Re: Community Priority Evaluation Guidelines   September 7th, 2013

Dear ICANN and Economist Intelligence Unit (EIU):

DotMusic Limited ("DotMusic") is applicant[1] for .MUSIC, a multi-stakeholder music community-based effort. DotMusic would like to thank ICANN and the EIU to be given this opportunity to provide specific feedback on the CPE process and provide comment on the initial draft CPE guidelines[2] published on August 16, 2013 ("Guidance") pertaining to the Applicant Guidebook ("AGB"). We would like to reiterate our CPE concerns on subjective scoring,[3] especially given that the development of the CPE criteria was not a truly bottom-up, multi-stakeholder process. The ICANN community has yet to receive any adequate reasoning pertaining how certain criteria was developed e.g how the 14-point CPE threshold score was determined.

Our application represents nearly 8 years of work, including over half a decade of dedicated music community global public outreach ("Outreach") for our .MUSIC community-based application. During this long period, DotMusic and its community members have invested significant time, efforts and financial resources in a truly collaborative manner to form our community-based application and its policies focused on our Mission to create a gTLD that is aligned with the music community's common interest: the legal distribution and promotion of music (emphasis added).

Accordingly, we encourage the EIU to help fulfill the goals of the new gTLD Program to increase diversity, competition and innovation – and give the benefit of the doubt in scoring authentic communities with demonstrable community support (emphasis added) – taking into consideration that community-applicants only represent a small percentage of total new gTLD applications (under 4%). This notion of the importance of community-based gTLDs is also be consistent with ICANN CEO Fadi Chehadé's reference to Community TLDs as "the reason [he gave] for expanding the DNS with new gTLDs"[4] and GAC's most recent Durban Communique consensus advice relevant to Community Applications:

> *The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment* (emphasis added) *for all applications which have demonstrable community support* (emphasis added)*, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.*
>
> *Therefore the GAC advises the ICANN Board to: Consider to take better account of community views, and improve outcomes for communities* (emphasis added)*, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.* [5]

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[1] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392
[2] http://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf
[3] Constantine Roussos, ICANN Beijing Meeting Public Forum,
http://beijing46.icann.org/meetings/beijing2013/transcript-public-forum-11apr13-en.pdf (Page 66-67), April 11, 2013
[4] http://meetings.icann.org/board-gac-spring11
[5] https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2, Section IV, GAC Advice to Board, 1.1.a.1 (P.3) and 7b (P.6). GAC stated that "In those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information," (https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf , p.4). ICANN's New gTLD

DotMusic has a number of critical overarching issues and feedback relating to the Guidance such as aligning Guidance definitions – such as "Community", "Delineation" and "Nexus" to reflect all types of authentic communities and structures (membership-based, non-membership based or a hybrid of both). We urge that CPE is not treated as an academic scoring exercise because the unintended consequences would be in conflict the new gTLD program's objectives.

In context, the AGB has been created in such a manner that if a community applicant fails CPE they would have a <u>negligible</u> chance of winning an auction (emphasis added). In economic terms, an auction significantly favors standard "open" applicants over "community" applicants because:

- Community applicants have a built-in accountability mechanism through the Registry Dispute Resolution Procedure (RRDRP)[6] while standard "open" applicants do not.
- Community applicants are not allowed to make changes to their application[7] (such as making their registration policies less restrictive to spur more registrations) to encourage them to bid higher in an auction.
- Standard "open" applicants have an unfair economic advantage in the case of an auction of last resort since their "open" application is worth more than a "restricted" community-based application since fewer restrictions generate more domain registrations i.e an open applicant can afford to bid higher than a community applicant since an "open" gTLD's profit potential is significantly higher (emphasis added).

We urge ICANN and the EIU to take into consideration our comments in a constructive manner to fulfill the goals of the new gTLD Program and to ensure there is diverse community-based participation in the Program in the present or in a future gTLD round. Failing authentic community applicants will create unintended consequences of making the gTLD Program accessible only for deep-pocketed gTLD portfolio companies (such as Donuts, Google and Amazon) who can "buy" and control a significant portion of the domain space's most semantic strings (emphasis added).

As ICANN itself emphasizes, "diversity (emphasis added), choice and innovation are key"[8] for the goals of the gTLD Program. We hope this is an opportunity for ICANN to take community feedback relating to CPE into consideration and address ongoing concerns in order to serve the global public interest and its Affirmation of Commitments. We look forward with working with both ICANN and the EIU to make the CPE process and gTLD Program a success in accordance to its goals.

Best Regards,

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Supporting Organizations:
http://music.us/supporters.htm

Program Committee responded to GAC, and has <u>accepted</u> this important GAC advice (emphasis added) (https://www.icann.org/en/news/correspondence/crocker-to-dryden-06jun13-en.pdf, Annex 1, GAC Register #5, P.11)
[6] http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm
[7] http://newgtlds.icann.org/en/applicants/customer-service/change-requests
[8] http://www.icann.org/en/news/announcements/announcement-07may09-en.htm

A) CPE Panelists should ask Clarifying Questions in areas of concern

DotMusic has used numerous experts in both the music and ICANN space to grade its community application based on CPE Guidelines in the AGB. As expressed to the ICANN Board in during the Beijing Public Forum there is considerable subjectivity in the scoring process. Most experts we asked would not commit to a definite score. They provided a range of possible scores instead. These score ranges fluctuated between 13 and 16. In other words our community application would likely pass (14, 15, 16 score) but had a chance it would fail (13 score). Such uncertain results are of great concern since scoring may vary from one Panelist to another.

Since there is minimal margin for error given the high threshold for passing, the EIU should offer Clarifying Questions in areas where there is concern. This is consistent with the Clarifying Question process the Financial and Technical Panels undertook during Initial Evaluation. DotMusic already experienced negative Legal Rights Objection panel decisions based on inaccurate information that some WIPO Panelists relied upon to make their decisions.[9] Incorporating Clarifying Questions in areas of concern would help alleviate such inaccuracies and unfair determinations.

B) Both .MUSIC community applications should be scored by same Panelist

.MUSIC is the only string which has two community-based applicants (emphasis added). It is recommended that the same Panelist is used to grade both .MUSIC community-based applications for consistency purposes (emphasis added) especially taking into consideration that many members represented by supporting organizations in each community-based effort overlap i.e members can belong to more than one supporting organization and in many cases are represented in both community-based applications (emphasis added).

C) All CPE scores should be calibrated against each other to ensure consistency

We support the testing of evaluators (Guidance, P.19) and kindly request that data sets and results are calibrated to ensure consistency with the GNSO recommendations and the AGB, to date. Since scoring is a subjective process and some Panelist may be inherently stricter than others, it is a necessity that all scores be compared and normalized for fairness and consistency purposes. All scores should be considered in relation to each other to avoid unintended consequences, such as the inconsistent ICDR Panel decisions relating to string similarity e.g .ECOM and .CAM string similarity objections were upheld by one Panelist while rejected by another.[10] The subjective bias concern can also be illustrated in the inconsistent ICDR Panel decisions pertaining to singulars and plurals e.g .PET/.PETS objection upheld by one Panelist but .CAR/.CARS rejected by another.[11] To ensure transparency and consistency in scoring across all community-based applicants we also kindly request that in cases of negative points the Panelist clearly articulates and substantiates beyond reasonable doubt why points were deducted (emphasis added).

[9] Some LRO Panelists inaccurately argued that DotMusic Limited (the Objector) was not the trademark owner when in fact a simple search with the Office of Harmonization for the Internal Market (OHIM) for Trademarks and Designs would have indicated otherwise
[10] http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7B3d7531bb-c0b8-462e-ab7a-2a6572300363%7D_ICANN_DRP_StringConfusion_Objections.pdf
[11] http://go.adr.org/ICANNgTLD

D) Communities and Common Interests

It should be assumed that ICANN and the EIU agree that 'communities' in relation to this process are considered homogenous in relation to the common interest they share that identifies them (in the case of .MUSIC it is the legal distribution and promotion of music) but heterogeneous in relation to their sub-communities (in the case of .MUSIC there are different entity types, such as music artists, music bands, music promoters and genre-based sub-communities, such as rock, punk, hip hop and so forth). The Guidance seems to assume that the components and subjects of the communities are indeed diverse, such as in the case of the "ICANN community." Understanding and allowing for this community "cohesion" and nuance throughout the evaluation <u>must be taken into consideration to avoid 'false negatives' resulting from an inaccurate evaluation procedure that does not represent how the community in question functions and does not flexibly consider this inherent diversity</u> (emphasis added).

E) Comments on EIU Guidelines

ICANN and the EIU might consider valuable insights using several historical resources, which could assist in the development of guidelines for Panelists:

- <u>Community gTLD Change Request Handling Discussion Draft Explanatory Memorandum</u>: ICANN published a discussion draft in February 2011 that explores how a registry change request process would function for the community-based gTLD ".sugar". This draft provides a useful insight into how ICANN has envisioned and approached the existence, development and evaluation of community-based gTLDs. (http://archive.icann.org/en/topics/new-gtlds/explantory-memo-community-change-request-21feb11-en.pdf), 21st February 2011
- <u>ICANNWiki - Community TLD</u>: ICANN Public Comment Analyses from AGB drafts: In developing the Applicant Guidebook, Internet community members published comments and questions relating community-based applications when each version was published for public comment. ICANN responded to those questions and comments. The responses provide useful additional context as to staff reasoning during the AGB developmental process. A summary of those responses is provided here: (http://icannwiki.com/index.php/Community_TLD#Requirements_for_Community_)
- Interview with Avri Doria on the History of Community gTLDs: This interview provides additional context for the 1 August 2013 letter. (http://www.circleid.com/posts/20130305_interview_with_avri_doria_on_the_history_of_community_gtlds/), 5th March 2013
- <u>Letter from Craig S. Schwartz to Christine Willett</u> representing the views of the Community TLD Applicant Group (CTAG): This letter provides a useful historical overview and policy context for community-based gTLDs in this application round. (http://newgtlds.icann.org/en/program-status/correspondence/schwartz-to-willett-01aug13-en.pdf), 1st August 2013

1-A Delineation (Criterion #1: Community Establishment)

"Community" definition

Research by distinguished music community expert Dr. Kay Kaufman Shelemay,[12] a Harvard professor of Music, clearly articulated the definition and nexus of the music community[13] with the common interest of "sharing music with others."[14] The word "community," derived from Latin, has been in use in English since the 14th century, but did not acquire present-day local associations until the 20th century.[15] The *Oxford English Dictionary* defines community first and foremost as a collectivity, that is, "a body of people or things viewed collectively."[16]

The genesis of the study of "Community" is generally dated to the work of the German sociologist Ferdinand Tönnies (1855–1936), who theorized a distinction between *Gemeinschaft* (a community based on individual social relationships) and *Gesellschaft* (civil society).[17] By the second half of the twentieth century, interests moved to exploring communities as sites of identity.[18] A landmark study by Adelaida Reyes Schramm considered the construction of both formally and informally constituted performing groups.[19] Many different studies define the term "community" in new and creative ways, such as a study of a "phonic community," including studying ethnic differences through analyzing "the sound of the community" and the ways in which community members "come to 'recognize' each other" through noise-creating voices[20] i.e a clear and straightforward community membership is not a requirement to identify with a community.

Concepts of "community" have been subject to a changing intellectual landscape. Benedict Anderson sought to define an elusive complex of terms - nation, nationality, nationalism - as "cultural artifacts of a particular kind."[21] Anderson proposed that a community is to be distinguished, not by its falsity/genuineness (i.e a clear and straightforward community membership is not needed), but by the style in which it is imagined, conceived as a deep, horizontal

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[12] http://www.music.fas.harvard.edu/faculty/kshelemay.html

[13] Kay Kaufman Shelemay, G. Gordon Watts Professor of Music, Ethnomusicology, "Musical Communities: Rethinking the Collective in Music" http://dash.harvard.edu/bitstream/handle/1/8810547/Shelemay-Communities-Final.pdf?sequence=2 / http://dash.harvard.edu/handle/1/8810547, 2013

[14] Kay Kaufman Shelemay, personal communication, September 4, 2013

[15] Raymond Williams, "Community." In Keywords: A Vocabulary of Culture and Society, revised ed. New York: Oxford University Press, 1983, "Community," in Keywords, 75–76, 1983

[16] "Community, n." OED Online. Oxford University Press. http://www.oed.com.ezp-prod1.hul.harvard.edu/view/Entry/37337?rskey=3i15CN&result=39912&isAdvanced=true, 2010

[17] Ferdinand Tönnies, "Community and Civil Society", Cambridge Texts in the History of Political Thought. Cambridge and New York: Cambridge University Press, Pg.17, 2001

[18] Barth, Fredrik, ed. Ethnic Groups and Boundaries: The Social Organization of Culture Difference; Results of a Symposium Held at the University of Bergen 23rd to 26th of February 1967. Scandinavian University Books. Bergen: Universitetsforlaget; and London: Allen & Unwin, 1969. Ethnic Groups and Boundaries; Aronson, "Ethnicity as a Cultural System"; and Gleason, "Identifying Identity: A Semantic History."

[19] Schramm, Adelaida Reyes. "Ethnic Music, the Urban Area, and Ethnomusicology," *Sociologus* 29 (1979): 1–21. "The Role of Music in the Interaction of Black Americans and Hispanos in New York City's East Harlem." PhD diss., Columbia University, 1975

[20] Alleyne, Brian. "An Idea of Community and Its Discontents: Towards a More Reflexive Sense of Belonging in Multicultural Britain." *Ethnic and Racial Studies* 25, no. 4 (2002): 607–27. See also Noy, Chaim. *A Narrative Community. Voices of Israeli Backpackers.* Raphael Patai Series in Jewish Folklore and Anthropology. Detroit: Wayne State University Press, 151–52, 2007

[21] Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism.* 1983. Revised ed. London: Verso, Pg 3–4, 1991

comradeship.[22] Anderson's suggestion that all communities may be imagined has had a continued prominence in ethnomusicology which has resonated among music historians.[23]

Relevant work by Anthony P. Cohen urged to understand "community" not as a structure to be defined and described, but as a mode of experience that has meaning to people who consider themselves to be part of it.[24] According to Cohen, a community is "a matter of feeling, a matter which resides in the minds of the members themselves" and is based on sharing of particular symbols, such as ritual orders or, for our purposes, musical performance.[25] In this way, Cohen disputed one of the key concepts of the social sciences, the notion of a community as fixed in time and place, and described it instead as "a largely mental construct."[26]

These studies also align with historical work by Eric Hobsbawm and Terence Ranger[27] referring to the "community" as an invented tradition taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behavior by repetition (without the need of a clear and straightforward community membership), which automatically implies continuity with the past.[28]

Drawing on the work of Edward Said, as well as the notion of scene as advanced by Barry Shanks, Will Straw defined the music community as a music scene, a "cultural space in which a range of musical practices coexist, interacting with each other within a variety of processes of differentiation, and according to widely varying trajectories of change and cross-fertilization."[29] According to Straw the music "community" – where disruption and fragmentation of cultures co-exist – is associated with imaginary unities which underlie it.[30]

In sociological literature, the word "scene" is discussed as a substitute rubric for "community" in attempting to explain "the significance of music in everyday life."[31] The concept of community constitutes people involved in music making, while at the same time sustaining the secondary

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[22] Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. 1983. Revised ed. London: Verso, Pg 6-7, 1991

[23] Anderson's theoretical influence on recent ethnomusicological work includes Frishkopf, Michael. "Introduction: Music and Media in the Arab World and *Music and Media in the Arab World* as Music and Media in the Arab World: A Metadiscourse,"Pg 22-23, 2010; and Sugarman, Jane C. "Building and Teaching Theory in Ethnomusicology: A Response to Rice." *Ethnomusicology* 54 (2010): 341–44; In historical musicology, see Celenza, Anna Harwell. "Imagined Communities Made Real: The Impact of Robert Schumann's *Neue Zeitschrift für Musik* on the Formation of Music Communities in the Mid- Nineteenth Century." *Journal of Musicological Research* 24 (2005): Pg 1–26

[24] Cohen, Anthony P. *The Symbolic Construction of Community*. Chichester, UK: Ellis Horwood; and London and New York: Tavistock Publications, Pg 19–20, 1985.

[25] Cohen, Anthony P. *The Symbolic Construction of Community*. Chichester, UK: Ellis Horwood; and London and New York: Tavistock Publications, Pg 21, 1985.

[26] Cohen, Anthony P. *The Symbolic Construction of Community*. Chichester, UK: Ellis Horwood; and London and New York: Tavistock Publications, Pg 108, 1985.

[27] Hobsbawm, Eric. "Introduction: Inventing Traditions." In *The Invention of Tradition*, 1–14. Cambridge University Press, 1983

[28] Hobsbawm, Eric. "Introduction: Inventing Traditions." In *The Invention of Tradition*, 1–2. Cambridge University Press, 1983

[29] Said, Edward W. "Figures, Configurations, Transfigurations." *Race & Class* 32 (1990): 1–16; Shanks, Barry. "Transgressing the Boundaries of a Rock 'n' Roll Community," 1988; and Will Straw, "Systems of Articulation, Logics of Change: Communities and Scenes in Popular Music." *Cultural Studies* 5, Pg 373, 1991

[30] Will Straw, "Systems of Articulation, Logics of Change: Communities and Scenes in Popular Music." Pg 369, 1991

[31] Andy Bennett, "Consolidating the Music Scenes," *Poetics: Journal of Empirical Research on Culture, the Media and the Arts* 32, Pg 224, 2004

notion of community by describing an ideology of bonding expressed through music, generating a shared sense of belonging.[32]

Music is created to be communicated and shared with others in the community. According to Eduard Hanslick - considered the father of modern music criticism - music is composed of melody, harmony, rhythm, timbre and silence in a particular structure.[33] Musical meaning is presentative and it is the notion of personal involvement (not a formal membership) which lends significance to the word ordered in this definition of music."[34] Music communicates to its community in the form of a combination of sounds and silences and in most cases lyrics (in different languages) in the same manner that linguistic communities communicate through language (their common interest), or religious communities through religious beliefs (their common interest). In a similar token to language, music is one focused on expression and emotion.[35]

According to Chris Dobrian "the oft-quoted poetical statement that "music is the universal language of mankind"[36] is indicative of the communicative quality of music. Because music is a stimulus to our sense of hearing, it is clear that music can, and inevitably does, convey information."[37] According to studies, music is considered the "universal language"[38] and a "total social fact"[39] i.e the music community focused on culture and society.

Music has certainly been used in the service of all varieties of the social imagination. Music often impels the formation of collectivities by the strength of its ability to communicate to listeners. It carries emotional meaning and establishes what have been termed "audible entanglements," rendering "audible and visible specific constituencies, and imaginations of longing and belonging."[40] A music community does not require the presence of conventional structural elements (such as a clear and straightforward community membership) nor must it be anchored in

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[32] Andy Bennett, "Consolidating the Music Scenes," *Poetics: Journal of Empirical Research on Culture, the Media and the Arts* 32, Pg 224, 2004

[33] Eduard Hanslick, The Beautiful in Music, http://books.google.com/books?id=Vhc6AAAAIAAJ&pg=PA5 , 1854

[34] Clifton, Thomas, Music as Heard: A Study in Applied Phenomenology, Yale University Press, P.3-4, 1983

[35] Justin London, Musical Expression and Musical Meaning in Context, Carleton College, http://www.people.carleton.edu/~jlondon/musical_expression_and_mus.htm

[36] Henry Wadsworth Longfellow, "Music is the universal language of mankind," *Outre-Mer: A Pilgrimage Beyond the Sea* 1835

[37] Chris Dobrian, Music and Language, http://music.arts.uci.edu/dobrian/CD.music.lang.htm, 1992

[38] Study by Daniel Abrams (Stanford University), In Brain Scans, Music Is A Universal Language, http://www.livescience.com/28642-music-inspires-universal-brain-response.html, 2013; Science Daily, "Language Of Music Really Is Universal, Study Finds", http://www.sciencedaily.com/releases/2009/03/090319132909.htm, Authors include Thomas Fritz, Max Planck Institute for Human Cognitive and Brain Sciences, Leipzig, Germany; Sebastian Jentschke, UCL Institute of Child Health, London, UK; Nathalie Gosselin, Universite´ de Montreal, Montreal, Canada; Daniela Sammler, Max Planck Institute for Human Cognitive and Brain Sciences, Leipzig, Germany; Isabelle Peretz, Universite´ de Montreal, Montreal, Canada; Robert Turner, Max Planck Institute for Human Cognitive and Brain Sciences, Leipzig, Germany; Angela D. Friederici, Max Planck Institute for Human Cognitive and Brain Sciences, Leipzig, Germany; and Stefan Koelsch, Max Planck Institute for Human Cognitive and Brain Sciences, Leipzig, Germany, University of Sussex, Falmer, UK, 2009

[39] Jean Molino, "Fait musical et sémiologue de la musique", Musique en Jeu, no. 17, P.37, 1975

[40] Jocelyne Guilbault,"Audible Entanglements: Nation and Diasporas in Trinidad's Calypso Music Scene." *Small Axe*, no. 17, Pg 40, 2005. Music can generate a sense of shared identity that may be transitory or that may be part of a process that reinforces belonging to a collectivity of longer duration. The more transitory aspect of music's power, commonly termed communitas after its formative use by anthropologist Victor Turner, is less my subject here, but I do wish to propose that music's ability to generate social bonding is an important aspect of performance's centrality to communities of longer duration as well. For a lengthy exposition by Turner on various categories of communitas he set forth based on both ethnographic and historical data, see Turner, Victor. "Communitas: Model and Process". In *The Ritual Process: Structure and Anti-Structure*. 1969. Reprint, Ithaca, NY: Cornell University Press, Pg 131–65, 1977. The impact of music on social bonding has, as noted above, recently engaged scientific attention, an emerging field that will be discussed in the conclusion.

a single place, although both structural and local elements may assume importance at points in the process of community formation as well as in its on-going existence. Rather, a music community is a social entity, an outcome of a combination of social and musical processes, rendering those who participate in making or listening to music aware of a connection among themselves."[41]

Andy Bennett, an expert in music community and music culture, explains "Community":[42]

> A forerunner of scene as a means of explaining the significance of music in everyday contexts was 'community'. Community has been applied to music in two main ways. First, as a means of accounting for the way in which locally produced music become a means through which individuals are able to situate themselves within a particular city, town or region. As Lewis notes 'People look to specific music as symbolic anchors in regions, as signs of community, belonging, and a shared past' (Lewis, 1992: 144[43]). This point is reinforced by Dawe and Bennett, who suggest that: 'Music is a particularly potent representational resource ... a means by which communities are able to identify themselves and present this identity to others' (Dawe and Bennett, 2001: 4[44]). From this point of view, a shared connection with a locally created musical style becomes a metaphor for community, a means through which people articulate their sense of togetherness through a particular juxtaposition of music, identity and place.

Another application of community to musical life focuses on the significance of community as a romantic construct, that is, as a means through which individuals who lack the commonality of shared local experience can cast music itself as a 'way of life' and a basis for community. As Frith observes: 'Community became something that was created by the music that described the musical experience' (Frith 1981: 167[45]). A similar sensibility of community is apparent in the use of music as a bonding device for followers of music. According to Fonarow, central to music is 'an emotional feeling of community and connectedness' between musicians and their audiences (Fonarow, 1997: 364[46]).

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[41] Implicit to this definition is the proposal that processes of community formation are generated and sustained in part through musical performance. Here I find relevant Christopher Small's suggestion that we render music as a verb: "To music is to take part, in any capacity, in a musical performance, whether by performing, by listening, by rehearsing or practicing, by providing material for performance (what is called composing), or by dancing"; See Small, Christopher. *Musicking: The Meanings of Performing and Listening*. Music/Culture. Middletown, CT: Wesleyan University Press; and Hanover, NH: University Press of New England, Pg. 9, 1998. Small's broad notion of the act of "musicking," takes into account its social dimension, including "all the activities that affect the nature of that event which is a performance" (11)

[42] Andy Bennett, "Consolidating the Music Scenes Perspective," Department of Sociology, School of Human Sciences, University of Surrey, https://www.sfu.ca/cmns/courses/2011/488/1-Readings/Bennett%20Consolidating%20Music%20Schenes.pdf, Section 1.1 Community, P.2, 2004. Bennett published articles on aspects of youth culture, popular music and local identity in a number of journals including British Journal of Sociology, Sociology, Sociological Review, Media Culture and Society and Popular Music. He is author of Popular Music and Youth Culture: Music, Identity and Place (2000, Macmillan) and Cultures of Popular Music (2001, Open University Press) and co-editor of Guitar Cultures (2001, Berg), After Subculture (Palgrave, 2004) and Music Scenes (Vanderbilt University Press, 2004).

[43] Lewis George H., Who do you love?: The dimensions of musical taste, in: Lull J. (Ed.), Popular Music and Communication, second ed. Sage, London, 1992

[44] Dawe Kevin, Bennett Andy, Introduction: guitars, people and places, in: Bennett A., Dawe K. (Eds.), Guitar Cultures. Berg, Oxford, 2001

[45] Frith, Simon, The magic that can set you free: the ideology of folk and the myth of rock. Popular Music 1, 159–168, 1981

[46] Fonarow Wendy, The spatial organisation of the Indie music gig, in: Gelder K., Thornton S. (Eds.), The Subcultures Reader. Routledge, London, 1997

The EIU Panelist should consider the definition of the word "community" in relation to the specific community in question and how it is commonly defined, identified, viewed and organized by the public and its own members in relation to "Delineation" and "Nexus." There are many viewpoints and definitions relating to the definition word "community" which could be considered:

> *"Community" connotes a collection of people bound together by common practices, norms and interests (Urban, 2002[47])*

> *Communities are often regarded as natural grouping based on ties of culture (Upadhya, 2006[48])*

> *Bill Lee (1992[49]) defines community, simply as a group of people who have something in common*

> *In Greek language it means "fellowship" or a group of people who come together for mutual support and to fulfill their basic needs.[50]*

> *Roberts (1979) sees a community as 'a collection of people who have become aware of some problem or some broad goal, who have gone through a process of learning about themselves and about their environment, and have formulated a group objective'.[51]*

The EIU should take special consideration to the United Nations Educational, Scientific and Cultural Organization's (UNESCO) "community" definition and types:

> *"There are three types of communities: Geographic Community or a Neighborhood, Community of Identity, Community of Interest or Solidarity."*

UNESCO, a specialized agency of the United Nations, identifies "music" as a Community of Identity (not one that needs a clear and straightforward membership) implying common identifiable characteristics (See "Nexus") such as having in common a culture such as music.

> *Community of Identity "implies common identifiable characteristics or attributes such as having in common a culture. By culture we mean: language, __music__, religion and customs."[52](Emphasis Added)*

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[47] Michael Urban, Getting By on the Blues: Music, Culture, and Community in a Transitional Russia, http://onlinelibrary.wiley.com/doi/10.1111/0036-0341.00235/abstract, 2002
[48] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, What is Community, Section 6.1, Pg 68
[49] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, What is Community, Section 6.1, Pg 68
[50] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, What is Community, Section 6.1, Pg 68
[51] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, What is Community, Section 6.1, Pg 68
[52] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, Pg 3-5

<u>"Community" and "Delineation:" Evidence of Activities and Extent of Awareness and Recognition</u>

DotMusic has engaged in a plethora of awareness activities ("Outreach") for more than half a decade (http://music.us/events.htm). DotMusic has sponsored relevant events and made public speaking engagements at the most relevant conferences at a global level in both the music and domain space. DotMusic has been mentioned in the media (mainstream and non-mainstream press, including all relevant music publications and popular music blogs), and has created significant awareness both offline and online through our social media, the DotMusic .MUSIC petition and other marketing campaigns.

Question: Is that the type documented evidence of activities that the EIU is looking for? Or do these activities pertain only to the activities and awareness and recognition of the supporting community organizations? How will the EIU measure "requisite awareness and recognition"?

The EIU should also consider as evidence of "requisite awareness" the existence of coalitions or alliances to accomplish common goals.

<u>"Delineation" definition</u>

A Panelist must fully understand the nature of how the particular community in question functions, is structured and delineated (see previous section relating to "Community" definition). The Panelist's role is to decide whether the community in question exists and is commonly known and identified by the public i.e <u>how the public commonly perceives the dynamics and structure that particular community</u> and <u>how the public commonly perceives that community's participation and interaction</u>. This means the Panelist must not impose false "structural" requirements – such as a formal membership unless the public would commonly perceive that such a membership was necessary for the community to exist and function appropriately (emphasis added). In cases of not awarding a maximum score in a particular CPE section when a commonly-known authentic community is involved, the Panelist must have the burden of proof of explaining how a maximum score could be reasonably attained by that valid community in question.

Neither ICANN nor the EIU can deny the existence of an "ICANN community", a "Christian community" or a "Music community." All three communities are commonly known and share similar organizational, functional and structural elements:

- <u>Christian Community</u>: The Christian community, bound by the common interest of Christian religion and values, is similar to the music community since it also encompasses "sub-communities" or "sub-cultures" within its main word that identifies the community. These "sub-communities" or "sub-cultures" in the Christian community are called denominations. These denominations include Catholic, Orthodox, Baptist, Lutheran and so forth.
- <u>Music Community</u>: In the music community "sub-communities" or "sub-cultures" are called genres. These include pop, rock, hip hop, dance, country and so forth. Music genres also include religious genres (e.g Christian music) or cultural/language-based (e.g Irish music). The music community does share common interests (sharing music – distribution and promotion) and follows a common structure for fulfilling those common interests (e.g how music is distributed, performed and marketed).

- ICANN Community: The ICANN community also includes "sub-cultures" or "sub-communities" with the common interest of preserving security, stability and resiliency of the DNS and promoting competition, consumer trust and consumer choice (common interest shared).[53] These include different constituent groups representing diverse interests (akin to music sub-communities/genres or Christian denominations) such as GAC, ALAC, SSAC, IETF, CCNSO, TLG, RSSAC[54] and other groups such as the NTAG[55] and CTAG.[56] A "sub-community" group such as the GNSO also has other "sub-communities" called constituency groups, such as the IPC[57] or the NCSG.[58]

Just in the case of the Christian community or ICANN community – both commonly recognized by the public and their corresponding community – the Music Community does not require formal membership. There is no certification or membership requirement to be a Christian community member or an ICANN community member. However, formal "memberships" of some sort exist in all communities at the top of the hierarchal ladder. For example, the Christian Catholic religion has formal members with voting rights to elect, for example, the Pope. In the ICANN community, while participation to be considered as part of the ICANN community is not a requirement, elected ICANN Board members are selected by formal ICANN community members with voting powers. The same pertains to the music community. Music associations representing "sub-community" interests – such as the International Federation of Arts Councils and Culture Agencies – have formal members and represent interests of that particular "sub-community" relating to music (arts councils and government ministries)[59] or in the case of the Canadian Independent Music Association (CIMA) representing the interests of the Canadian Independent Music Community, with formal members including music labels, music promoters, music managers, music producers, music distributors, music lawyers and so forth.[60]

The Guidance relating to "Delineation" is inconsistent with the inherently flexible definition of "community." Mandating a "clear and straight-forward membership" requirement to earn maximum points for a community to pass CPE (given the high threshold to pass CPE) is inconsistent and unrealistically idealistic since commonly-known communities are interpreted to have both formal and informal membership attributes (as illustrated by ICANN, Christian and Music Community examples).

The Guidance should reflect how the public commonly interprets community identity for the community in question, especially in cases where a combination of both formal and informal membership exists. This way, significant portions of a community are not excluded and no discrimination exists in the definition of "Delineation." Under the current discriminatory definition of "Delineation," ICANN itself would fail CPE if it applied for ICANN as a community since no such "clear and straight-forward membership" exists within ICANN that encompasses the entire ICANN community. The ICANN community – like any other community for that matter – is structured in a

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[53] http://www.icann.org/en/about/aoc-review
[54] http://www.icann.org/en/groups/chart
[55] http://www.gtldregistries.org/ntag/about_ntag
[56] http://thectag.org/
[57] http://www.ipconstituency.org/
[58] http://gnso.icann.org/en/about/stakeholders-constituencies/ncsg
[59] http://www.ifacca.org/membership/current_members/
[60] http://www.cimamusic.ca/Page.asp?PageID=749&SiteNodeID=53&BL_ExpandID=133

manner that includes both formal memberships and informal memberships. A more appropriate "Delineaton" criteria description that would fulfill both the CPE's objectives and a maximum "Delineation" score is to require that the supporting community member organizations (See "Community Endorsement") have (i) clear and straight-forward membership, (ii) are relevant to the string, and (iii) represent a significant portion of that community (emphasis added). This would also be consistent with recent GAC advice relating to "demonstrable community support."

This "Delineation" wording to meet a maximum score is consistent with the language defining "Community", "Nexus" and "Community Endorsement." We kindly request ICANN and the EIU to consider the Guidance relating to a high score pertaining to "Delineation" to add this critical wording (see underlined below):

> "Delineation" relates to the membership of a community, where a clear and straight forward membership in relevant supporting community institution(s)/member organization(s) representing a majority of the overall community addressed scores high, while an unclear, dispersed or unbound definition scores low.

The current Guidance wording used to score maximum points in the "Delineation" section violates ICANN's own ByLaws, [61] Core Values[62] and Affirmation of Commitments.[63] "Delineation" should not be defined in a manner that would exclude a significant portion of the community based on the inaccurate, idealistic and unrealistic notion that "a clear and straight-forward membership" is needed. "Delineation" must be consistent with how the each "community" is commonly perceived by the public. The EIU should take into strong consideration how ICANN delineates its own "ICANN Community" as a model for CPE "Community Establishment" criteria.

The purpose of CPE is to pass valid communities with demonstrable community support. A valid community should be one that is commonly-known by the public. If it is publicly known then it should be able to pass CPE and achieve maximum points in "Delineation."

If ICANN itself is not able to pass as a community under its own-developed CPE policies then we recommend that CPE is suspended so that CPE Guidelines and scoring criteria be subject to ICANN Community public comment. This would ensure that CPE is developed in a more appropriate manner better representing the definition of "Community" as it is commonly known by the public, with criteria that are aligned with the goals of the new gTLD Program by prioritizing diversity and authentic, commonly-known communities.

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[61] "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," http://www.icann.org/en/about/governance/bylaws, ICANN Bylaws, Article II, Powers, Section 3. Non-discrimination treatment
[62] In performing its mission, the following core values should guide the decisions and actions of ICANN: 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…6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest, http://www.icann.org/en/groups/board/governance/code-of-conduct, ICANN Core Values
[63] ICANN's Affirmation of Commitments: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination, http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm, 3

The GNSO recommendations (The Generic Names Supporting Organization Final Report on the Introduction of Generic New Top-Level Domains) - from which the AGB definitions are derived from - offer further clarification on "Delineation" by clearly stating that:

> "Community should be interpreted **broadly** and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted"[64]

"Organized" definition

The Guidance should consider that there may be more than one entity, hence entities, that are "mainly dedicated to the community." For example, there may be an entity that's focused on standards development, one focused on policy coordination, etc. Consider the ICANN community and the various roles the ICANN, IETF, W3C and IAB play in the global Internet community.

There seems to be a general misunderstanding within the EIU of the relationship between the community and the applicant. In some cases, the applicant has applied with the *support of* the community. For instance, in the case of .MUSIC, it is not in the scope/bylaws that a single music association is the operator for a .MUSIC gTLD. DotMusic for example is an organization that will operate the .MUSIC gTLD with the *support* of a significant portion of the music community (http://music.us/supporters.htm) under a multi-stakeholder governance model of all-inclusive representation as mentioned in our community-based application.

In regards to the Music Community, the word "entity" (See Guidance definition of "Organized") should not only be singular given the existence of multiple entities with diverse goals representing a significant portion of the community but with common interests relating to the "legal distribution and promotion of music."

To assist in this process, we recommend that the EIU panelists familiarize themselves with the concepts of sponsored applicants who participated in the 2000 and 2004 rounds of new gTLDs when a variety of types of communities applied for their strings.

2-A Nexus and 2B Uniqueness (Criterion #2: Nexus between Proposed String and Community)

United Nations Educational, Scientific and Cultural Organization (UNESCO), a specialized agency of the United Nations, identifies "music" as a Community of Identity implying common identifiable ("Nexus") characteristics such as having in common a culture such as music:

> Community of Identity "implies common identifiable characteristics or attributes such as having in common a culture. By culture we mean: language, **music**, religion and customs."[65](Emphasis Added)

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[64] http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm, Implementation Guideline P, 3
[65] UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, Pg 3-5

The EIU should consider relevant publicly available works and studies (such as those quoted in this document) to determine whether a string – such as music – identifies the community ("Uniqueness") and is commonly known as the community ("Nexus).

For example, many studies represent the historical, cultural, and spatial significance of music, including an examination of identity formation through musical practices (Bennett 2004[66]).[67] Music performances give the music community an opportunity to voice their emotions, values, lifestyle, and economic and social conditions through sound, rhythm, and community (Susan J Smith, 2010[68]). People have historically used music to create or transform cultural places, but music also is and has been used by people to challenge the legitimacy of accepted conventions or opinions about them and their economic, social, or political situation (Smith 1997).[69]

The music community is <u>identified</u> and <u>commonly known</u> as "networks of musicians, promoters, and interested people" (Ken Spring, 2004[70]).[71] The performers and audiences together build community and participate in place making through musical interactions.[72] The "music community is comprised of both bands and audiences, and each group is important to music experiences." "How music is consumed in a space alters the way in which it can contribute to or alter the cultural meaning of places and people's interactions in places."[73]

Music can be used (and is) as a means by which people <u>identify</u> themselves into their community (without the need for clear and straight forward membership):

> In the place of the continued commercialism of music, the quest for identity and meaning has been rekindled (Connell and Gibson 2006: 277) with music "community members – both musicians and audiences" (Connell and Gibson 2006: P.132). The arrival and widespread use of the Internet and technology has been strongly influential on music audiences fan participation. With new frameworks for music consumption, communication, distribution and reception being adopted, many elements have been re- negotiated and re-modified, often altering our traditional understandings of music audiences and their role in these practices. The popularity of social media and online communities in particular brought forth a number of online explorations of music audience and fan behavior.[74]

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[66] Grazian, David. "The Symbolic Economy of Authenticity in the Chicago Blues Scene." in Music Scenes: Local, Translocal, and Virtual. ed. Bennett, Andy and Richard A. Peterson. Nashville: Vanderbilt University Press, 2004. 31-47

[67] Rebecca Elizabeth Ball, Portland's Independent Music Scene: Formation of Community Identities and Alternative Urban Cultural Landscapes, http://dr.archives.pdx.edu/xmlui/bitstream/handle/psu/4714/Ball_psu_0180E_10052.pdf?sequence=1, 2010, P.27

[68] Smith, Susan J. "Beyond Geography's Visible Worlds: A Cultural Politics of Music." Progress in Human Geography. 21.4 (1997): 505-529. Sage Journals Online.Web. 3 January 2010

[69] Rebecca Elizabeth Ball, Portland's Independent Music Scene: Formation of Community Identities and Alternative Urban Cultural Landscapes, http://dr.archives.pdx.edu/xmlui/bitstream/handle/psu/4714/Ball_psu_0180E_10052.pdf?sequence=1, 2010, P.32

[70] Spring, Ken. "Behind the Rave: Structure and Agency in a Rave Scene." in Music Scenes: Local, Translocal, and Virtual. ed. Bennett, Andy and Richard A. Peterson. Nashville: Vanderbilt University Press, 2004. 48-63

[71] Rebecca Elizabeth Ball, Portland's Independent Music Scene: Formation of Community Identities and Alternative Urban Cultural Landscapes, http://dr.archives.pdx.edu/xmlui/bitstream/handle/psu/4714/Ball_psu_0180E_10052.pdf?sequence=1, 2010, P.50

[72] Rebecca Elizabeth Ball, Portland's Independent Music Scene: Formation of Community Identities and Alternative Urban Cultural Landscapes, http://dr.archives.pdx.edu/xmlui/bitstream/handle/psu/4714/Ball_psu_0180E_10052.pdf?sequence=1, 2010, P.95

[73] Connell, John, and Chris Gibson. "World Music: Deterritorializing Place and Identity." Progress and Human Geography. 28.3 (2004): 342-361. Sage Journals Online. Web. 19 March 2009

[74] Lucy Bennet, Music audiences: An introduction, http://www.participations.org/Volume%209/Issue%202/13%20Bennett%20Intro.pdf , 2012

The goal of musical expressions is not one of profit maximization but one of connecting musicians to audiences as a way to reinforce each others' role in the community, building accessible cultural places that are representative of people's cultural values.[75] Music culture may not be defined as much by demographic indicators such as race, gender, and income level, as it is by values, including DIY (Do-It-Yourself) and DIT (Do-It-Together) ethics and building a social and community identity.[76]

Tests for "Nexus" and "Uniqueness"

Relevant tests could be considered to accurately show whether a string is commonly known and identifies a community. For example in the case of "music," a strong test that signifies that it is "commonly-known" by others (Nexus) and that it has no other **significant** meaning beyond identifying the community (Uniqueness)" is considering consistent definitions and translations in other languages, their unique, commonly-known characteristics as well as other elements such as common phonetic and visual similarities:

> English: music
> Africaans: musiek
> Albanian: muzikë
> Azerbaijani: musiqi
> Basque: musika
> Belarusian: музыка
> Bosnian: muzika
> Bulgarian: музика
> Catalan: música
> Cebuano: music
> Danish: musik
> Dutch: muziek
> Esperanto: muziko
> Estonian: muusika
> Filipino: musika
> Finnish: musiikki
> French: musique
> Galician : música
> German: Musik
> Greek: μουσική
> Haitian Creole: mizik
> Indonesian: musik
> Italian: musica
> Javanese: music
> Latin: musica
> Latvian: mūzika

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[75] Zukin, Sharon, "Urban Lifestyles: Diversity and Standardization in Spaces of Consumption." Urban Studies 35.5-6 (1998): 825-839. Sage Journals Online.Web. 17 November 2009,133

[76] (Bennett, Andy and Richard A. Peterson. Introduction. Music Scenes: Local, Translocal, and Virtual. ed. Bennett, Andy and Richard A. Peterson. Nashville: Vanderbilt University Press, 2004. 1-16, P.134

Lithuanian: muzika
Mecedonian: музика
Malay: muzik
Maltese: mużika
Norwegian: musikk
Polish: muzyka
Portuguese: música
Romanian: muzică
Russian: музыка
Serbian: музика
Spanish: música
Swahili: muziki
Swedish: musik
Turkish: müzik
Ukrainian: музика

Also the EIU could consider whether the string in question can be an abbreviation of other derivative words that stem from it. For example, the word "music" can also be used as an abbreviation for derivative words such as "MUSICian" (music community member that relates to a person playing an instrument) or MUSICal (adjective relating to "MUSIC"). This showcases the unique characteristics of "music" as a dominant word.

The EIU could also consider the origin and definition of the community string in question to determine its "Nexus" and "Uniqueness." For example, the origin of "music "is from Old French *musique*, via Latin from Greek *mousikē (tekhnē*) '(art) of the Muses' from *mousa* 'muse.'[77] It is clear in this example that "music" has no other significant meaning other than its relation to the art of combining sounds rhythmically, melodically or harmonically.

CPE Panelists could also use easily-verifiable tests to determine whether the public immediately thinks of the applying community when thinking of the applied-for string. An effective test includes adding the word "community" after the string and then verifying if the public completely understands that it identifies the underlying community and whether it is a commonly used phrase.

For example, under the applied-for string .MUSIC using the "string+community" test, it can be verified that the "music community" is commonly-known. While the string .MUSIC passes this test, other strings such as .TUNES would not pass because the public does not commonly use the phrase "tunes community" in any communication. Other powerful keywords that could be used to demonstrate that the word "community" has standing relating to "Uniqueness" and "Nexus" are using the words "business" and "industry" after the community string in question. In the case of the .MUSIC string the words "music business" and a "music industry" are commonly used in everyday language. In antithesis, under the string .SONG, the words "song industry" or "song business" are not commonly known or used, resulting in .SONG failing to pass the test.

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[77] http://oxforddictionaries.com/us/definition/american_english/music

Another test is using the "string+community entity type" approach. For example under the applied for string .MUSIC using the "STRING+COMMUNITY ENTITY TYPE" test, it can be easily verified that entity types such as "music artists", "music producers" and "music publishers" identify commonly-known "music community" entity types ("Nexus"). This test can be another useful way to test whether the string matches the names of the community entirely and is unique. It is clear that no-one commonly refers to the "music community" using alternative words or synonyms to replace the matching and unique Community word "music." i.e as indicated previously no-one refers to "music artists" as "song artists" or "music producers" as "tunes producers."

The usage test(s) for commonly-know terms to identify the validity community string can also be verified using Google Adwords Keyword Planner[78] or other keyword suggestions tools such as Youtube Keyword Tool.[79] These tools can verify that Internet users are indeed searching using those exact-match search phrases and show the volume or long tail variations of the community string in question.

<u>Tests for "Longevity" and "Pre-Existing"</u>

In relation to "Longevity" and "Pre-Existing," the EIU could consider commonly used classification systems to determine whether the string in question has longevity and is pre-existing. For example, the applied-for string "music" is classified under numerous classification systems such as ISMN, ISRC, ISWC, ISNI and Dewey. In the case of the Dewey Decimal Classification system the code 780 relates to "music"[80] and was published in 1876, which can meet both the "Longevity" and "Pre-Existing" criteria.

3A Eligibility, 3B Name Selection, 3C Content and Use, 3D Enforcement (Criterion #3: Registration Policies)

<u>"Eligibility" definition</u>

The context of the domain name system and the uses of a gTLD should also be considered in relation to the vision and goals of the community itself. A gTLD is not merely a reflection of a community – it is a useful tool that can be designed and built in innovative ways to achieve various community goals. The EIU and ICANN should take care not to restrict communities from imagining innovative applications for community-based gTLDs that could enhance competition and choice within the domain name system as a whole and use gTLDs in ways that are useful to their members. Through understanding a community's vision and goals and the process by which they have applied those goals in designing their gTLD application, the EIU is more likely to understand the community. Therefore, a simple inconsistency between the community's "offline" eligibility rules and the "online" eligibility rules for the applied for gTLD should be considered within this context before leading to negative scoring.

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[78] https://adwords.google.com/ko/KeywordPlanner/Home
[79] https://www.youtube.com/keyword_tool
[80] http://www.oclc.org/dewey/resources/summaries.en.html

- Re: Eligibility, rather than stating, "Is eligibility for being allowed as a registrant restricted" consider "Are the eligibility restrictions consistent with the articulated community-based purpose of the applied-for gTLD and not discriminate against inclusion of legitimate community members (e.g excluding those without a clear membership?"
- The two extremes of scoring on Question 3a Eligibility (1 and 0) are so separate as to require more specific inclusion of criteria for a score of 1. We recommend that Guidance for a score of 1 point include 'Eligibility restricted to community members **_or sufficiently restrictive for the appropriate protection of the community._**'

4A Support, 4B Opposition (Criterion #4: Community Endorsement)

4A Support

Support is in our view the most critical indicator of the strength of a community application because support was earned not created or paid for by the applicant. This is because it is an indicator of both the community's existence and the validity of other aspects of the evaluation, including "Establishment," "Nexus" and "Registration Policies" described in the application itself. Therefore, the depth, character and type of support should be considered as an overall indicator of the strength of an application to avoid the risk of 'false negatives' as described in the AGB. Because of the important nature of this criterion, assessment of support also needs to be the most carefully developed and evaluated aspect of CPE.

The Guidance is also overreaching and creates a new standard when compared to the AGB: Whereas it had been adequate in the AGB for the applicant to have documented support from the community to score a 2, the Guidance appears to make it mandatory for the applicant to have documented support to represent the community. This new wording would be a fundamental change of the entire community concept.

Also the new wording "Is the applicant the recognized community institution(s) or member organization(s)?" introduces the new dominant concept that the applicant itself should be a community institution/organization. Again, this creates a new and misleading presumption that the applicant ideally is a community institution/organization and applicants that are not a community institution/organization would score worse.

The Guidance is also inconsistent with respect to demonstrated community support. For a score of 2, the Guidance clearly states that there must be documented support from institutions/organizations representing "*a*" (emphasis added) majority of the overall community addressed which is consistent with the AGB and the Guidance Evaluation Guidelines referring to "documented support from institutions/organizations representing "*a*" (emphasis added) majority of the overall community." However the Evaluation Guidelines change this criterion in the following sentence, which refers to the question "Does the applicant have support from "*the*" (emphasis added) majority of the recognized community institution/member organizations? This inconsistency is also repeated in the Criteria section of Support: "However for a score of 1 the Guidance states that applicant does not have the support from "*the*" (emphasis added) majority of the recognized community." The AGB refers to "a" majority of support and "a" significant portion of the community (emphasis added). **It is an impossibility to prove that any community applicant has over 50%**

support in any community so asking for "the" majority supporting the community application is not applicable and should be changed to "a" majority or "a" significant portion of the community which is consistent with the language in the AGB.

Verification of Support Letters

DotMusic has deep concerns about the suggested verification process for letters of support. We urge ICANN and the EIU to work collaboratively to establish an appropriate verification procedure for letters of support if needed. It has been in most cases over 18 months since letters of support were submitted to ICANN (emphasis added) as part of the substantially delayed application development and processing application process.

We also suggest in cases where there is significant support from Coalitions of supporting organizations or recognized, relevant institutions/community member organizations – such as in the case of DotMusic (http://music.us/supporters.htm) - where several supporting organizations can alone constitute a significant portion of the community - that not all letters be deemed necessary to be verified since only a few letters from some of these supporting organizations are sufficient enough to score a maximum score of 2 points in "Support."

We strongly suggest the EIU be consistent in relation to other evaluation panels (e.g the Financial or Technical panels) which assumed that the information contained in the application was valid, especially since applicants have agreed to terms and conditions that assert that:

> *Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application.[81]*

The verification process as proposed also places an unnecessary and undue burden on the endorser/endorsing entity. EIU panelists are being compensated to conduct the CPE and thus should be responsible for verifying the authenticity of support letters as well as opposition as noted in the next section. Additionally, the applicant may also be notified about the authenticity request in order to double-check the answer of the endorsee to the evaluators. Evaluators should also notify the applicant if an authentic request was not successful which could be possible for various unintended reasons. It is noted that DotMusic has spent over half a decade of Outreach and has taken significant time to receive a significant amount of letters of Support from relevant music community institutions of demonstrable size (http://music.us/supporters.htm). Given the significant level of support and letters it will be an impossible feat to ask DotMusic to re-authenticate its entire Support in a short amount of time.

Also there is no wording in the Guidance pertaining to support from single individuals (such as DIY artists) who have given their support for .MUSIC (in a form of a multi-year petition) and through social media campaigns (such as Myspace, Twitter and Facebook) representing hundreds of

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[81] http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf

thousands of constituents the majority of whom do not belong to any recognized supporting organization or music association. This significant email list of individual Supporters could be shared with the Panelists for authenticity purposes but would require the Panelist to sign terms to alleviate any privacy or sharing proprietary 3rd-party information concerns if we give them access to our database.

Question: How will these individual instances of significant support be accounted for?

4B Opposition

In considering opposition, the context of this application round is important. We note in particular that communities are obliged to apply for protection in this application round. Unlike the 2004 Sponsored TLD (sTLD) round, the presumption and default in this round is that no strings are community-based. To achieve community status for a given string a community must explain itself to ICANN in a way that they and/or the evaluator will understand. Failure to do so means that the community in question will be denied any role in how that gTLD is launched and used over the long term. In contrast, a community gTLD has a built-in accountability mechanism through the Registry Restrictions Dispute Resolution Procedure (RRDRP). According to ICANN:

> *The RRDRP is one of the proposed mechanisms to address post delegation concerns. The purpose of the RRDRP is to handle complaints from a harmed organization or individual alleging that a community---based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the restrictions stated in the terms of the gTLD registry agreement[82]*

Such a mechanism does not exist for non-community gTLDs. This means that if the EIU decides to pass a community application even though some in the community have concerns, the community or others can turn to the RRDRP for their issues to be addressed. If the EIU has concerns and decides not to pass the community evaluation, it is in essence rendering a final decision on the matter by removing the possibility of an RRDRP.

The EIU should also recognize that community priority applications have been the subject of what is by far the longest public comment period in ICANN history (emphasis added). Each community application has been open for public comment for over a year. One would expect that truly concerned organizations would have voiced their opinions about these applications months ago, even over a year ago when they were published. This would have represented a "good faith" concern because community applicants could have undertaken to deliberate with the concerned party and/or to establish or make changes in their applications to accommodate that party – if the broader community agreed – through an application change request process.

Opposition has not occurred for the majority of applications, a fact that provides ample evidence of broader public non-opposition to community-based designation for these applied for community gTLDs. Letters of opposition received at the eleventh hour should therefore be taken in this

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[82] http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm

context. By any measure, ample time has passed for valid concerns to be raised by any party about all community applications.

In relation to Opposition the Guidance states that "When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition."

"To be taken into account as relevant opposition, such objections or comments must be of a <u>reasoned nature</u>. 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" and be "opposition that is deemed relevant" and of "non-negligible size."

Separate criteria have also been incorporated in the Community Objection stage which are highly relevant to "Opposition" and should be considered. However, the Community Objections allowed "only the Objector itself to be considered as a party to the proceeding" while "all other entities were considered as related entities." According to the Community Objection ICC rules "an Objector may wish to be supported by other entities: an Objector may wish to use the support of other entities to demonstrate its standing."[83] In addition to the Objector itself, the CPE Panel should <u>also</u> take the relevancy of the Related Entities as well into consideration pertaining to "Opposition."

When considering formal Community Objections, negative scoring relating to "Opposition" must be of reasoned nature (e.g community applications that raise anti-competitive issues or exclusionary policies that prevent legitimate community members from registering a domain) and by "relevant" entities. Also it must be noted to the EIU that any opposing party does <u>not</u> need to prove a likelihood of material harm, which was criteria relating to Community Objections criteria which would entirely disqualify an applicant if met. In contrast, in relation to "Opposition", any opposition of reasoned nature is sufficient.

If the opposed community Applicant had an existing Community Objection against them based on grounds that are "incompatible with competition objectives" (e.g discriminating or excluding a significant portion of that community), they should be construed as valid reasons for opposition (i.e of reasoned nature). The Panelist should also verify if such discriminatory or exclusionary policies exist within an application e.g A Community Objection was filed against .MUSIC LLC on grounds that it was exclusionary and incompatible with competition objectives since its policies allowed only music Associations and their members organized before 2007 to participate (requiring "current registration and verifiable membership in a global music community organization that was organized and in existence prior to 2007"). This means a significant portion of the music community – Do-It-Yourself artists and fans – not belonging to these associations is excluded.[84] Since this opposition is of reasoned nature it should be acceptable by the EIU to consider "Opposition" as valid.

Also other elements should be taken into consideration that pertain to issues relating to competition, including allowing registrar equal access and non-discrimination. For example, if a

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[83] http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/how-to-file-an-objection/
[84] http://music.us/DotMusic-Concerns-with-Application-1-959-51046.pdf

registry pertaining to community-based application states that they will be the sole registrar it would be a clear violation of the ICANN AGB.[85] This type of opposition would be of reasoned nature since it is inconsistent with competition objectives resulting in the loss of point(s).

Conclusion

CPE is a critical evaluation process for many applicants. Therefore, ICANN must give the community adequate time to respond to the CPE Guidance. Community applications are specialized with the expectation that the awarded community applicants will protect their respective communities. As such, it is important that these recommendations and feedback is considered to address overarching concerns with the Guidance and that the voice of these community-based efforts be heard and strongly considered.

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[85] The AGB states that TLD registries commit to provide "non-discriminatory access to to Registry Services to all ICANN-accredited registrars" (Section 2.9(a), Base Agreement & Specifications, http://newgtlds.icann.org/en/applicants/agb) while ensuring that they will not "directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems" (Specification 9, Section 1(a), Base Agreement & Specifications http://newgtlds.icann.org/en/applicants/agb)