ Flanders Music Centre (Muziekcentrum Vlaanderen) is an organization established by the Flemish government to support the music sector and to promote Flemish music in Belgium and abroad. See <http://flandersmusic.be>

Conductors Guild,¹⁵⁶ MusicBrainz,¹⁵⁷ AdRev,¹⁵⁸ Membran,¹⁵⁹ SyncExchange,¹⁶⁰ the Center for Information and Resources for Contemporary Music - Le centre d'Information et de Ressources pour les Musiques Actuelles¹⁶¹ ("IRMA"), and thousands more. In addition to organizational support, DotMusic's Application also received support from amateur, professional and globally-recognized music artists, including bands such as Radiohead.¹⁶²

Independent Expert Testimonies

24. DotMusic submitted forty-three (43) independent expert testimony letters that agreed unanimously that DotMusic met the Community Establishment, Nexus and Support criteria.¹⁶³ The experts were Dr. Argiro Vatakis, Dr. Askin Noah, Dr. Brian E Corner, Dr. Chauntelle Tibbals, Dr. Daniel James Wolf, Dr. David Michael Ramirez II, Dr. Deborah L Vietze, Dr. Dimitrios Vatakis, Dr. Dimitris Constantinou, Dr. Eric Vogt, Dr. Graham Sewell, Dr. Jeremy Silver, Dr. Joeri Mol, Dr. John Snyder, Dr. Jordi Bonada Sanjaume, Dr. Jordi Janer, Dr. Juan Diego Diaz, Dr. Juliane Jones, Dr. Kathryn Fitzgerald, Dr. Lisa Overholser, Dr. Luis-Manuel Garcia, Dr. Manthos Kazantzides, Dr. Michael Mauskapf, Dr. Mike Alleyne, Dr. Nathan Hesselink, Dr. Paul McMahon, Dr. Rachel Resop, Dr. Shain Shapiro, Dr. Sharon Chanley, Dr. Tom ter Bogt, Dr. Vassilis Varvaresos, Dr. Wendy Tilton, Dr. Wilfred Dolfsma, JD Matthew Covey Esq, Jonathan Segal MM, Lecturer David Loscos, Lecturer David Lowery, Lecturer Dean Pierides, Professor Andrew Dubber, Professor and Author Bobby Borg, Professor Heidy Vaquerano Esq, Professor Jeffrey Weber Esq and Stella Black MM.

¹⁵⁶ The Conductors Guild, founded in 1975, represents the interests of music conductors worldwide. *See* <http://conductorsguild.org>

¹⁵⁷ MusicBrainz is the largest community-maintained open source encyclopedia of music information globally. The MusicBrainz music community has nearly 1.3 million members with a database covering nearly 1 million artists and nearly 18 million songs from over 200 countries. *See* <http://musicbrainz.org>

¹⁵⁸ AdRev is music multi-channel music network providing YouTube music creators the opportunity to improve monetization, discovery, programming, audience growth and production quality for their YouTube music video content. Adrev administrates and manages over 6 million music copyrights across 26.5 million music videos. The Adrev network has over 36 billion views annually. *See* <http://www.adrev.net>

¹⁵⁹ Membran Entertainment Group, founded in 1968, controls over 300,000 musical works. Through its label-management services, Membran offers labels, artists or producers with marketing, promotion and distribution services worldwide. *See* <http://www.membran.net>

¹⁶⁰ Sync Exchange is a global music licensing marketplace for musicians, rights holders, composers and music supervisors. *See* <http://syncexchange.com>

¹⁶¹ IRMA is an organization supported by the music industry that was formed in 1986 by the French Government to provide information, guidance and resources to constituents involved in contemporary music. *See* <http://irma.asso.fr>

¹⁶² Radiohead support letter for DotMusic's .MUSIC community Application, <https://www.icann.org/en/system/files/correspondence/obrien-to-icann-eiu-15dec15-en.pdf>

¹⁶³ *See* 43 independent expert letters scoring chart at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-exhibits-a25-redacted-24feb16-en.pdf>, Exhibit A40; Also *see* 43 independent expert letters at <https://icann.box.com/shared/static/w4r8b711mfs1yww46ey4fa009tkzk8cr.pdf>, *Answers to Clarifying Questions*, Exhibit A21, Annex K; Also *see* <http://music.us/expert/letters>

The Independent Nielsen QuickQuery Poll

25. Before the .MUSIC CPE commenced, DotMusic submitted an independent poll conducted by Nielsen¹⁶⁴ as supporting evidence to demonstrate that DotMusic's Application met the CPE criteria for Community Establishment and Nexus. According to DotMusic's Application, the "Name" of the community defined was the "music community"¹⁶⁵ and the definition of the "Community" addressed was "a logical alliance of communities of individuals, organizations and business that relate to music."¹⁶⁶ The independent Nielsen QuickQuery survey was conducted from August 7, 2015, to August 11, 2015, with 2,084 neutral and diverse adults.¹⁶⁷ The survey examined whether or not the applied-for string (.MUSIC) was commonly-known and associated with the identification of the community defined by DotMusic by asking: "If you saw a website domain that ended in '.music' (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e. a logical alliance of communities of individuals, organizations and business that relate to music)?" A substantial majority, 1562 out of 2084 (i.e. 3 in 4 or 75% of the respondents) responded positively, agreeing that (i) the applied-for string (.MUSIC) corresponds to the name of community addressed by the application (the "music community") and that (ii) the "music community" definition is "a logical alliance of communities of individuals, organizations and business that relate to music."

Answers to CPE Clarifying Questions ("CQ")

26. On September 29th, 2015, DotMusic received five (5) CPE Clarifying Questions ("CQ") from ICANN and the EIU on Community Establishment and Nexus.¹⁶⁸ On October 29, 2015, DotMusic provided ICANN and the EIU with answers to CPE Clarifying

¹⁶⁴ See Nielsen QuickQuery. Retrieved on May 11, 2016, from

<http://sites.nielsen.com/meetquickquery/?cid=emtechcrunchquickquery>

¹⁶⁵ According to the DotMusic Application: "The name of the community served is the 'Music Community' ('Community')." See 20A, para.1 at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392;>

According to the DotMusic Application: "The 'MUSIC' string matches the name ('Name') of the Community and is the established name by which the Community is commonly known by others." See 20A, para.3

¹⁶⁶ According to the DotMusic Application: "The Community is a strictly delineated and organized community of individuals, organizations and business, a 'logical alliance of communities of a similar nature ('COMMUNITY')', that relate to music: the art of combining sounds rhythmically, melodically or harmonically." See 20A, para.3; Also see DotMusic Public Interest Commitments: "[...] Community definition of a 'logical alliance of communities of similar nature that relate to music' [...]" at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, § 5.i, p.2

¹⁶⁷ See Nielsen Quick Query poll, Fielding Period: August 7-11, 2015: "Q3505 If you saw a website domain that ended in '.music' (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?" <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-exhibits-a25-redacted-24feb16-en.pdf>, Exhibit A32, Appendix B, pp. 38 to 41; Also see Nielsen QuickQuery Q3505, <http://music.us/nielsen-harris-poll.pdf>, pp. 1 to 3

¹⁶⁸ See Clarifying Questions ("CQ"), <https://icann.box.com/shared/static/w4r8b711mfs1yww46ey4fa009tkzk8cr.pdf>, Exhibit A20

Questions (“CQ Answers”).¹⁶⁹ DotMusic also included supporting evidence to its answers in the Annexes of the CQ Answers. These included:

- a. *Community Establishment & Definition Rationale and Methodology*, which clarified the “community defined, ‘a delineated and organized logical alliance of communities of similar nature related to music’” and clarified the Community Establishment rationale and methodology;¹⁷⁰
- b. *Venn Diagram for Community Definition and Nexus*, which clarified the relationship between eligibility and the cohesive music community’s definition as a “strictly delineated and organized logical alliance of communities related to music with [the] requisite awareness of [the] community defined,” while also clarifying that “non-music community members that lack recognition and awareness of the community defined” were “ineligible;”¹⁷¹
- c. *Music Sector Background: Music is a Copyright Industry for Clarifying Question D*, which clarified that “[t]he community defined by DotMusic – ‘a strictly delineated and organized community of individuals, organizations and business, a ‘logical alliance of communities of a similar nature’ that relate to music, the art of combining sounds rhythmically, melodically or harmonically’ -- functions in a regulated sector. Evidence to support this assessment includes recent ICANN Resolutions and GAC Advice that recognized music as a regulated, sensitive sector.”¹⁷² DotMusic also provides evidence of music community cohesion under international copyright law and conventions, which “[a]ccording to WIPO,¹⁷³ these rights are defined within national copyright laws which are, in large part, shaped by international treaties, many of which are administered by WIPO. Copyright law defines the rights conferred on authors of original works, and those who perform them, as well as those who support their widespread dissemination [...] Under the 1886 WIPO Berne Convention for the Protection of Literary and Artistic Works, an original work is protected for a minimum of 50 years after the author’s death but in many jurisdictions that figure can be 70 years or more [...] Copyright includes economic rights which give the creator the right to authorize, prohibit or obtain financial compensation [...] Copyright also confers moral rights (Article 6b is of the Berne Convention) allowing the creator of a work to claim authorship in it (the right of paternity or attribution) and to object to any modification of it that may be damaging or prejudicial to them (the right of integrity) [...] Every piece of music is protected by copyright;”¹⁷⁴
- d. *Independent Nielsen / Harris Poll for Community Establishment and Nexus*, which provided supporting evidence to demonstrate that DotMusic’s Application met the CPE criteria for Community Establishment and Nexus;¹⁷⁵ and

¹⁶⁹ See Answers to Clarifying Questions (“CQ Answers”), <https://icann.box.com/shared/static/w4r8b711mfs1yww46ey4fa009tkzk8cr.pdf>, Exhibit A21

¹⁷⁰ Ibid, Annex A, p.26 of 993

¹⁷¹ Ibid, Annex D, p.80 of 993

¹⁷² Ibid, Annex F, p.93 of 993

¹⁷³ WIPO is a United Nations agency with 188 member states, which provides a global forum for intellectual property services, policy, and cooperation (See <http://www.wipo.int/about-wipo/en/index.html>). WIPO is also the leading provider of domain dispute and alternative dispute resolution services under the Uniform Dispute Resolution Policy (“UDRP”) adopted by ICANN (See <http://wipo.int/amc/en/domains> and <https://icann.org/resources/pages/udrp-rules-2015-03-11-en>)

¹⁷⁴ Ibid, Annex F, pp.97 to 99 of 993

¹⁷⁵ Ibid, Annex H, pp.102 to 105 of 993

- e. *Forty-three (43) Expert Testimonies*, which provided supporting evidence of forty-three (43) independent expert letters agreeing unanimously that DotMusic’s Application met the Community Establishment, Nexus and Support CPE criteria.¹⁷⁶

The .MUSIC CPE Report for DotMusic’s Community-based Application

27. The .MUSIC CPE Report (“Report”)¹⁷⁷ for Application ID. 1-1115-14110¹⁷⁸ provided a total score of 10 points out of 16 points: 4 points were deducted for the “Community Establishment” criterion, 1 point was deducted for the “Nexus between Proposed String and Community” criterion, and 1 point was deducted under the “Community Endorsement” criterion.

The Reconsideration Request

28. DotMusic Limited (“DotMusic”),¹⁷⁹ the International Federation of Musicians¹⁸⁰ (“FIM”), the International Federation of Arts Councils and Culture Agencies¹⁸¹ (“IFACCA”), the Worldwide Independent Network¹⁸² (“WIN”), the Merlin Network¹⁸³ (“Merlin”), the Independent Music Companies Association¹⁸⁴ (“IMPALA”), the American Association of Independent Music¹⁸⁵ (“A2IM”), the Association of Independent Music¹⁸⁶ (“AIM”), the Content Creators Coalition¹⁸⁷ (“C3”), the Nashville Songwriters Association International¹⁸⁸ (“NSAI”) and ReverbNation¹⁸⁹ co-filed a Reconsideration Request 16-5 (“RR”)¹⁹⁰ requesting the ICANN Board Governance Committee to overturn the CPE Report based on CPE process violations and the contravention of established procedures by ICANN and the CPE Panel.¹⁹¹ According to the RR, some of the ICANN violations of established procedures and policies include:

¹⁷⁶ Ibid, Annex K, pp. 159 to 993 of 993

¹⁷⁷ DotMusic CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>

¹⁷⁸ DotMusic Application, <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>

¹⁷⁹ <http://music.us>; Also see Supporting Organizations at: <http://music.us/supporters>

¹⁸⁰ <http://fim-musicians.org/about-fim/history>

¹⁸¹ http://ifacca.org/membership/current_members and http://ifacca.org/membership/current_members

¹⁸² <http://winformusic.org/win-members>

¹⁸³ <http://merlinnetwork.org/what-we-do>

¹⁸⁴ <http://impalamusic.org/node/16>

¹⁸⁵ <http://a2im.org/groups/tag/associate+members> and <http://a2im.org/groups/tag/label+members>

¹⁸⁶ <http://musicindie.com/about/aimmembers>

¹⁸⁷ <http://c3action.org>

¹⁸⁸ <https://nashvillesongwriters.com/about-nsai>

¹⁸⁹ <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues), and <https://reverbnation.com/fan-promotion> (Fans)

¹⁹⁰ See <https://icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

¹⁹¹ Also see RR-related letter from the International Federation of the Phonographic Industry (“IFPI”) stating: “We believe the finding to be flawed [...] Given the scale of the music community’s support for the Dot Music application, it is difficult to understand what level of support a CPE applicant would need to demonstrate to prevail, and this gives rise to serious misgivings about the transparency, consistency, and accountability of the CPE process [...] highlighting the disparity between the decisions of the EIU Panel. Unfortunately, these inconsistencies have continued in the EIU Panel’s evaluation of the DotMusic Application. [...] we note with concern the different criteria that appear to have been applied to the .HOTEL and .MUSIC CPE applications respectively. Also of concern is the EIU Panel’s finding that DotMusic failed to provide documented support from ‘recognised community institution(s)/member organization(s).’ IFPI is a globally recognised organization [...] Our members operate in 61

- a. Disregard of International Laws and Conventions with respect to the defined Music Community’s “cohesion” in relation to music copyright;¹⁹²
- b. Misapplication and disregard of “Community” Definition from 20A;
- c. Misapplication and disregard of “logical alliance” Community Definition that has “cohesion” and meets criteria according to the Applicant Guidebook (“AGB”);
- d. Misapplication and disregard of Community “Name” in Nexus;
- e. Misapplication and disregard of AGB “Majority” Criterion in Support;
- f. Misapplication and disregard of AGB “Recognized” organizations recognized by both the United Nations (“UN”) and the World Intellectual Property Organization (“WIPO”);¹⁹³
- g. Disregard of global music federations “mainly” dedicated to Community recognized both by UN and WIPO;
- h. Misapplication of the AGB’s “Organized” definition in Community Establishment based on false facts and lack of compelling evidence that the Music Community defined is not organized under a regulated sector, international law and international conventions or treaties;
- i. Disregard of historical evidence that the Music Community defined existed before 2007 in Community Establishment;

countries and IFPI has affiliated organisations, including national groups in 57 countries. We also administer the internationally recognised ISRC system. We therefore object to the EIU Panel’s finding,” <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-ifpi-to-icann-24feb16-en.pdf>; Also see RR-related letter from the National Music Council, representing almost 50 music organizations (including the Academy of Country Music, American Academy of Teachers of Singing, American Composers Forum, American Federation of Musicians, American Guild of Musical Artists, American Guild of Organists, American Harp Society, American Music Center, American Orff-Schulwerk Association, Artists Against Hunger & Poverty, ASCAP, BMI, Chopin Foundation of the United States, Conductors’ Guild, Country Music Association, Delta Omicron International Music Fraternity, Early Music America, Interlochen Center for the Arts, International Alliance for Women in Music, International Federation of Festival, Organizations, International Music Products Association, Mu Phi Epsilon International Music Fraternity, Music Critics Association of North America, Music Performance Fund, Music Publishers Association of the United States, Music Teachers’ Association of California, Music Teachers National Association, National Academy of Popular Music, National Academy of Recording Arts & Sciences, National Association for Music Education, National Association of Negro Musicians, National Association of Recording Merchandisers, National Association of Teachers of Singing, National Federation of Music Clubs, National Flute Association, National Guild for Community Arts Education, National Guild of Piano Teachers, American College of Musicians, National Music Publishers’ Association, National Opera Association, Recording Industry Association of America, SESAC, Sigma Alpha Iota and the Songwriters Guild of America) and the International Music Council (an organization that UNESCO founded in 1949 representing over 200 million music constituents from over 150 countries and over 1000 organizations globally. See <http://www.imc-cim.org/about-imc-separator/who-we-are.html>). The letter stated that: “The international music community has come together across the globe to support the DotMusic Application, and we cannot comprehend how the application could have failed on the community criteria [...] We therefore object to the decision noted above, the basis of which is an apparent inconsistency in the application of the governing rules,” <https://icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-28mar16-en.pdf>

¹⁹² Also See RR-related DotMusic Letter to ICANN Board Governance Committee (“BGC”), <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-28mar16-en.pdf>

¹⁹³ Also See RR-related IFPI Letter to ICANN Board Governance Committee (“BGC”), <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-ifpi-to-icann-24feb16-en.pdf>

- j. Misapplication of policy and disregard of ICANN-accepted GAC consensus Category 1 Advice in Community Establishment demonstrating the defined Community’s unity under a regulated sector;¹⁹⁴
- k. Failure to compare and apply consistent scoring across all CPE applications and implement the quality control process to ensure fairness, transparency, predictability and non-discrimination;
- l. Failure to address the EIU’s conflict of interest with Google, a .MUSIC competing applicant. Google’s chairman, Eric Schmidt, was on The Economist Group board during DotMusic’s CPE in violation of the ICANN-EIU Statement of Work (“SOW”) and Expression of Interest (“EOI”), the AGB and CPE Guidelines, ICANN’s Bylaws, and The Economist’s Guiding Principles; and
- m. Failure to undertake appropriate (if any) research to support compelling conclusions in the CPE Report, despite DotMusic’s (and DotMusic’s supporters’) provision of thousands of pages of “application materials and [...] research” as “substantive evidence” of “cohesion,” including DotMusic’s in-depth answers and supporting evidence in response to the EIU’s Clarifying Questions. The Music Community’s activities rely upon cohesion of general principles of international copyright law, international conventions and government regulations. Without such cohesion and structure, music consumption and music protection under general principles of international copyright law and international conventions would be non-existent.

About Copyright, Copyright Law, International Copyright Conventions/Treaties and Collective Rights Management

- 29. According to the World Intellectual Property Organization (“WIPO”): “Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.”... “[W]orks commonly protected by copyright throughout the world include [...] musical compositions.” ... “Copyright protection extends only to expressions.”¹⁹⁵
- 30. According to WIPO: “There are two types of rights under copyright: (i) economic rights, which allow the rights owner to derive financial reward from the use of his works by others; and (ii) moral rights, which protect the non-economic interests of the author.”¹⁹⁶
- 31. The public benefits of a robust copyright system are not solely economic. Copyright protects human rights. Article 27 of the Universal Declaration of Human Rights (UDHR),¹⁹⁷ adopted in 1948 by the UN General Assembly, states: “(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to

¹⁹⁴ Also See RR-related DotMusic Letter to ICANN Board Governance Committee (“BGC”), <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17mar16-en.pdf>

¹⁹⁵ See WIPO, <http://www.wipo.int/copyright/en>

¹⁹⁶ Ibid

¹⁹⁷ United Nations, <http://www.un.org/en/universal-declaration-human-rights/index.html>; Also see U.N Guiding Principles on Business and Human Rights, ‘Protect, Respect and Remedy’ Framework, http://ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, p.5

share in scientific advancement and its benefits; and (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

32. The United States Supreme Court has stated that “the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”¹⁹⁸ ... “The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in ‘science and useful Arts.’”¹⁹⁹ [...] “The immediate effect of [...] copyright law is to secure a fair return for an ‘author’s’ creative labor. But the ultimate aim is, by this incentive, to stimulate [the creation of useful works] for the general public good.”²⁰⁰ When the United States Congress enacted the Copyright Act of 1909, it stated that “the enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings, [...] but upon the ground that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings [...]”²⁰¹
33. In general, “copyright laws state that the rights owner has the economic right to authorize or prevent certain uses in relation to a work or, in some cases, to receive remuneration for the use of his work (such as through collective management). The economic rights owner of a work can prohibit or authorize: (i) its reproduction in various forms, such as printed publication or sound recording; (ii) its public performance, such as in a play or musical work; (iii) its recording, for example, in the form of compact discs or DVDs; (iv) its broadcasting, by radio, cable or satellite; (v) its translation into other languages; and (vi) its adaptation, such as a novel into a film screenplay.” [...] “Examples of widely recognized moral rights include the right to claim authorship of a work and the right to oppose changes to a work that could harm the creator’s reputation.”²⁰²
34. In the majority of countries, and according to the Berne Convention: “copyright protection is obtained automatically without the need for registration or other formalities. Most countries nonetheless have a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment and/or transfer of rights.”²⁰³

¹⁹⁸ U.S. Supreme Court, *Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985), No. 83-1632, Decided May 20, 1985, 471 U.S. 53, <https://supreme.justia.com/cases/federal/us/471/539/case.html>

¹⁹⁹ U.S. Supreme Court, *Mazer v. Stein*, 347 U.S. 201 (1954), No. 228, Decided March 8, 1954, 347 U.S. 201, <https://supreme.justia.com/cases/federal/us/347/201/case.html>

²⁰⁰ U.S. Supreme Court, *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151 (1975), No. 74-452, Decided June 17, 1975, 422 U.S. 151, <https://supreme.justia.com/cases/federal/us/422/151/case.html>

²⁰¹ H.R. Rep. No. 2222, 60th Cong., 2d Sess., 7 (1909) (report accompanying the Copyright Act of 1909), <http://www.copyright.gov/history/1909act.pdf>

²⁰² Ibid

²⁰³ Ibid

35. Copyright law “aims to balance the interests of those who create content, with the public interest in having the widest possible access to that content. WIPO administers several international treaties in the area of copyright and related rights: (i) the Beijing Treaty on Audiovisual Performances;²⁰⁴ (ii) the Berne Convention for the Protection of Literary and Artistic Works;²⁰⁵ (iii) the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite;²⁰⁶ (iv) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;²⁰⁷ (v) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled;²⁰⁸ (vi) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (co-administered by WIPO, ILO and UNESCO);²⁰⁹ (vii) the WIPO Copyright Treaty (“WCT”);²¹⁰ and (viii) the WIPO Performances and Phonograms Treaty (“WPPT”).”²¹¹
36. According to WIPO: “copyright protection is automatic in all states [171 contracting parties²¹²] party to the Berne Convention. Whilst there may be nuances to the particular national laws applicable in these states, in general there is a high degree of harmony.”²¹³
37. According to the United States Copyright Office, a department of the Library of Congress: “An “international agreement” is defined as “(1) the Universal Copyright Convention; (2) the Geneva Phonograms Convention; (3) the Berne Convention; (4) the WTO Agreement; (5) the WIPO Copyright Treaty; (6) the WIPO Performances and Phonograms Treaty; and (7) any other copyright treaty to which the United States is a party.”²¹⁴

²⁰⁴ See WIPO, Beijing Treaty on Audiovisual Performances, <http://www.wipo.int/treaties/en/ip/beijing>

²⁰⁵ See WIPO, Berne Convention for the Protection of Literary and Artistic Works, <http://www.wipo.int/treaties/en/ip/berne>

²⁰⁶ See WIPO, Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, <http://www.wipo.int/treaties/en/ip/brussels>

²⁰⁷ See WIPO, Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, <http://www.wipo.int/treaties/en/ip/phonograms>

²⁰⁸ See WIPO, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, <http://www.wipo.int/treaties/en/ip/marrakesh>

²⁰⁹ See WIPO, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, <http://www.wipo.int/treaties/en/ip/rome>

²¹⁰ See WIPO, WIPO Copyright Treaty, <http://www.wipo.int/treaties/en/ip/wct>

²¹¹ See WIPO, WIPO Performances and Phonograms Treaty, <http://www.wipo.int/treaties/en/ip/wppt>

²¹² See WIPO, *Berne Convention (Total Contracting Parties : 171)*, Retrieved on May 17, 2016 from http://www.wipo.int/treaties/en/ShowResults.jsp? treaty_id=15

²¹³ See WIPO, *Frequently Asked Questions: Copyright*, http://www.wipo.int/copyright/en/faq_copyright.html

²¹⁴ U.S. Library of Congress, U.S. Copyright Office, § 101. *Definitions*, <http://www.copyright.gov/title17/92chap1.html#101>; Also see list of countries indicating which international copyright convention and treaty agreements each country has signed and the date each agreement took effect at <http://www.copyright.gov/circs/circ38a.pdf>. *International Copyright Relations of the United States*, Circular 38a, Revised: April, 2016, pp. 3 to 9

38. According to the United States Copyright Office, a department of the Library of Congress: “International copyright conventions and treaties have been developed to establish obligations for treaty member countries to adhere to, and implement in their national laws, thus providing more certainty and understanding about the levels of copyright protection in particular countries.”²¹⁵ International Agreements and Treaties include: (i) Buenos Aires Convention (‘BAC’) of 1910. U.S. ratification deposited with the government of Argentina, May 1, 1911; proclaimed by the president of the United States, July 13, 1914; (ii) the Beijing Treaty on Audiovisual Performances (‘BTAP’). On June 26, 2012, the United States and 47 other nations signed the treaty; (iii) the Berne Convention for the Protection of Literary and Artistic Works. Appearing within parentheses in the country listing that follows is the latest act of the convention to which the country is party. Thus ‘Berne (Paris)’ means the Berne Convention as revised at Paris on July 24, 1971, and as amended on September 28, 1979. ‘Berne (Brussels)’ means the convention as revised at Brussels on June 26, 1948. ‘Berne (Rome)’ means the convention as revised at Rome on June 2, 1928. Other acts of the convention were revised at Stockholm on July 14, 1967, and at Berlin on November 13, 1908. In each case, a reference to a particular act signifies adherence only to the substantive provisions of the act. For example, the substantive provisions of Berne (Paris) include articles 1 to 21 and the appendix; articles 22 to 38 deal with administrative provisions of the convention. The effective date for U.S. adherence to the Berne Convention is March 1, 1989; (iv) Bilateral copyright relations with the United States by virtue of a proclamation, or treaty (‘Bilateral’). Where there is more than one proclamation or treaty, only the date of the first one is given; (v) Free Trade Agreement (‘FTA’). The United States has concluded comprehensive free trade agreements (many bilaterally, some regionally) with multiple countries. With the exception of the U.S.-Israel agreement, the FTAs contain chapters on intellectual property rights, which include substantive copyright law and enforcement obligations; (vi) the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (‘Phonograms’), Geneva, 1971. The effective date for the United States is March 10, 1974; (vii) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (‘SAT’), Brussels, 1974. The effective date for the United States is March 7, 1985; (viii) Universal Copyright Convention (‘UCC Geneva’), Geneva, 1952. The effective date for the United States is September 16, 1955, the date the treaty entered into force. (ix) Universal Copyright Convention (‘UCC Paris’) as revised at Paris, 1971. The effective date for the United States is July 10, 1974, the date the treaty entered into force; (x) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (‘VIP’). This treaty was adopted on June 27, 2013. It will enter into force once 20 eligible parties, including countries or certain intergovernmental organizations, ratify it, (xi) the World Intellectual Property Organization (‘WIPO’) Copyright Treaty (‘WCT’), Geneva, 1996. The effective date for the United States is March 6, 2002, the date the treaty entered into force; (xii) the WIPO Performances and Phonograms Treaty (‘WPPT’), Geneva, 1996. The effective date for the United States is May 20, 2002, the date the treaty entered into force; (xiii) and the World Trade Organization (‘WTO’), established pursuant to the Marrakesh Agreement of April 15, 1994, to implement the Uruguay Round Agreements. The Agreement on Trade-

²¹⁵ Ibid, *International Issues*, <http://www.copyright.gov/international-issues>

Related Aspects of Intellectual Property Rights ('TRIPS') is one of the WTO agreements. It includes substantive obligations for the protection of copyright and other intellectual property rights as well as their enforcement. The effective date of United States membership in the WTO is January 1, 1995."²¹⁶

39. According to the United States Copyright Office, "in addition to international treaties and conventions, other instruments, such as free trade agreements, require member countries to comply with specific obligations."²¹⁷ The TRIPS is an international agreement administered by the WTO that provides minimum standards for copyright and many other forms of intellectual property ("I.P.") regulation.²¹⁸ The TRIPS agreement introduced intellectual property law into the international trading system and is a comprehensive international agreement on intellectual property covering 162 contracting parties.²¹⁹ According to Article 3, TRIPS requires WTO members to provide copyright rights to content producers including "performers, producers of sound recordings and broadcasting organizations." According to Article 7, the objective of TRIPS is the "protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."²²⁰
40. According to the WTO: "In *US - Section 110(5) Copyright Act*, the Panel emphasized the need, in the light of general principles of interpretation, to harmoniously interpret provisions of the TRIPS Agreement and the Berne Convention (1971) In the area of copyright, the Berne Convention and the TRIPS Agreement form the overall framework for multilateral protection. Most WTO Members are also parties to the Berne Convention. [I]t is a general principle of interpretation to adopt the meaning that reconciles the texts of different treaties and avoids a conflict between them. Accordingly, one should avoid interpreting the TRIPS Agreement to mean something different than the Berne Convention except where this is explicitly provided for. This principle is in conformity with the public international law presumption against conflicts, which has been applied by WTO panels and the Appellate Body [...] [T]he legal status of the minor exceptions doctrine under the TRIPS Agreement is consistent with these general principles."²²¹

²¹⁶ Ibid, *International Copyright Relations of the United States*, Circular 38a, Revised: April, 2016, <http://copyright.gov/circs/circ38a.pdf>, pp.2 to 3

²¹⁷ Ibid, p.1

²¹⁸ Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

²¹⁹ See WTO, *Members and Observers*, Retrieved on May 17, 2016 from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm. Also see WIPO, *IP-related Multilateral Treaties - Agreement on Trade-Related Aspects of Intellectual Property Rights - Total Contracting Parties : 162*, Retrieved on May 17, 2016 from http://www.wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=231&group_id=22

²²⁰ WTO, *TRIPS, Part I - General Provisions and Basic Principles*, https://www.wto.org/english/tratop_e/trips_e/t_agm2_e.htm

²²¹ WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/trips_01_e.htm, para. 88; Also see WTO, *US - Section 110(5) Copyright Act*, June 15, 2000,

41. The Civil Code of California is a collection of statutes for the State of California. The Civil Code of California is made up of statutes which govern the general obligations and rights of persons within the jurisdiction of California. According to Section 980 of the California Civil Code: “The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has an exclusive ownership therein until February 15, 2047, as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.”²²² According to Section 989 of the California Civil Code: “The Legislature hereby finds and declares that there is a public interest in preserving the integrity of cultural and artistic creations.”²²³
42. In the United States, federal preemption begins with the Constitution's Supremacy Clause, which provides that “[t]his Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”²²⁴ Federal laws and regulations may preempt state laws in three ways. The first is through express preemption, where the federal law or regulation explicitly states that it preempts state or local regulation. The Second is implied preemption where it can be inferred from the language of the federal law that state law is preempted. The third means of preemption is field preemption, which arises when there is a conflict between the state and federal regulation or where attempting to comply with both federal and state laws would create a conflict. Section 301 of the Copyright Act expressly addresses copyright preemption. Section 301(a) provides: “On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.”²²⁵ Section 106 provides copyright holders with the exclusive rights to reproduction, adaptation, publication, performance and display.²²⁶ Section 301(f)(1) expands the preemption right to apply to the rights of attribution and integrity, enumerated in Section 106A of the Copyright Act, which includes the following rights: (i) to claim authorship of that work; (ii) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

<https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3a%2fwt%2fds%2f160r-00.doc&> , WT/DS160/R, para.6.66, p.24

²²² California Civil Code, <http://leginfo.ca.gov/cgi-bin/displaycode?section=civ&group=00001-01000&file=980-989>, § 980(a)(2)

²²³ Ibid, § 989(a)

²²⁴ U.S. Constitution, Article VI, cl.2, http://www.archives.gov/exhibits/charters/constitution_transcript.html

²²⁵ U.S. Copyright Office, *Preemption with respect to other laws*, <http://www.copyright.gov/title17/92chap3.html#301>, Title 17 of the United States Code, § 301

²²⁶ U.S. Copyright Office, *Exclusive rights in copyrighted works*, <http://www.copyright.gov/title17/92chap1.html#106>, Title 17 of the United States Code, § 106

(iii) to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; (iv) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right; and (v) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.²²⁷ State laws which purport to expand or decrease these exclusive rights would be preempted by the Copyright Act, according to Section 301. To avoid a preemption claim, state law (whether common law or statutory) must regulate conduct other than that associated with those exclusive rights provided by the Copyright Act. The language of Section 301 creates a two-part test for determining preemption: First, whether the work is within the subject matter of the Copyright Act; and second, whether the state law creates rights equivalent to those exclusive rights protected by the Copyright Act.

43. The United States legislation that directly addresses copyright on the internet is the Digital Millennium Copyright Act (“DMCA”) that was signed into United States law on October 28, 1998. The legislation implements two 1996 World Intellectual Property Organization (“WIPO”) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The DMCA also addresses a number of other significant copyright-related issues. The DMCA is divided into titles. These titles include: (i) Title I, the “WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998,” implements the WIPO treaties; (ii) Title II, the “Online Copyright Infringement Liability Limitation Act,” creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities; (iii) Title III, the “Computer Maintenance Competition Assurance Act,” creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair; and (iv) Title IV contains six miscellaneous provisions, relating to the functions of the Copyright Office, distance education, the exceptions in the Copyright Act for libraries and for making ephemeral recordings, “webcasting” of sound recordings on the Internet, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.²²⁸ The DMCA also heightens the penalties for copyright infringement on the Internet.²²⁹ The DMCA amended Title 17 of the United States Code to extend the reach of copyright, while limiting the liability of the providers of online services for copyright infringement by their users, an exemption from direct and indirect liability of Internet service providers and other intermediaries. This exemption was also adopted by the European Union in the

²²⁷ Ibid; Also *see* Title 17 of the United States Code, § 301(f)(1)

²²⁸ U.S. Copyright Office, *Digital Millennium Copyright Act of 1998*, <http://copyright.gov/legislation/dmca.pdf>, p.1

²²⁹ U.S. Government Printing Office, 17 United States Code (U.S.C), Title 17 – Copyrights, Chapter 5 – Copyright Infringement and Remedies, <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title17/html/USCODE-2010-title17-chap5-sec506.htm> , §506 – Criminal Offenses

Electronic Commerce Directive 2000.²³⁰ The Copyright Directive 2001 implemented the 1996 WIPO Copyright Treaty in the EU.²³¹

44. The rights of performing artists, notably including musicians and conductors, producers of phonograms (sound recordings) and broadcasting organizations, which are normally considered part of copyright protection in the United States, are normally referred to as “related” or “neighboring” rights in other countries and not least in Europe. The following international agreements, referred to above, deal exclusively or partially with such rights: The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; The Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite; the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; The WIPO Performances and Phonograms Treaty; The Beijing Treaty on Audiovisual Performances; and the TRIPS Agreements. In addition, most free-trade agreements which deal with copyright also contain provisions regarding related rights. While such rights in many respects resemble copyright, a term which in such countries is reserved for the protection of literary and artistic works, they are normally carefully tailored to suit the specific needs of protection for such subject matter. In particular, the term of protection is shorter and is counted from the year in which the performance, recording or broadcast took place, rather than the lifespan of the beneficiary as is typically the case regarding copyright in literary and artistic works.²³²
45. Most commonly, the rights under copyright and related rights are granted as exclusive rights, which mean that the individual owners of rights must consent to each single case of use of the protected works, performances and broadcasts. The only major deviance from this model is the broadcasting and other communication to the public of commercially published phonograms. In this case Article 12 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting organizations establishes a right of remuneration for the performers and producers of phonograms, which the Contracting Parties may opt out of by means of reservation (Article 16 of the Convention). Similar provisions are included in Article 15 of the WIPO Performances and Phonograms Treaty. This right is established in all the countries of the European Union and many other countries around the world, whereas it has only been established in a rudimentary form in the United States for digital broadcasting.²³³

²³⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:en:HTML>, Official Journal L 178 , 17/07/2000 P. 0001 - 0016

²³¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF>

²³² WIPO Intellectual Property Handbook: Policy, Law and Use, WIPO Publication No. 489(E), p.46 ff, http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf

²³³ Mihály Ficsor: Collective Management of Copyright and Related Rights, WIPO Publication No. 855(E), Geneva 2002, pp. 78 to 84, http://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf; Digital Performance Right in Sound Recordings Act Of 1995 Public Law 104-39

46. In practice, it is not always feasible to obtain individual permissions or distribute equitable remuneration individually to all the rights owners involved when it comes to mass uses of protected works or objects of related rights. As Dr. Mihály Ficsor states in the WIPO publication “Collective Management of Copyright and Related Rights:” “At the time of the establishment of the international copyright system, there were certain rights – first of all the right of public performance of non-dramatical musical works – where individual exercise of the rights did not seem possible, at least not in a reasonable and effective manner; and since then, with the ever newer waves of new technologies, the areas in which individual exercise of rights has become impossible, or at least impractical, is constantly widening. Until the advent of digital technology and the global interactive network, it seemed that there were an increasing number of cases where individual owners of rights were unable to control the use of their works, negotiate with users and collect remuneration from them.”²³⁴ “In the framework of a collective management system, owners of rights authorize collective management organizations to monitor the use of their works, negotiate with prospective users, give them licenses against appropriate remuneration on the basis of a tariff system and under appropriate conditions, collect such remuneration, and distribute it among the owners of rights. This may be regarded as a basic definition of collective management (however, [...] the collective nature of the management may, and frequently does also involve some other features corresponding to certain functions going beyond the collective exercise of rights in the strict sense).”²³⁵
47. Collective rights management has a cohesive structure and is widespread in the field of music. The rights of public performance, broadcasting and communication to the public of composers and lyric writers in their compositions and lyrics (if any), together with the corresponding rights acquired by music publishers normally managed by performing rights organizations, such as the American Society of Composers, Authors & Publishers (“ASCAP”), Broadcast Music Incorporated (“BMI”) and the Society of European Stage Authors and Composers (“SESAC”) in the United States, the Performing Rights Society (“PRS”) in the United Kingdom, Gesellschaft für musikalische Aufführungs und mechanische Verfielfältigungsrechte (“GEMA”) in Germany or the Indian Performing Rights Society (“IPRS”) in India. Outside the United States and particularly in Europe the rights to record musical works are managed collectively either by the said organizations (for example GEMA in Germany) or by similar organizations set up specifically for that purpose. In the United States the music publishers play a more independent role in such management, but collective management also takes place through the Harry Fox Agency. As regards the related rights of remuneration for broadcasting and other communication to the public of commercially published phonograms separate organizations exist in many countries set up by the national member organizations of The International Federation of Musicians (“FIM”) and the International Federation of Phonographic Industry (“IFPI”). In 2014, the authors’ rights societies for music collected €6.9 billion worldwide.²³⁶

²³⁴ Ficsor, *ibid*, p.16

²³⁵ *Ibid*, p.17

²³⁶ International Confederation of Societies of Authors and Composers (“CISAC”) Press release of October 27, 2015, <http://www.cisac.org/Newsroom/News-Releases/CISAC-publishes-new-Global-Collections-Report>

Expert Legal Opinion

I, the undersigned Dr. Jørgen Blomqvist, Honorary Professor of International Copyright at the University of Copenhagen, have undertaken the expert role to provide an independent legal opinion on the well-foundedness of the ICANN Community Priority Evaluation (“CPE”) Report²³⁷ for DotMusic’s community-based Application ID. 1-1115-14110²³⁸ for the new gTLD string ‘.MUSIC.’ My legal expert opinion is based on the relevant facts presented herein in relation to music definitions, the CPE sections of “Community Establishment,” “Nexus between Proposed String and Community” and “Support” (under “Community Establishment”) as well as matters of international law, general principles of international copyright and related rights and international conventions, treaties and agreements as well as established practices regarding the management of copyright and related rights.²³⁹

CPE Section on Community Establishment

48. Activities of Music Community members – regardless whether they are commercial or non-commercial – are reliant in one way or another on the regulated structure of the music sector and cohesion of general principles of international music copyright, international law as well as international conventions, treaties and agreements that relate to music copyright and activities. The CPE Panel’s conclusion that there is “no substantive evidence” that the Music Community defined in its entirety has cohesion (i.e. does not unite cohesively under music copyright or is reliant on international conventions for its activities) is *neither* a compelling *nor* a defensible argument. In fact, all of the Music Community’s activities rely upon cohesion of general principles of international copyright law, international conventions, management of rights and government regulations. Without such cohesion and structure, music consumption and music protection under general principles of international copyright law and international conventions would be non-existent.

49. ICANN’s Articles of Incorporation mandate that all of ICANN’s activities and decision-making must be “in conformity with relevant principles of international law and applicable international conventions.”²⁴⁰ The Music Community participates²⁴¹ in a

²³⁷ CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>

²³⁸ DotMusic community application, Application ID: 1-1115-14110, Prioritization Number: 448; See <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>

²³⁹ DotMusic scored the full points under the CPE’s *Registration Policies* and *Opposition* (under *Community Endorsement*) sections, so my legal expert opinion will not include those sections because there is mutual agreement on their scoring grade.

²⁴⁰ ICANN’s Articles of Incorporation provide that: “*The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable open competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations, ICANN Articles of Incorporation,*” <https://icann.org/resources/pages/governance/articles-en>, Article 4

²⁴¹ The EIU CPE Panel awarded the full *Community Establishment* points to the .ECO community applicant determining that “*cohesion and awareness is founded in their demonstrable involvement in environmental activities*” which “*may vary among member categories.*” (See .ECO CPE Report, <https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>, p.2). Inter alia, under DotMusic’s

regulated sector with activities tied²⁴² to music that must cohere to general principles of international music copyright, international law as well as international conventions, treaties and agreements, which are held together by a strong backbone of collective management of rights that channels permissions to use protected material and the remuneration for such use from the one end of the feeding chain (the authors, performers and producers) to the other (the music users) and vice versa. Accordingly, ICANN cannot deny Music Community “cohesion” when its own Articles of Incorporation mandate it to recognize applicable international conventions, such as the 1886 Berne Convention that relates to the protection of music copyright signed by 171 countries and which, for example, in its Article 14 *bis* (3) recognizes the specific situation for musical works.²⁴³

50. The Economist Group, the parent company of the EIU CPE Panel, also publicly recognizes the Berne Convention. The Economist is reliant on copyright cohesion under applicable laws and protection under international conventions²⁴⁴ to conduct its primary activities. According to The Economist: “Copyright is a property right that gives the creators of certain kinds of material rights to control the ways in which such material can be used. These rights are established as soon as the material has been created, with no need for official registration. Copyright applies globally and is regulated by a number of international treaties and conventions (including the Berne Convention, the Universal Copyright Convention, the Rome Convention and the Geneva Convention).”²⁴⁵

51. It appears that the Panel failed to undertake appropriate (if any) research to support its conclusions. The decision was rendered despite DotMusic's provision of thousands of pages of “application materials and [...] research” as “substantive evidence” of “cohesion,” including citing in numerous materials the international Berne Convention. For example, DotMusic defined its Community and clarified in its Application materials that: “The requisite awareness of the community is clear: participation in the Community, the logical alliance of communities of similar nature related to music, -- a symbiotic, interconnected eco-system that functions because of the awareness and recognition of its members. The delineated community exists through its members participation within the logical alliance of communities related to music (the “Community” definition). Music community members participate in a shared system of creation, distribution and promotion of music with common norms and communal behavior e.g. commonly-known and established norms in regards to how music entities perform, record, distribute, share

Application, Music Community members, at the very least, also share similar category variance with members that also have demonstrable involvement in music-related activities.

²⁴² The EIU CPE Panel awarded the full *Community Establishment* points to the .OSAKA community applicant determining there was community “cohesion” because members “*self identify as having a tie to Osaka, or with the culture of Osaka.*” (See .OSAKA CPE Report, <https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>, p.2). Inter alia, under DotMusic’s Application, Music Community members, at the very least, also self-identify as having a tie to music or with the culture of music.

²⁴³ Berne Convention for the Protection of Literary and Artistic Works of 1886 with 171 contracting countries, See http://wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15 and http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283693

²⁴⁴ See The Economist website, *Terms of Use*, “*Governing Law and Jurisdiction*,” <http://economist.com/legal/terms-of-use>, (“*The Economist shall also retain the right to bring proceedings as to the substance of the matter in the courts of the country of your residence.*”)

²⁴⁵ See The Economist website, *Copyright Information*, <https://economist.com/rights/copyright.html>

and consume music, including a shared legal framework in a regulated sector governed by common copyright law under the Berne Convention, which was established and agreed upon by over 167 international governments with shared rules and communal regulations.”²⁴⁶

52. The CPE Panel also ignored the significance of the Music Community’s regulated sector that is governed by general principles of international copyright law as well as international conventions, treaties and agreements as well as by the collective management of copyright and related rights. In fact, both the ICANN Board and the NGPC have admitted such a finding by accepting the GAC Category 1 Advice that .MUSIC is a “string that is linked to regulated sector” that “should operate in a way that is consistent with applicable laws.”²⁴⁷ In effect, this ICANN-approved resolution reaffirms that all music groups (and music sub-groups) that comprise the Music Community defined have cohesion because they participate as a whole in a regulated sector with activities tied to music that cohere to general principles of international copyright law, international conventions, treaties and agreements.
53. According to the AGB: “With respect to “Delineation” and “Extension,” it should be noted that a community can consist of [...] a *logical alliance of communities* (for example, an international federation of national communities of a similar nature).”²⁴⁸ As a requirement, the AGB also instructs applicants that in the case of a community of an “alliance of groups,” “details about the constituent parts are required.”²⁴⁹
54. According to DotMusic’s Application (and other Application Materials), the Music Community’s definition is a “strictly *delineated* and *organized community* of individuals, organizations and business, a “*logical alliance of communities of a similar nature* (‘COMMUNITY’), that relate to music” (Application, 20A, emphasis added). In this case, the “similar nature” component relates to DotMusic’s mission and purpose to protect intellectual property and promote music. The nature under which the Music Community operates is regulated following general principles of international copyright law as well as international conventions, treaties and agreements that relate to music copyright and activities, and it is tied together by strong mutual interests and unifying elements, including not least the collective management of copyright and related rights.
55. According to the requirements of the AGB, DotMusic’s definition of the Community meets the Community Establishment criteria of a “delineated” and “organized” community. In fact, DotMusic’s Music Community definition restricts the Music Community to a “delineated” and “organized” community, which by definition “implies ‘more of cohesion than a mere commonality of interest’” with “an awareness and recognition of a community among its members.” Along those lines, the “logical

²⁴⁶ See DotMusic Public Interest Commitments (“PIC”), <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, p.6

²⁴⁷ <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1 to 2

²⁴⁸ AGB, p.4-12 (emphasis added)

²⁴⁹ AGB, Attachment to Module 2, Evaluation Questions and Criteria: “*Descriptions should include: How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required,*” Notes, 20A, A-14

alliance” of music communities has awareness and recognition of the community defined²⁵⁰ ²⁵¹ because each supporting community member organization admitted so by providing written community endorsement letters supporting the community-based application and its mission and purpose, which include protecting copyright/intellectual property and promoting music.

56. Furthermore, the dictionary definition of a “*logical alliance*” is inherently cohesive. Dictionary definitions for “*logical*”²⁵² and “*alliance*”²⁵³ meet the requirement of “*cohesion*” and the “*requisite awareness*.” In formation, an “alliance” requires an awareness and organization of all the groups in their entirety. For example, united in support of protecting music copyright and promoting legal music, a logical alliance of music communities (that were defined as the “Music Community”) filed comments to the U.S. Copyright Office to express “the Music Community’s list of frustrations with the DMCA.”²⁵⁴ Another logical alliance comprised of nearly fifty (50) music communities, the National Music Council, also filed a submission to ICANN in support of DotMusic’s community-application and Reconsideration Request 16-5.²⁵⁵ These are clear examples “*documented evidence of community activities*” that the Music Community is organized and united in protecting music copyright and promoting music.²⁵⁶ These organized and united documented activities based on shared core principles demonstrate that the Music Community defined “implies more of cohesion than a mere commonality of interest.”

²⁵⁰ The EIU CPE Panel awarded the full *Community Establishment* points to the .GAY community applicant determining that there was “*an implicit recognition and awareness of belonging to a community of others who have come out as having non-normative sexual orientations or gender identities, or as their allies.*” (See GAY CPE Report, <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>, p.2). Inter alia, under DotMusic’s Application, Music Community members have an *explicit* recognition and awareness of *belonging* to a community that is united under the principles of protecting copyright/intellectual property and promoting legal music. The Music Community defined is comprised of a “*logical alliance*” (i.e. *allies*) that operates under a regulated sector and general principles of international copyright law and international conventions.

²⁵¹ The EIU CPE Panel awarded the full *Community Establishment* points to the .SPA community applicant determining that the defined spa community had the requisite awareness among its members because members of all the categories recognize themselves as part of the spa community by their *inclusion* in industry organizations and *participation* in their events: “*Members...recognize themselves as part of the spa community as evidenced...by their inclusion in industry organizations and participation in their events.*”²⁵¹ (See .SPA CPE Report, <https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>, p.2). Inter alia, under DotMusic’s Application, Music Community members also recognize themselves as part of the music community as evidenced by their inclusion in music community member organizations and participation in their events.

²⁵² Oxford Dictionaries “*logical*” definition: (i) *1. Of or according to the rules of logic or formal argument*; (ii) *1.1 Characterized by or capable of clear, sound reasoning*; (iii) *1.2 (Of an action, development, decision, etc.) natural or sensible given the circumstances, see http://oxforddictionaries.com/us/definition/american_english/logical*

²⁵³ Oxford Dictionaries “*alliance*” definition: (i) *1. A union or association formed for mutual benefit, especially between organizations*; (ii) *1.1 A relationship based on an affinity in interests, nature, or qualities*; (iii) *1.2 A state of being joined or associated, see http://oxforddictionaries.com/us/definition/american_english/alliance*

²⁵⁴ Comments of “Music Community” to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment*, Docket No. 2015-7, April 1, 2016, <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-89806&attachmentNumber=1&disposition=attachment&contentType=pdf>, pp.2 to 3

²⁵⁵ National Music Council letter to ICANN, March 28, 2016, <https://icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-28mar16-en.pdf>

²⁵⁶ See Mission and Purpose, Application 18A and 20C. DotMusic’s mission and purpose includes the unified principles of “[p]rotecting intellectual property” and “[p]romoting music.”

57. The AGB also requires “at least one entity mainly dedicated to the community” defined. DotMusic’s application has many “recognized community institution(s)/member organization(s)” that are mainly dedicated to the music community addressed (i.e the “logical alliance of communities that relate to music”), that include the International Federation of Musicians (“FIM”) and the International Federation of Phonographic Industry (“IFPI”).
58. The FIM, founded in 1948, is a recognized international federation representing the “voice of musicians worldwide.”²⁵⁷ The FIM’s global recognition is demonstrated by its official roster consultative status relations with the United Nations Economic and Social Council (“ECOSOC”); the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status); the World Intellectual Property Organization (“WIPO”) (Permanent Observer Status); and the Organisation Internationale de la Francophonie (“OIF”). The FIM also consults the Council of Europe, the European Commission and the European Parliament. FIM is also a member of the International Music Council (“IMC”).²⁵⁸
59. The IFPI, founded in 1933, is a recognized international federation “representing the “recording industry worldwide.” The IFPI represents the majority of music consumed globally.²⁵⁹ The IFPI also represents the three major label groups (Universal Music, Sony Music and Warner Music), organizations that “control 78% of the global market.”²⁶⁰
60. The IFPI is only associated with music and it is the globally-recognized music organization that administers the International Standard Recording Code (“ISRC”), an international standard code for uniquely identifying sound recordings and music video recordings, which is reciprocally recognized across all segments of the Music Community.²⁶¹ The code was developed with the ISO technical committee 46, subcommittee 9 (TC 46/SC 9), which codified the standard as ISO 3901 in 1986.²⁶² The IFPI’s ISRC is “intentionally standardised under ISO,” globally structured²⁶³ and “well established, widely accepted internationally.”²⁶⁴ Furthermore, it relates to the addressed Music Community defined by DotMusic, an “organized and delineated logical alliance of communities that relate to music.” The IFPI does not restrict ISRC codes to solely its members. In fact, ISRC eligibility is available and dedicated to the entire global Music

²⁵⁷ Musicians represent the overwhelming majority of the Music Community defined

²⁵⁸ UNESCO, <http://ngo-db.unesco.org/r/or/en/1100025135>

²⁵⁹ See IFPI, <http://www.ifpi.org>

²⁶⁰ See Credit Suisse Research and Analytics, Global Music, 25 June 2014. Retrieved May 12, 2016 from

https://doc.research-and-analytics.csfb.com/docView?language=ENG&source=emfromsendlink&format=PDF&document_id=1034433411&extdocid=1034433411_1_eng_pdf

²⁶¹ According to the DotMusic Application, evidential examples of music community cohesion were described in 20A: “commonly used [...] classification systems such as ISMN, ISRC, ISWC, ISNI [...]” The ISRC is administered by the IFPI on behalf of the entire Music Community.

²⁶² http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=23401

²⁶³ <http://isrc.ifpi.org/en/isrc-standard/structure>

²⁶⁴ <http://isrc.ifpi.org/en/why-use/benefits>

Community, irrespective of whether they are members of organizations or not, are professionals or amateurs, are independent or non-independent, commercial or non-commercial: “Owners of recordings may for example be independent artists, record labels or recorded music groups. ISRC is available to all owners of recordings regardless of their membership²⁶⁵ (or not) with any industry association.”²⁶⁶ In fact, without the IFPI’s ISRC codes, legal music consumption as it cohesively functions currently would not exist in the manner that it does today because there would be no way to appropriately and efficiently attribute music to Music Community members.²⁶⁷ The IFPI’s global recognition is also demonstrated by its official relations with United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status), a globally-recognized international organization with 195 country member states²⁶⁸ and the World Intellectual Property Organization (“WIPO”) (Permanent Observer Status).²⁶⁹

61. Based on the AGB criteria, both the IFPI and the FIM qualify as recognized community member organizations that are *mainly*²⁷⁰ dedicated to the community addressed²⁷¹ with organized “documented activities” that are united under the shared Music Community core principles of protecting copyright and promoting music.

62. According to the AGB, *Pre-existence* requires that the Community defined by the applicant “must have been active prior to September 2007.”²⁷² *Longevity* effectively also requires that the community defined is not ephemeral or set up for the specific purpose of

²⁶⁵ DotMusic’s community application defines the community as “a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature,” that relate to music: the art of combining sounds rhythmically, melodically or harmonically.” The IFPI’s ISRC codes do not restrict eligibility to members of select music organizations but are available to the entire music community as defined.

²⁶⁶ <http://isrc.ifpi.org/en/using-isrc>

²⁶⁷ For example, without the IFPI’s ISRC codes, YouTube Music would be unable to effectively credit the corresponding music copyright owner related to each music video, *see* <https://support.google.com/youtube/answer/6007080> and; For the same reason, nearly all digital music retailers rely on and require ISRC codes, including Apple iTunes²⁶⁷ (the world’s largest music retailer with over 43 million music tracks,²⁶⁷ *see* <http://apple.com/itunes/working-itunes/sell-content/music-faq.html> and <http://apple.com/itunes/music> and <http://www.digitalmusicnews.com/2014/04/24/itunes800m>)

²⁶⁸ *See* UNESCO, <http://en.unesco.org/countries/member-states>

²⁶⁹ *See* UNESCO at <http://ngo-db.unesco.org/r/or/en/1100064188> and WIPO at http://wipo.int/members/en/organizations.jsp?type=NGO_INT

²⁷⁰ According to the Oxford Dictionaries, the definition of “mainly” is “*more than anything else.*” *See* http://www.oxforddictionaries.com/us/definition/american_english/mainly

²⁷¹ In the case of .HOTEL’s CPE Report, the prevailing .HOTEL community applicant received a full grade for “*Organization*” because the Panel found “recognized community institution(s)/member organization(s),” (*See* .HOTEL CPE Report, <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.6) the International Hotel & Restaurant Association (“IH&RA”), the China Hotel Association (“CHA”), the American Hotel & Lodging Association (“AH&LA”) and HOTREC: “*the community as defined in the application has at least one entity mainly dedicated to the community. In fact there are several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA) [...]*” (*See* .HOTEL CPE Report, *Community Establishment*, p.2) “[...] *The applicant possesses documented support from the recognized community institution(s)/member organization(s).*” (*See* .HOTEL CPE Report, p.6). According to the .HOTEL CPE Report, it is also noted that the Panel recognized that the nationally-based AH&LA and CHA were “recognized” organizations that were “mainly” dedicated to the hotel community. Consistently, DotMusic’s application had multiple recognized international federations and national organizations mainly dedicated to the music community.

²⁷² AGB, p.4-11

obtaining a gTLD approval.²⁷³ Both the IFPI (founded in 1933) and the FIM (founded in 1948) are recognized community member organizations and international federations that are mainly dedicated to the community as defined by the applicant with records of activity beginning before 2007.²⁷⁴ In fact, both the IFPI and the FIM were active and organized prior to the introduction of the Internet, top-level domains and ICANN.²⁷⁵ The defined Music Community and its music-related segments were organized prior to 2007, united under shared core principles, such as the protection of music copyright and the promotion of music. In other words, none of the .MUSIC Application's supporting community organizations were set up for the specific purpose of obtaining gTLD approval. The pursuits of the community defined are of a lasting, non-transient nature (i.e. will continue to exist in the future). With respect to the collective management of music copyright, such activities started out in 1850 in France and were widespread in Europe during the first decades of the 20th Century.²⁷⁶

63. According to the AGB, the Community defined must be of “considerable size and have longevity. *Size* requires that the “community is of considerable size.”²⁷⁷ According to DotMusic's Application, the size and extensiveness of the Music Community were shown in DotMusic's support letters from 20F and also described in 20A: “The Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries...with a Community of considerable size with millions of constituents (“SIZE”).”²⁷⁸ Moreover, according to DotMusic's Application materials, the community defined is supported by a logical alliance of music organizations with members that represent over 95% of music consumed globally. In sum, the community defined is of considerable size.
64. DotMusic's Application meets all the criteria under the *Community Establishment* section.

²⁷³ AGB, “‘Longevity’” means that the pursuits of a community are of a lasting, non-transient nature,” p.4-12

²⁷⁴ A similar example is the International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA”) and the International Spa Association (“ISA”). According to the .GAY CPE Report, “*the ILGA, an organization mainly dedicated to the community as defined by the applicant, as referred to above, has records of activity beginning before 2007.*” (See .GAY CPE Report, <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>, p.3). According to the .SPA CPE Report: “*The community as defined in the application was active prior to September 2007 [...] [T]he proposed community segments have been active prior to September 2007. For example, the International Spa Association, a professional organization representing spas in over 70 countries, has been in existence since 1991.*” (See .SPA CPE Report, <https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>, p.3). Consistent with the .SPA and .GAY CPE Reports' rationale for ISA and ILGA (an international federation with consultative status with UNESCO, see ILGA, <http://ilga.org/about-us>), both the IFPI and FIM have “*records of activity before 2007*” (The IFPI and the FIM were founded in 1933 and 1948 respectively) and are “*mainly dedicated to the community*” as defined by DotMusic.

²⁷⁵ Internet Society, *Brief History of the Internet*, <http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet>

²⁷⁶ Mihály Ficsor: *Collective Management of Copyright and Related Rights*, WIPO Publication No. 855(E), http://www.wipo.int/edocs/pubdocs/en/copyright/855/wipo_pub_855.pdf, p.19

²⁷⁷ AGB, “‘Size’ relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers,” p.4-11

²⁷⁸ See .MUSIC Application, 20A, para.4 at

<https://gtdresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1392?t:ac=1392>

CPE Section on Nexus between Proposed String and Community

65. According to DotMusic’s Application, the “Name” of the community defined was described in 20A: “The name of the community served is the “Music Community” (“Community”).”²⁷⁹
66. According to DotMusic’s Application, the “Nexus between Proposed String and Community” was described in 20A and 20D: “The “MUSIC” string *matches* the name (“Name”) of the Community and is the established name by which the Community is commonly known by others.”²⁸⁰ DotMusic “explain[ed] the relationship between the applied- for gTLD string and the community identified in 20A” in its answer to 20D: “The .MUSIC string relates to the Community by [...] *completely representing the entire* Community. It relates to all music-related constituents using an all-inclusive, multi-stakeholder model [...].”^{281 282}
67. Before the .MUSIC CPE commenced, DotMusic also submitted an independent poll conducted by Nielsen ²⁸³ as supporting evidence to demonstrate that DotMusic’s Application met the CPE criteria for Community Establishment and Nexus. An independent Nielsen QuickQuery survey was conducted from August 7, 2015, to August 11, 2015, with 2,084 diverse and neutral adults.²⁸⁴ The survey examined whether or not

²⁷⁹ Application, 20A, para.1

²⁸⁰ Ibid, 20A, para.3 (*emphasis added*)

²⁸¹ Ibid, 20D, para.1 (*emphasis added*)

²⁸² According to the .SPA community application, the defined spa community also included a secondary community that did not relate to the operation of spas: “The *secondary community generally* also includes holistic and personal wellness centers and organizations. While *these secondary community organizations do not relate directly* to the operation of spas, *they nevertheless often* overlap with and participate in the spa community and may share certain benefits for the utilization of the .spa domain.” (See .SPA community application, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/123?t:ac=123>, 20A, para.3 (*emphasis added*)). The EIU CPE Panel awarded the .SPA community applicants the full points under both the *Community Establishment* and the *Nexus Between the Proposed String and Community* sections despite the spa community defined by the applicant including a “secondary community” that “do[es] not relate directly” to the string. Inter alia, DotMusic’s Application, Music Community members are delineated and restricted to music categories and music subsets that *only* relate to music. According to DotMusic’s Application Materials, unrelated secondary communities that have a tangential relationship with the music community defined are not allowed, which is a higher threshold than the one allowed by the EIU CPE Panel in awarding maximum points for the *Community Establishment* and the *Nexus Between the Proposed String and Community* sections of the .SPA CPE Report. Inter alia, DotMusic “restricts eligibility to Music Community members -- as explicitly stated in DotMusic’s Application -- that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community they identify with as part of the registration process. This public interest commitment ensures the inclusion of the entire global music community that the string .MUSIC connotes.” (See DotMusic Public Interest Commitments (“PIC”), PIC Enumerated Commitment #3, <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, p.1). DotMusic’s defined community “...exclude[s] those with a passive, casual or peripheral association with the applied-for string.” (See Ibid, PIC Enumerated Commitment #4, p.2)

²⁸³ See Nielsen QuickQuery. Retrieved on May 11th, 2016 from <http://sites.nielsen.com/meetquickquery/?cid=emtechcrunchquickquery>

²⁸⁴ See Nielsen Quick Query poll, Fielding Period: August 7-11, 2015: “Q3505 If you saw a website domain that ended in “.music” (e.g., www name music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?” <https://www.icann.org/en/system/files/files/reconsideration-16-5->

the applied-for string (.MUSIC) was commonly-known and associated with the identification of the community defined by DotMusic by asking: “If you saw a website domain that ended in “.music” (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e. a logical alliance of communities of individuals, organizations and business that relate to music)?” A substantial majority, 1562 out of 2084 (i.e. 3 in 4 or 75% of the respondents) responded positively, agreeing that (i) the applied-for string (.MUSIC) corresponds to the name of community addressed by the application (the “music community”) and that (ii) the “music community” definition is “a logical alliance of communities of individuals, organizations and business that relate to music.” The Independent Nielsen Poll for Community Establishment and Nexus provided independent supporting evidence to demonstrate that DotMusic’s Application met the CPE criteria for the *Community Establishment* and the *Nexus Between the Proposed String and Community* sections.²⁸⁵

68. The applied-for string, MUSIC, is commonly known by others as the name of the community: the Music Community (i.e. the string matches the name of the community). With regard to the community context and from a general point of view, the string has no other significant meaning beyond identifying the community described in the application: the Music Community.

69. DotMusic’s Application meets all the criteria under the *Nexus between Proposed String and Community* section.

CPE Section on Support (under Community Endorsement)

70. The AGB and CPE Guidelines allow communities that are supported and established through multiple organizations and institutions. The relevant provisions provide: “with respect to “Support,” the plurals in brackets for a score of 2, *relate to cases of multiple institutions/organizations*. In such cases there must be documented support from institutions/organizations representing a *majority of the overall community addressed in order to score 2.*”^{286 287}

71. According to the DotMusic Application, DotMusic received “documented support” from multiple organizations representing a majority of the Community, as referenced in 20D: “See 20F for documented support from institutions / organizations representing majority of the Community and description of the process/rationale used relating to the expression of support.”²⁸⁸ According to the DotMusic Application Materials and DotMusic’s Support letters, the .MUSIC Application is supported by multiple organizations with members representing over ninety-five percent (95%) of music consumed globally, a

[dotmusic-exhibits-a25-redacted-24feb16-en.pdf](#), Exhibit A32, Appendix B, pp. 38 to 41; Also *see* Nielsen QuickQuery Q3505, <http://music.us/nielsen-harris-poll.pdf>, pp. 1 to 3

²⁸⁵ Ibid, Annex H, pp.102 to 105 of 993

²⁸⁶ AGB, §4.2.3, Module 4, p.4-18 (emphasis added)

²⁸⁷ CPE Guidelines, p.18

²⁸⁸ Application, 20D, last paragraph

majority of the overall Music Community defined, the “organized and delineated logical alliance of communities of similar nature that relate to music.”²⁸⁹

72. According to the AGB, another alternative for a score of 2 points under “Support” is possessing “documented support from, the recognized²⁹⁰ community institution(s)/ member organization(s).”²⁹¹
73. The level of global recognition of any music community organization should be analyzed within the context of the community that such institution is claiming to be a part of, not the public in general. The AGB does not require that one organization represent an “entire” community. In fact, it would be impossible for an institution to represent any community in its entirety unless the representation is associated with the core principles of music copyright protection that all community members share, or the administration of internationally-recognized and community-shared music attribution systems conducted on behalf of the entire community (such as the administration of the ISRC by the IFPI conducted on behalf of the community in its entirety). The concept of “community” is not strictly defined by the AGB. According to the Oxford Dictionaries, a “community” could be “a group of people living in the same place or having a particular characteristic in common,” “a body of nations or states unified by common interests,” “a feeling of fellowship with others, as a result of sharing common attitudes, interests, and goals” or “similarity or identity.” It generally refers to a “group of people” that may be considered as a “unit” that share similar interests, goals or values.²⁹² The community defined, the “delineated and organized logical alliance of communities of similar nature that relate to music” are united, *inter alia*, under the principles of copyright protection and legal music promotion. As defined, the Music Community has more of cohesion than a mere commonality of interest because it functions under a structured and regulated sector. Without such cohesion and structure, music consumption and usage as we know them today would not be possible.
74. The music organizations supporting the DotMusic Application are the most recognized and trusted music organizations, including multiple globally-recognized organizations that constitute a majority of all music that is consumed at a global level. Recognized organizations include the IFPI and the FIM. DotMusic’s application possesses documented support from the recognized community member organizations.²⁹³

²⁸⁹ See Support Letters from multiple organizations for DotMusic’s Application at <http://music.us/supporters> and <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>; See over two-thousand (2,000) Support Letters at <https://icann.box.com/shared/static/bg7rpnj9zeg4jvt8ff7qaka2ot7ai4mg.pdf>. (Exhibits A19-1, A19-2 and A19-3) and at <https://icann.box.com/shared/static/s2dab2ba5pf6hx9f1j7cg5x86acnrhli.pdf> (Exhibit A19-4); and <https://gtldcomment.icann.org/applicationcomment/viewcomments>

²⁹⁰ AGB, “‘Recognized’ means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community,” pp. 4-17 to 4-18

²⁹¹ AGB, p.4-17

²⁹² Oxford Dictionaries, http://www.oxforddictionaries.com/us/definition/american_english/community

²⁹³ According to the .HOTEL CPE Report, the .HOTEL applicant fulfilled two options (either option was acceptable under the CPE Guidelines): “[t]hese groups constitute the recognized institutions to represent the community, and a majority of the overall community as described by the applicant.” (See .HOTEL CPE Report, p.6). Recognized organizations mainly dedicated to the hotel community included the nationally-based AH&LA and CHA.

75. DotMusic’s Application meets both “Support” options to meet a score of 2. DotMusic has “documented support from, the recognized community institution(s) / member organization(s)”²⁹⁴ and “documented support from institutions/organizations representing a majority of the overall community addressed.”²⁹⁵ DotMusic’s Application meets all the criteria for “Support” under the *Community Endorsement* section.

Conclusion

76. I am in agreement with the forty-three (43) independent expert testimonies, which agreed unanimously that DotMusic’s Application met the *Community Establishment*, the *Nexus Between the Proposed String and Community* and the *Support* CPE criteria. Furthermore, the findings of the Nielsen Poll provided more independent supporting evidence to demonstrate that DotMusic’s Application met the CPE criteria for *Community Establishment* and *Nexus Between the Proposed String and Community*.

77. It is my legal expert opinion that DotMusic’s application meets the full criteria under *Community Establishment*, the *Nexus Between the Proposed String and Community*, and *Support* (under *Community Endorsement*).



Dr. Jørgen Blomqvist
Honorary Professor in International Copyright, Ph.d

June 17, 2016

²⁹⁴ According to the .HOTEL CPE Report, the .HOTEL applicant fulfilled two options (either option was acceptable under the CPE Guidelines): “[t]hese groups constitute the recognized institutions to represent the community, and a majority of the overall community as described by the applicant.” (See .HOTEL CPE Report, <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.6). Recognized organizations mainly dedicated to the hotel community included the nationally-based AH&LA and CHA. Consistent with the .HOTEL CPE Report’s “Support” rationale, DotMusic’s Application also meets the “Support” criterion.

²⁹⁵ According to the .RADIO CPE Report: “[T]he applicant possesses documented support from institutions / organizations representing a majority of the community addressed [...]The applicant received support from a broad range of recognized community institutions/member organizations, which represented different segments of the community as defined by the applicant. These entities represented a majority of the overall community. The Community Priority Evaluation Panel determined that the applicant fully satisfies the requirements for Support.” (See .RADIO CPE Report, <https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>, p.7). Consistent with the .RADIO CPE Report’s “Support” rationale, DotMusic’s Application meets the “Support” criterion because it has support from recognized community organizations representing a majority of the overall community defined by the applicant.