

# Expert Ethnomusicologist Opinion

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Doctor of Philosophy in Ethnomusicology

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**Ethnomusicologist Expert Opinion on ICANN's .MUSIC Community  
Priority Evaluation Report for DotMusic's Application ID 1-1115-14110**

**Prepared for:**

International Corporation of Assigned Names and Numbers ("ICANN");

Organized alliance of music communities representing over 95% of global music consumed ("Music Community"); and

DotMusic Limited ("DotMusic")

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## Executive Summary

I respectfully submit my *independent* expert opinion as to why the Community Priority Evaluation (“CPE”) Report by the Economist Intelligence Unit (“EIU”) for DotMusic’s community-based .MUSIC Application (with ID 1-1115-14110) “that the application did not meet the requirements specified in the Applicant Guidebook” is incorrect.<sup>2</sup> In my view, based on a careful study of the materials provided to me,<sup>3</sup> DotMusic’s community Application was improperly denied in CPE by ICANN and the EIU (the “CPE Panel”).

Based on my expertise as an ethnomusicologist (Ph.D in Ethnomusicology), my professional music career experience spanning over 45 years,<sup>4</sup> and having reviewed DotMusic’s Application Materials for .MUSIC (including the Public Interest Commitments), expert testimonies submitted in support of the Application (43 in total), the results of an independent Nielson Poll, the ICANN Applicant Guidebook (“AGB”), the ICANN CPE Guidelines and the CPE determinations for .HOTEL, .SPA, .ECO, .RADIO, .OSAKA and .GAY by the EIU, my Expert Ethnomusicologist Opinion concludes that DotMusic fully meets all CPE criteria for a score of 16 points. Specifically:

- i. DotMusic’s Application satisfies the “Community Establishment” CPE criterion: DotMusic’s Application was graded 0 out of 4 points under the “Community Establishment” CPE criterion. However, in my opinion, DotMusic fully meets the CPE criterion for a score of 4 points because, inter alia:
  - a. The Community defined, the “delineated and organized logical alliance of music communities of similar nature,” is vast and diverse, yet clearly has cohesion under general principles of international copyright law and international music conventions and operates in a regulated music sector;
  - b. The requisite awareness of Community members is demonstrated in various ways: By the letters of support from the Community addressed; registration requiring awareness and compliance with shared values, purpose and mission; Community recognition by mandating Community member self-identification, including selecting music “community stakeholder” type; and Content and Use policies restricted to music-related Community content and legal music usage in terms of participation or activity;
  - c. There is also “more cohesion than commonality of interest” because DotMusic uses “organized, consistent and interrelated criteria to demonstrate Community Establishment verified using Community-organized, unified criteria that invoke a formal membership without discrimination;”
  - d. DotMusic’s Public Interest Commitments (PIC) also clarify that Community members are only those “with an active, non-tangential relationship with the applied-for string” with “the requisite awareness of the music community;”

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<sup>2</sup> See .MUSIC CPE Report for DotMusic Limited (the “CPE Report”), <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, p.1

<sup>3</sup> See Appendix B

<sup>4</sup> See Appendix A

- e. There are many *recognized* organizations *mainly* dedicated to the Community. Supporting organizations of such type include the International Federation of Phonographic Industry (IFPI) and the International Federation of Musicians (FIM) globally recognized by the United Nations and the World Intellectual Property Organization (WIPO). IFPI represents the majority of music consumption globally, while FIM represents musicians, the constituent type constituting the majority of the Community in size. Other supporting mainly dedicated organizations, such as A2IM and Reverbnation, have membership types that cover all of DotMusic’s constituent member categories in their entirety without discrimination; and
  - f. The alliance of music communities or music member categories pre-existed September 2007. For example, the IFPI and the FIM were formed in 1933 and 1948 respectively. Member categories that form the alliance (such as labels, publishers and musicians), international copyright law and the regulated music sector will continue to exist into the future.
- ii. DotMusic’s application fully satisfies the “Nexus” CPE criterion: DotMusic was graded 3 out of 4 points under the “Nexus Between the Proposed Community and String” CPE criterion. But, in my expert opinion, DotMusic fully meets the criterion for a score of 4 points because, inter alia:
- a. The name of the community served, the “Music Community,” is the “established name by which the Community is commonly known by others.” An overwhelming majority of over 2,000 participants in an independent Nielsen Poll agreed that the .MUSIC string matched the Community defined satisfying “commonly-known by others” criterion;
  - b. The .MUSIC string “relates to the Community by completely representing the entire Community” i.e. “It relates to all music-related constituents;”
  - c. DotMusic’s PIC re-clarifies that Community eligibility will “exclude those with a passive, casual or peripheral association with the applied-for string” so that the Community only “includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents;” and
  - d. The string matches the Community because all music constituent types considered essential for Community to function are included.
- iii. DotMusic’s application fully satisfies the “Support” CPE criterion DotMusic was graded 1 out of 2 points under the “Support” CPE criterion. But, in my expert opinion, DotMusic fully meets the criterion for a score of 2 points because DotMusic’s Application has documented support from organizations with members representing over 95% of global music, an overwhelming majority, including support from the most globally-recognized organizations (e.g. IFPI and FIM) and organizations with member types representative of all of DotMusic’s music categories without discrimination (e.g. Reverbnation and A2IM).

## Expert Ethnomusicologist Opinion

I, the undersigned Dr. Richard James Burgess, have undertaken the expert role to provide an independent ethnomusicologist expert opinion (the “Expert Ethnomusicologist Opinion”) on the well-foundedness of the ICANN Community Priority Evaluation (“CPE”) Report<sup>5</sup> for DotMusic’s community-based Application (with ID 1-1115-14110)<sup>6</sup> for the .MUSIC string.<sup>7</sup>

My opinion will focus exclusively on Music Community definitions from my perspective:

- As an expert ethnomusicologist with a Ph.D in Ethnomusicology;
- Derived from a music career spanning more than 45 years, far-reaching Music Community participation and extensive professional experience as an ethnomusicologist, studio drummer, label owner, music association executive, music-computer programmer, recording artist, record producer, composer, author, manager, marketer and inventor;
- As CEO of one of the world’s leading trade associations representing the interests of the independent music community.

My Expert Ethnomusicologist Opinion relates to:

- (i) The ICANN gTLD Applicant Guidebook (“Guidebook”) CPE criteria of *Community Establishment*, the *Nexus between Proposed String and Community and Support*;
- (ii) Music Community *cohesion* and *requisite awareness and recognition* of the Community defined by DotMusic;
- (iii) General principles of international copyright and related rights and international conventions, treaties and agreements, including established practices regarding the Music Community management of copyright and the related economic and non-economic rights derived from copyright.

DotMusic scored the full points under the *Registration Policies* and *Opposition* CPE criteria. As such, my Expert Ethnomusicologist Opinion will not discuss those criteria because there is mutual agreement on their scoring.

I disclose that this Expert Ethnomusicologist Opinion is in my personal capacity. I have not received any compensation in exchange for providing this Expert Ethnomusicologist Opinion nor do I hold any sort of financial or shareholder interest in DotMusic Limited.

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<sup>5</sup> See .MUSIC CPE Report for DotMusic Limited (the “CPE Report”), <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>

<sup>6</sup> See DotMusic community application, Application ID: 1-1115-14110, Prioritization Number: 448; See <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>

<sup>7</sup> For the purposes of my Expert Ethnomusicologist Opinion, I have primarily focused on Application Materials provided to me by DotMusic as identified in Appendix B, including the Applicant Guidebook, the CPE Guidelines, the DotMusic CPE Report, other relevant CPE Reports, the DotMusic Application, the DotMusic Public Interest Commitments, the DotMusic Answers to Clarifying Questions, the Independent Expert Testimonies and the Independent Nielsen Poll.

## Community Establishment CPE Criterion Is Satisfied

1. DotMusic was improperly graded 0 out of 4 points under the “Community Establishment” CPE criterion. DotMusic fully meets the “Community Establishment” CPE criterion for a score of 4 points. The Expert Ethnomusicologist Opinion agrees with the Expert Legal Opinion of Honorary Professor of International Copyright Dr. Jørgen Blomqvist<sup>8</sup> with respect to “Community Establishment.”
2. The Expert Legal Opinion by Honorary Professor Dr. Jørgen Blomqvist demonstrates that the Music Community has cohesion under general principles of international copyright law, international copyright conventions and treaties as well as collective rights<sup>9</sup> managed under a regulated music sector. Supplementing Honorary Professor Dr. Jørgen Blomqvist’s Expert Legal Opinion, I would also point to other examples of a regulated music sector, which include consent decrees for ASCAP and BMI, two music organizations that have supported DotMusic. According to the U.S. Department of Justice:

ASCAP and BMI are performing rights organizations that license public performance rights in compositions held by their hundreds of thousands of songwriter and publisher members. Since 1941, when the United States originally brought civil antitrust lawsuits against ASCAP and BMI, both organizations have been subject to consent decrees, which are designed to prevent anticompetitive effects arising from their collective licensing of music performance rights. Both consent decrees have been amended periodically since their entry. The ASCAP consent decree was last amended in 2001 and the BMI consent decree was last amended in 1994.<sup>10</sup>

3. Other examples of Music Community cohesion under general principles of international copyright law and conventions include many landmark cases in relation to music plagiarism and copyright infringement. Since the 1850s, federal courts from all around the world have published verdicts with respect to such cases. For example, the 1844 U.S. Court case *Millett v. Snowden* is one of the earliest reported music copyright infringement cases globally.<sup>11</sup> Other notable cases include the U.K. Court’s *Austin v.*

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<sup>8</sup> Honorary Professor Dr. Jørgen Blomqvist, Expert Legal Opinion, June 17, 2016 at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>

<sup>9</sup> See Expert Legal Opinion by Honorary Professor Dr. Jørgen Blomqvist at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>, June 17, 2016, §§ 29 to 47, pp. 30 to 38

<sup>10</sup> U.S. Department of Justice, August 4, 2016. See <https://justice.gov/opa/pr/justice-department-completes-review-ascap-and-bmi-consent-decrees-proposing-no-modifications>

<sup>11</sup> *Millett v. Snowden*, 17 F.Cas. 374, No. 9600 (Cir. Ct. S.D. New York) [1844] at <http://mcir.usc.edu/cases/Before1900/Pages/millettvsnowden.html>

*Columbia Gramophone Co* (1923),<sup>12</sup> the Canada's Ontario Supreme Court's *Gondos v. Hardy* (1982),<sup>13</sup> Australia's *CBS Records Australia v. Guy Cross* (1989),<sup>14</sup> China's Beijing District Court's *Apollo Inc. v. Coca Cola* (2004),<sup>15</sup> and Taiwan's *People v. Hu* (2007).<sup>16</sup> Other examples are cases that relate to mass copyright infringement. The most prominent cases include *Napster (A&M Records, Inc. v. Napster, Inc.)*<sup>17</sup>, *Kazaa (Universal Music Australia Pty Ltd v Sharman License Holdings Ltd)*<sup>18</sup>, *LimeWire (Arista Records LLC et al v. Lime Wire LLC et al)*<sup>19</sup><sup>20</sup> *Grooveshark (UMG Recording Inc et al v. Escape Media Group Inc et al)*<sup>21</sup><sup>22</sup> and *Megaupload (Kim Dotcom v Her Majesty's Attorney-General)*.<sup>23</sup>

4. As the examples provided illustrate, the activities of Music Community members depend on the regulated structure of the music sector. My music career's viability, that has spanned over 40 years, has been sustainable because of the Music Community's reliance on general principles of international music copyright, international law as well as international conventions, treaties and agreements (such as the Berne Convention that relates to music copyright and music activities).
5. The CPE Report's conclusion that there is "no substantive evidence" that the defined Music Community in its entirety has cohesion<sup>24</sup> is not a compelling or a defensible statement. The Music Community in its entirety (across all music constituent member categories as described in DotMusic's Application) must unite cohesively under music copyright in order to function as it does today. It is more of cohesion than a

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<sup>12</sup> *Austin v. Columbia Gramophone Co.*, Mag. Cas. 398 (Eng.) [1923] at <http://mcir.usc.edu/cases/1920-1929/Pages/austincolumbia.html>

<sup>13</sup> *Gondos v. Hardy*, (1982) 38 O.R. (2d) 555 at <http://mcir.usc.edu/cases/1980-1989/Pages/gondoshardy.html>

<sup>14</sup> *CBS Records Australia v. Guy Cross*, (NSW) 15 IPR 385 [1989] at <http://mcir.usc.edu/cases/1980-1989/Pages/cbsguy.html>

<sup>15</sup> *Apollo Inc. v. Coca Cola (China) Inc.* [2004] at <http://mcir.usc.edu/cases/asiancase/apollo.html>

<sup>16</sup> *People v. Hu*, Taiwan Pingtung Appellate Court [2007] at <http://mcir.usc.edu/cases/2000-2009/Pages/peoplevhu.html>

<sup>17</sup> *A&M Records, Inc. et al v. Napster, Inc.*, 239 F.3d 1004 [2001] at <http://www.copyright.gov/docs/napsteramicus.html>

<sup>18</sup> *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* FCA 1587 [2005] at <https://jade.io/article/111640> ; Also see ARSTechnica, "Sharman Networks settles Kazaa file-sharing lawsuits. The RIAA and MPAA finally squeeze a legal settlement," July 27, 2006, at <http://arstechnica.com/uncategorized/2006/07/7363>

<sup>19</sup> *Arista Records LLC et al v. Lime Wire LLC*, 715 F. Supp. 2d 481 [2010] at <https://dockets.justia.com/docket/new-york/nysdce/1:2006cv05936/288038>

<sup>20</sup> See Reuters, "LimeWire to pay record labels \$105 million, ends suit," May 12, 2011, at <http://www.reuters.com/article/us-limewire-idUSTRE74B78320110512>

<sup>21</sup> *UMG Recording Inc et al v. Escape Media Group Inc et al*, U.S. District Court, Southern District of New York, No. 11-08407 [] at <https://dockets.justia.com/docket/new-york/nysdce/1:2011cv08407/387934>

<sup>22</sup> See Reuters, "Grooveshark copyright violations 'willful,' judge says before trial," April 24, 2015, at <http://www.reuters.com/article/us-music-lawsuit-grooveshark-idUSKBN0NF21120150424>

<sup>23</sup> *Kim Dotcom v Her Majesty's Attorney-General*, NZSC 199 [2014] at <https://forms.justice.govt.nz/search/Documents/pdf/jdo/55/alfresco/service/api/node/content/workspace/SpaceSStore/534ffa00-2598-41c5-81bd-4c80f4dd44a5/534ffa00-2598-41c5-81bd-4c80f4dd44a5.pdf>

<sup>24</sup> See CPE Report, p.3

commonality of interest because legal music activities and participation are established by general principles of international law. The global Music Community as a unit is reliant on international conventions for its activities. Without cohesion established under international law and music-related conventions (such as the Berne Convention), the Music Community would lack structure and as a result would not be able to provide music to consumers nor have any way to compensate musicians and corresponding rights holders. In effect, if the Music Community across all member categories lacked cohesion and an awareness and recognition of general principles such as music copyright protection established by international law, international conventions and a regulated sector then music consumption and the music industry as we know them today would not exist in their present form nor cohere. Mass copyright infringement cases (such as Napster, Limewire, Kazaa and Megaupload) showcase the importance of a regulated Music Community structure. Without cohesion and dependence under the current music regulatory framework that forms the basis of the music business and industry, the Music Community will have difficulties sustaining itself with respect to longevity because there will no longer be any protection of musical works or the ability for creators to be compensated or receive attribution. Furthermore, in the absence of international conventions and structures, Community members will no longer be able to make any sort of living through music.

6. ICANN has indicated in its Articles of Incorporation that all of its activities and decisions must be “in conformity with relevant principles of international law and applicable international conventions.”<sup>25</sup> All Music Community member types participate in a regulated sector with activities tied to music that must cohere to general principles of international music copyright law as well as international conventions, treaties and agreements, which are driven by collective management of rights that grant permission to use copyright-protected music content in exchange for some form of compensation and/or attribution for such usage. From a historical perspective, these principles temporarily give creators the sole right to copy and distribute their musical works. The idea that a creator should be able to control how their musical work is initially distributed goes way back in history. For example, in the U.S., the Founding Fathers understood creative musical works serve the public interest and that creators need an incentive to create music: the exclusive right to control their creation for a limited period of time. After that period expires, then the general public could legally copy or use that work for any purpose. The U.S. Supreme Court summarized: “[T]he ultimate aim is, by this incentive, to *stimulate artistic creativity for the general public good.*”<sup>26</sup>

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<sup>25</sup> 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>, Art. 4

<sup>26</sup> *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 [1975] at <https://supreme.justia.com/cases/federal/us/422/151/case.html>



These principles address Community cohesion, including the need and support for a regulated structure to ensure Music Community sustenance among each and every member included in Dotmusic's Application. Based on my professional music experience, this is because each member category delineated in DotMusic's Community definition is essential for the complete, proper and efficient functioning of the Community. In my professional music experience, all music constituent types delineated are interdependent and reliant on each other given the symbiotic nature of the Music Community and its regulated sector.

7. The Music Community definition and its requisite awareness and recognition among Community members through their explicit participation and compliance was clarified in DotMusic's Application Materials:

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 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."<sup>27</sup>

From my perspective as an expert ethnomusicologist, it is essential to realize that the Community does not exist because of these international instruments; rather the instruments are a reflection of the fact that there is an organized Music Community. They satisfy a need of the Community, which is why the signatory states negotiated the treaties. All those who participate in music activities who demonstrably accept that they are subject to regulation is a reflection of having awareness and recognition that the Music Community exists. International instruments, such as the Berne Convention, are evidence of the existence of the Music Community. International treaties and agreements are a reflection of a need for rules that are accepted by a substantial number of nation states to serve the public interest and the public good with respect to those covered by the conventions. In my expert ethnomusicologist opinion, the existing international instruments provide the strongest evidence for Community existence that demonstrates awareness and recognition among its members.

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<sup>27</sup> See DotMusic Public Interest Commitments ("PIC"), <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, p.6

As such, the Expert Ethnomusicologist Opinion agrees with the definition of the Music Community as an “alliance” of music communities that are organized under a regulated music sector and general principles of international copyright law and conventions of similar nature. DotMusic’s definition of the Music Community as an organized and delineated “alliance” of music communities of similar nature is the most accurate and reflective definition of the Community. Based on my music experience, the dictionary definitions of “alliance” align entirely with how the Music Community organizes itself. An “alliance” is defined as “a union between groups etc.: a relationship in which people agree to work together,” “an association to further the common interests of the members” (i.e. more of cohesion than a commonality of interest), a “union by relationship in qualities” or “a treaty of alliance.”<sup>28</sup> While there may be many member category types, music constituents all are united under common principles, such as the protection of music. As the CEO of one of the world’s leading music trade organizations, I can testify that it is the norm that organizations representing diverse member category types work together as a united family to protect principles aligned with DotMusic’s articulated Mission and Purpose, such as protecting music, supporting fair compensation as well as promoting legal music and music education. In fact, the Community across all its member categories engages in joint initiatives and participates in international conferences and meetings, such as Midem catered to all music constituent types.<sup>29</sup> Community participation is thus not unwitting. It is based on active participation in activities that promote the best interests of the community – through debate, dissent, agreement. Simply because the Community across all member categories may not be in agreement or act together all the time does not mean that they disagree as to whether they are members of and participants in the Music Community identified by DotMusic.

8. The significance of general principles of international copyright and conventions may be considered more important from a commercial economic rights and music industry standpoint, but the importance of non-economic rights derived from copyright is just as critical from a moral and human rights perspective to enable music creativity and serve the public good. As per the 1948 United Nations’ Article 27 of the Universal Declaration of Human Rights: “(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to 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.”<sup>30</sup> While it may appear that friction exists between the commercial and non-commercial characteristics of Community members’ music activities and participation, there is no impact on the cohesion of the Community as a whole. For example, both amateur and professional musicians may choose to distribute their music for free to increase

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<sup>28</sup> See Merriam-Webster dictionary definition of “alliance” at <http://merriam-webster.com/dictionary/alliance>

<sup>29</sup> See Midem at <http://www.midem.com/discover>

<sup>30</sup> See 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](http://ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), p.5

awareness or leverage their music as a loss leader to stimulate other music-related activities, such as performing live (or vice-versa).

9. It is noteworthy to mention that prevailing CPE Applicants received full points under the “Community Establishment” CPE criterion in the absence of a cohesive, regulated sector that is bound by general principles of international copyright law and conventions, such as music. Prevailing community applicants’ cohesion and requisite awareness requirements under “Community Establishment” were satisfied by meeting a community-based characteristic, such as demonstrated participation, involvement, activities, having a tie, inclusion, an active commitment or self-identification. Based on my review of the CPE criteria and the applications that passed, DotMusic’s Application satisfied all of these characteristics that were deemed acceptable by the EIU CPE Panel for a full score under the “Community Establishment” CPE criterion.

For example, the .SPA community applicant satisfied the “Community Establishment” CPE criterion because its “Members...recognize themselves as part of the spa community as evidenced...by their inclusion in industry organizations and participation in their events.”<sup>31</sup> DotMusic also satisfies this criterion under the same rationale, in my view. According to DotMusic’s Application, one of the requirements include that Music Community members must self-identify and recognize themselves as part of the Community. This too may be evidenced by their inclusion in music community member organizations or participation in music-related events.

Another example, with a lower threshold for member “cohesion” and “requisite awareness” of the Community addressed, is the .ECO community applicant, which satisfied the “Community Establishment” CPE criterion. The .ECO community members’ “cohesion and awareness is founded in their demonstrable involvement in environmental activities...who “demonstrate active commitment, practice and reporting.” This involvement may vary among member categories.”<sup>32</sup> DotMusic’s Application must be seen to have satisfied this criterion as well under the same rationale: Music Community members (across all music member categories delineated) must have demonstrable involvement and active commitment in music activities.<sup>33</sup> Just as the .ECO community involvement may vary among member categories, the same applies for the Music Community’s member categories. However, the Music Community variance has more cohesion and robustness than .ECO’s community given that all Community members are also united under a regulated music sector and general principles of international copyright and conventions. Again, as I have stated, from my perspective as an expert ethnomusicologist, it is not the case that the Community exists because of the conventions; but that the conventions are evidence of the existence of the Community.

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<sup>31</sup> See .SPA CPE Report, <https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>, p.2

<sup>32</sup> See .ECO CPE Report at <https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>, p.2

<sup>33</sup> This is also a Content and Use commitment mandated under the DotMusic Application’s Registration Policies.

Furthermore, another example that shows that DotMusic’s Application exceeds the “Community Establishment” CPE criterion is comparing the .RADIO community application that satisfied the “Community Establishment” CPE criterion on the basis that .RADIO community members, as “participants in this clearly defined industry, have an awareness and recognition of their inclusion in the industry community.”<sup>34</sup> Under the same rationale, DotMusic’s Application satisfies the “Community Establishment” CPE criterion because Music Community members are also “participants” in a clearly defined music sector regulated by general principles of international copyright law and conventions and have an awareness and recognition that they are “included” in the Music Community by self-identifying themselves as part of the Community defined by selecting their delineated music member category type or identifying themselves as a member of a music community member organization.

The .OSAKA community applicant is another example of an application that satisfied the “Community Establishment” with a relatively and comparatively lower threshold than DotMusic’s Application. According to .OSAKA’s community application, the EIU CPE Panel determined that there was community “cohesion” because .OSAKA community members “self identify as having a tie to Osaka, or with the culture of Osaka.”<sup>35</sup> Similarly, under DotMusic’s Application, Music Community members must also self-identify as having a tie to music. In fact, the DotMusic Application not only requires that Community members “self-identify” as having a tie to music, all Community members must also select what music category delineation corresponds to them.

Similarly, the .HOTEL community application satisfied the “Community Establishment” CPE criterion for a community definition that was comprised of “categories [that] are a logical alliance of members” and “defined in terms of its association with the hotel industry.”<sup>36</sup> Likewise, the DotMusic Application’s Community definition is delineated by “member categories” and is a “logical alliance.” DotMusic’s Community definition also includes “business” in terms of its association with the music industry.<sup>37</sup>

In summary, a comparative analysis between prevailing CPE Reports and DotMusic’s CPE Report *convinces me as an ethnomusicologist* that DotMusic’s Application satisfies the “Community Establishment” rationale of all prevailing CPE Reports for .SPA, .ECO, .RADIO, .OSAKA and .HOTEL combined. In other words, DotMusic’s Application meets all the “Community Establishment” thresholds that have been accepted by the EIU CPE Panel in relation to prevailing community applicants, such as demonstrated participation, involvement, activities, having a tie, inclusion, active commitments or self-identification. While many community applications that have prevailed focused

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<sup>34</sup> See .RADIO CPE Report at <https://icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>, pg.2

<sup>35</sup> See .OSAKA CPE Report at <https://icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>, p.2

<sup>36</sup> See .HOTEL CPE Report at <https://icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.2

<sup>37</sup> See Application 20A. The Community is defined 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.”

primarily on “industry” (e.g. the CPE Reports for .RADIO and .HOTEL), DotMusic also included “industry” as part of its Community definition to accommodate the dual rights (economic rights and non-economic rights, such as moral and human rights) that are essential for the Music Community to function and be subject to a regulated sector.

10. As such and inter alia, the Expert Ethnomusicologist Opinion disagrees with the CPE Report conclusion that states that: “while individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is considerable enough that the community defined as a whole cannot be said to have the cohesion required by the AGB. The Panel therefore determined that there is insufficient awareness and recognition of a community among the proposed community members, and that they do not therefore cohere as a community as required by the AGB.”<sup>38</sup> As someone who has spent his career participating in (as a musician), studying (as an ethnomusicologist and academic), organizing and advocating for (as head of a trade association) the Music Community, the EIU’s conclusion is simply incorrect and reflects a misunderstanding of the Community, its membership and activities. The CPE Report does not explicitly identify the music category or subset of the music categories types that relates to the “number of individuals” that “do not show such cohesion.” Moreover, the CPE Report provided no test, evidence or research to quantify what “considerable enough” is. The CPE Guidelines instruct ICANN and the EIU to provide “conclusions that are compelling and defensible” and “to document the way in which it has done so in each case.”<sup>39</sup> Not only did the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, I am not aware of any supporting research and documented evidence from the EIU to substantiate this particular CPE Report conclusion.

11. According to DotMusic’s Application Materials, “DotMusic expects that the substantial majority of all of its registrations will originate from the music entity type classified as “Musical groups and artists” [...] All music constituent types that are associated with the string must have a relationship with “music” and have the requisite awareness of DotMusic’s defined Community to be part of the Community.”<sup>40</sup> DotMusic clarified that “[w]hile some music constituent types in DotMusic’s definition and classification might comprise a minority in numbers (e.g. music lawyers) when compared to the primary and core constituent classification type (music groups and artists), the inclusion of every music constituent type is paramount to the purpose of the string. Every music constituent type critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the

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<sup>38</sup> See .MUSIC CPE Report, p.3

<sup>39</sup> See CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.22

<sup>40</sup> See DotMusic Public Interest Commitments (PIC) at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, p.11

participation of all music constituent types. The inclusion of all music constituent types serves the public interest because it ensures the Community matches the nexus of the string without discrimination, while excluding peripheral, casual entities with a tangential relationship with the Community defined ... [T]he string's articulated community-based purpose and the string's Content and Use requirements [] mandate that usage only relates to music activities and licensed, legitimate music content.<sup>41</sup> "All components of the Application's Community Definition, Delineation and Registration Polices are not mutually exclusive. They must all be met to ensure eligibility..."<sup>42</sup> In other words, excluding any music category or subset of the music categories types as the CPE Report appears to suggest will compromise the AGB requirement that all category parts of the delineated alliance collectively must "form a whole." Excluding constituent types would in effect result in a "construed community" because of the symbiotic and overlapping nature of the music community. Further, it would be discriminatory and not match the Nexus requirements if DotMusic excluded any music constituent type that is essential for the functioning of the Music Community.

12. The CPE Report does not explicitly define nor identify the delineated constituent category type(s) that should have been excluded to enable the community defined to function cohesively as defined by the AGB. The CPE Report did not provide any research or analysis explaining which specific music constituent types are not essential to the Music Community to function as it does today and how these music constituent types' activities and participation lack cohesion in relation to regulatory nature music sector and how the music community organizes itself and functions today. As such, any suggestion that a particular delineated community type compromises the cohesiveness of the "community defined as a whole" is false, imprecise and undocumented. Not only did ICANN and the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, ICANN and the EIU did not provide any EIU supporting research and documented evidence to substantiate this particular CPE Report conclusion. That said, a few of the primary categories, such as Musical Groups and Artists, Independent Music Artists, Performers, Arrangers and Composers, Music Publishers, Music Recording Industries, Music Collection Agencies or Performance Rights Organizations, represent nearly all of the Music Community defined in size. Even if one considers the EIU's undefined music constituent types that, according to the CPE Report, lacked cohesion with the community defined (I do not agree to such a vague, non-specific and unsubstantiated assessment), they are not substantial in size in comparison to be "considerable enough" (or influential enough) to conclude that "community defined as a whole cannot be said to have cohesion." Moreover, one "member category" type alone that was delineated by DotMusic's Application is "considerable enough" based on research evidence presented by the EIU in a CPE Report concerning the .MUSIC string, which agrees that "Musical groups and artists" constitute the vast majority of the Community in numbers. According to a 2014 EIU CPE Report: "the

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<sup>41</sup> *Ibid*, p.15

<sup>42</sup> *Ibid*

number of amateur musicians worldwide ... is estimated to be about 200 million.”<sup>43</sup> As such, any other member category (or all other member categories combined) cannot be “considerable enough” in relation to the DotMusic’s “Musical groups and artists” member category to conclude that there is insufficient cohesion because such a conclusion would be inconsistent with the 2014 EIU CPE Report concerning the .MUSIC string. The difference between the size of the “Musical groups and artists” member category in numbers and the number comprised by other member categories (even collectively) is considerably substantial and is indicative of the high degree of cohesion of the Community defined.

13. According to DotMusic’s Applications Materials, including Support Letters and the Public Interest Commitments (PIC) document, the members of the defined community, the “logical alliance of communities of similar nature that relate to music” have the requisite awareness and recognition of the community addressed. In fact, as the CEO of a globally-recognized trade association representing the independent music community, I can testify that all the most recognized music organizations are indeed united under the shared principles of protecting music copyright and promoting legal music. With respect to DotMusic, the explicit written support of all these recognized organizations indicates clear requisite and awareness of the Community addressed as well as cohesion under unified principles aligned with DotMusic’s Mission and Purpose.
14. I also reviewed the PIC “Appendix PIC Clarification” section, which clarifies that “the applied-for string (.MUSIC) ... will be restricted to only members of the Community (defined in the Application as “a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) who have an active, non-tangential relationship with the applied-for string and the requisite awareness and recognition that they are a part of the defined Community.”<sup>44</sup>
15. Moreover, according to the DotMusic Application Materials and Support letters, the Community members’ “requisite awareness and recognition” of the community defined was met through the proactive, explicit and purposeful action of submitting expressed letters of support that were aligned cohesively with DotMusic’s articulated Mission and Purpose: “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;”<sup>45</sup> “To be aligned with its Mission, DotMusic has focused on

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<sup>43</sup> See .MUSIC LLC Application 1-959-51046 CPE Report, October 6, 2014, footnote 11, p.6. The EIU research is based on TheNextWeb, “Sezion lets anyone collaborate on a song, could be the Instagram for amateur musicians,” June 6, 2012, at <http://thenextweb.com/apps/2012/06/06/sezion-lets-anyone-collaborate-on-a-song-could-be-the-instagram-for-amateur-musicians>

<sup>44</sup> See DotMusic Public Interest Commitments (PIC) at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, Appendix PIC Clarification, p.5

<sup>45</sup> *Ibid*, 20D, last paragraph



expressions of support that cover an all-inclusive global, balanced and multi-stakeholder representation of the Community, as delineated in response to question 20(a), that collectively represents the majority of the recognized Community by size;<sup>46</sup> and “[...] the Community relates to the ... constituents represented or covered by the recognized institutions, federations, associations, organizations, Coalitions or any other music entities that have expressed their support.”<sup>47</sup> In addition, member “requisite awareness and recognition” of the Community addressed is also established by member participation, alignment and compliance with DotMusic’s eligibility requirements, values, purpose and mission as described in 20E: “[O]nly eligible members of the Music Community who comply with the values, purpose and mission...can participate.”<sup>48</sup>

16. Furthermore, according to DotMusic’s Eligibility Registration Policy, members of Community defined must agree and validate via a two-step authentication that they are members of the Community defined (i.e. have the requisite awareness and recognition of the Community defined) and agree to DotMusic’s Content and Use policies that restrict content and usage to music-related participation and legal music activity. If any member of the defined Community does not abide by DotMusic’s Registration Policies or agree to DotMusic’s aligned articulated Purpose then they are not eligible to register a .music domain because they would lack cohesion and the requisite awareness and recognition of the Community defined.
17. According to the AGB, an option that fulfills the criteria for a community definition under “Community Establishment” is a logical alliance of communities: “a community can consist of ... a logical alliance of communities. All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community.”<sup>49</sup> For the music community to function, the alliance of music communities must work together cohesively given the symbiotic and regulatory nature of the sector. Removing any delineated music constituent type addressed in DotMusic’s Application would not make the community function cohesively as it does today and therefore would not relate to a “real community.”
18. The Community as defined was not “construed to obtain a sought after generic word as a gTLD string” and was “active prior to September 2007.” As shown by the results of a Nielsen Poll that I have reviewed, the vast majority of the 2000 participants agreed that the community definition accurately matched the string by explicitly agreeing that “[a] website domain that ended in “.music” (e.g., www.name.music) would [be] associate[d] with musicians and/or other individuals or organizations belonging to the music

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<sup>46</sup> See Application 20F at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, p.2

<sup>47</sup> *Ibid*

<sup>48</sup> See Application 20E

<sup>49</sup> See AGB, § 4.2.3, 4-12; Also see BGC Determination for DotKids Reconsideration Request 16-6, July 21, 2016, <https://www.icann.org/en/system/files/files/reconsideration-16-6-dotkids-bgc-21jul16-en.pdf>, p.12



community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)” i.e. the definition of an “organized. Furthermore, according to the Application Materials, the alliance of supporting organizations with members representing over 95% of global music consumed, represent a majority of the community defined. Any suggestion that such an alliance of music communities, representing the most recognized music organizations and the vast majority of music consumed, is considered a “construed community” and not a “real community” in relation to the “music” string cannot be viewed as a credible conclusion. Without this alliance, the music sector would not function (emphasis added). Again, not only did the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, the EIU did not provide any supporting research and documented evidence to substantiate this particular CPE Report conclusion.

According to the CPE Report, “based on the Panel’s research, there is no entity mainly dedicated to the entire community as defined by the applicant in all its geographic reach and range of categories.” According to the CPE Report, “[a]n “organized” community, according to the AGB, is one that is represented by at least one entity that encompasses the entire community as defined by the applicant. [...] Based on information provided in the application materials and the Panel’s research, there is no entity that organizes the community defined in the application in all the breadth of categories explicitly defined.”<sup>50</sup> According to the AGB, the definition of “‘Organized’ implies that there is at least one entity *mainly* dedicated to the community, with documented evidence of community activities.”<sup>51</sup> As such, the AGB does not require that an organization represents all members “in their entirety.” The language of both the AGB and the CPE Guidelines do not explicitly contain the words “entire” or “in their entirety.” However, even with such a requirement, many globally-recognized organizations that have supported DotMusic’s community application qualify as *mainly dedicated* to the community defined, such as the International Federation of Phonographic Industry (IFPI) and the International Federation of Musicians (FIM).

The IFPI’s formation date was 1933, which pre-existed the AGB’s requirements of community formation prior to September 2007.<sup>52</sup> The IFPI, “representing the recording industry worldwide,” is globally recognized by the United Nations. The IFPI has Consultative Status with the United Nations Educational, Scientific and Cultural Organization (UNESCO). The IFPI is also globally recognized by the World Intellectual Property Organization (WIPO). The IFPI has Permanent Observer Status with WIPO. IFPI also administers the International Standard Recording Code (ISRC) on behalf of the entire Music Community. The ISRC is based on the ISO 3901 International Standard Code for identifying music used by entire global Music Community.<sup>53</sup> The IFPI’s documented

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<sup>50</sup> See .MUSIC CPE Report, p.3.

<sup>51</sup> AGB, § 4.2.3, 4-11

<sup>52</sup> See IFPI, at <http://www.ifpi.org>

<sup>53</sup> See [http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=23401](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=23401), <http://isrc.ifpi.org/en/isrc-standard/structure> and <http://isrc.ifpi.org/en/why-use/benefits>

activities cohere with the Music Community's shared principles of protecting copyright and promoting music. The IFPI represents the three major label groups (i.e. Universal Music, Sony Music and Warner Music), that "control 78% of the global market,"<sup>54</sup> a majority.

The FIM also pre-existed September 2007. The FIM was founded in 1948.<sup>55</sup> The FIM represents the "voice of musicians worldwide," the member category that constitutes the vast majority of the Music Community defined in size. The FIM's global recognition is demonstrated by its official roster consultative status relations with the United Nations Economic and Social Council (ECOSOC), consultative status with UNESCO, and permanent observer status with the WIPO 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).<sup>56</sup> The FIM's documented activities also cohere with the Music Community's shared principles of protecting copyright and promoting music.

19. Furthermore, there are other supporting music organizations that are comprised of members covering the breadth of categories delineated by DotMusic's Application: A2IM and ReverbNation. The AGB mandated that "[f]or a community consisting of an alliance of groups, details about the constituent parts are required."<sup>57</sup> DotMusic provided details about the constituent parts of the community delineated in the form of music-only categories and category sub-sets:

- Musical groups and artists (711130)
- Independent music artists, performers, arrangers & composers (711500)
- Music publishers (512230)
- Music recording industries (512290)
- Music recording & rehearsal studios (512240)
- Music distributors, promoters & record labels (512220)
- Music production companies & record producers (512210)
- Live musical producers (711130)
- Musical instrument manufacturers (339992)
- Musical instruments & supplies stores (451140)
- Music stores (451220)
- Music accountants (541211)
- Music lawyers (541110)

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<sup>54</sup> See Credit Suisse Research and Analytics, Global Music, 25 June 2014. p.7 at <https://research-and-analytics.csfb.com/docView?docid=wbKkOP>

<sup>55</sup> See FIM at <https://www.fim-musicians.org>

<sup>56</sup> UNESCO, <http://ngo-db.unesco.org/r/or/en/1100025135>

<sup>57</sup> See 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

- Music education & schools (611610)
- Music agents & managers (711400)
- Music promoters & performing arts establishments (711300)
- Music promoters of performing arts with facilities (711310)
- Music promoters of performing arts without facilities (711320)
- Music performing arts companies (711100)
- Other music performing arts companies (711190)
- Music record reproducing companies (334612)
- Music, audio and video equipment manufacturers (334310)
- Music radio networks (515111)
- Music radio stations (515112)
- Music archives & libraries (519120)
- Music business & management consultants (541611)
- Music collection agencies & performance rights organizations (561440)
- Music therapists (621340)
- Music business associations (813910)
- Music coalitions, associations, organizations, information centers & export offices (813920)
- Music unions (813930)
- Music public relations agencies (541820)
- Music journalists & bloggers (711510)
- Internet Music radio station (519130)
- Music broadcasters (515120)
- Music video producers (512110)
- Music marketing services (541613)
- Music & audio engineers (541330)
- Music ticketing (561599)
- Music recreation establishments (722410)
- Music fans/clubs (813410)<sup>58</sup>

20. According to the CPE Report, DotMusic' Application "bounds community membership by way of well-defined categories. Therefore the Panel has determined that the applicant provides a clear and straightforward membership definition."

A2IM, an organization that I am currently the CEO of, which has supported DotMusic's community application, encompasses all music community constituent types as members without discrimination (referred to as Label Members and Associate Members),<sup>59</sup> such as (See corresponding music category in parentheses):

<sup>58</sup> See Application 20A; Also see .MUSIC CPE Report, p.2

<sup>59</sup> See A2IM members at <http://a2im.org/groups/tag/label+members> and <http://a2im.org/groups/tag/associate+members>; Also see DotMusic Application 20F, DotMusic Support Letters, A2IM at <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, pp. 22 to 26 of 413; Also see PIC, Appendix B, pp. 54 to 56 of 311

- All Access<sup>60</sup> (Category: Music News)
- Apple iTunes<sup>61</sup> (Category: Digital Music Retailer)
- Bandcamp<sup>62</sup> (Category: Music Services)
- Bandzoogie<sup>63</sup> (Category: Music Technology Services)
- Beggars Group<sup>64</sup> (Category: Recording Industry / Label. Artists include Adele and Radiohead)
- Big Machine<sup>65</sup> (Category: Recording Industry / Label. Artists include Taylor Swift and Tim McGraw)
- Billboard<sup>66</sup> (Category: Music Magazine and News)
- BMG Rights<sup>67</sup> (Category: Music Rights Management and Collection Agency)
- BureauExport<sup>68</sup> (Category: Music Export Office and Association)
- Coalition of Independent Music Stores (CIMS) (Category: Music Store)
- Concord Music Group<sup>69</sup> (Category: Recording Industry / Label. Artists include Paul McCartney, Tony Bennett and James Taylor)
- Citrin Cooperman<sup>70</sup> (Category: Music Accountant and Consulting)
- CMJ<sup>71</sup> (Category: Music Live Events)
- Dash Two<sup>72</sup> (Category: Music Agency)
- Disc Makers<sup>73</sup> (Category: Music Manufacturer)
- Imagem Publishing<sup>74</sup> (Category: Music Publishing)
- Merch Cat<sup>75</sup> (Category: Music Merchandising)
- Midem<sup>76</sup> (Category: Music Conference)
- Nielsen<sup>77</sup> (Category: Music Services and Technology)
- Pandora<sup>78</sup> (Category: Music Radio)
- Place<sup>79</sup> (Category: Music Software and App Developing Services)
- PledgeMusic<sup>80</sup> (Category: Music Fans)

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<sup>60</sup> See <http://a2im.org/groups/all-access>

<sup>61</sup> See <http://a2im.org/groups/apple>

<sup>62</sup> See <http://a2im.org/groups/bandcamp>

<sup>63</sup> See <http://a2im.org/groups/bandzoogie>

<sup>64</sup> See <http://a2im.org/groups/beggars-group>

<sup>65</sup> See <http://a2im.org/groups/big-machine-records>

<sup>66</sup> See <http://a2im.org/groups/billboard>

<sup>67</sup> See <http://a2im.org/groups/bmg-rights>

<sup>68</sup> See <http://a2im.org/groups/french-music-export-office>

<sup>69</sup> See <http://a2im.org/groups/concord-music-group>

<sup>70</sup> See <http://a2im.org/groups/citrin-cooperman>

<sup>71</sup> See <http://a2im.org/groups/cmj-network>

<sup>72</sup> See <http://a2im.org/groups/dash-two>

<sup>73</sup> See <http://a2im.org/groups/disc-makers>

<sup>74</sup> See <http://a2im.org/groups/imagem-music>

<sup>75</sup> See <http://a2im.org/groups/merchcat>

<sup>76</sup> See <http://a2im.org/groups/midem>

<sup>77</sup> See <http://a2im.org/groups/nielsen-musi>

<sup>78</sup> See <http://a2im.org/groups/pandora>

<sup>79</sup> See <http://a2im.org/groups/place>

- Reeperbahn Festival<sup>81</sup> (Category: Music Festival and Events)
- Reverbnation<sup>82</sup> (Category: Music Community of Artists, Industry and Fans)
- SiriusXM<sup>83</sup> (Category: Music Radio)
- Soundcloud<sup>84</sup> (Category: Music Community of Artists, Industry and Fans)
- Soundexchange<sup>85</sup> (Category: Performance Rights Music Collection Agency)
- Spotify<sup>86</sup> (Category: Music Streaming Services)
- Subpop Records<sup>87</sup> (Category: Recording Industry / Label. Artists include Soundgarden and Nirvana)
- Sullivan Street Studios<sup>88</sup> (Category: Music Studio)
- Synchtank<sup>89</sup> (Category: Music Licensing)
- The Syndicate<sup>90</sup> (Category: Music Marketing Services)
- The Good Seat<sup>91</sup> (Category: Music Ticketing)
- Traffic Control Group<sup>92</sup> (Category: Music Attorney)
- Tunecore<sup>93</sup> (Category: Digital Distributor)
- Vistex<sup>94</sup> (Category: Music Accountant)
- Vevo<sup>95</sup> (Category: Music Video Community)

A2IM also is affiliated with recognized organizations that relate to music, such as the Copyright Alliance,<sup>96</sup> MusicFirst,<sup>97</sup> the Worldwide Independent Network (WIN),<sup>98</sup> the Merlin Network,<sup>99</sup> and Music Matters.<sup>100</sup>

Another DotMusic supporting music organization that is representative of the community defined is Reverbnation,<sup>101</sup> an A2IM Associate Member and the world's

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<sup>80</sup> See <http://a2im.org/groups/pledgemusic>

<sup>81</sup> See <http://a2im.org/groups/reeperbahn-festival>

<sup>82</sup> See <http://a2im.org/groups/reverb-nation>

<sup>83</sup> See <http://a2im.org/groups/siriusxm>

<sup>84</sup> See <http://a2im.org/groups/soundcloud>

<sup>85</sup> See <http://a2im.org/groups/soundexchange>

<sup>86</sup> See <http://a2im.org/groups/spotify>

<sup>87</sup> See <http://a2im.org/groups/sub-pop-records>

<sup>88</sup> See <http://a2im.org/groups/sullivan-street-studios>

<sup>89</sup> See <http://a2im.org/groups/synchtank>

<sup>90</sup> See <http://a2im.org/groups/the-syndicate>

<sup>91</sup> See <http://a2im.org/groups/thegoodseat>

<sup>92</sup> See <http://a2im.org/groups/traffic-control-group>

<sup>93</sup> See <http://a2im.org/groups/tunecore>

<sup>94</sup> See <http://a2im.org/groups/vistex>

<sup>95</sup> See <http://a2im.org/groups/vevo>

<sup>96</sup> See <http://www.copyrightalliance.org>

<sup>97</sup> See <http://www.musicfirstcoalition.org>

<sup>98</sup> See <http://www.winformusic.org>

<sup>99</sup> See <http://www.merlinnetwork.org>

<sup>100</sup> See <http://whymusicmatters.com>

<sup>101</sup> See Reverbnation members at <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues)

largest music-dedicated community covering nearly 4 million musicians and industry individuals and organizations and other types of music constituents in over 100 countries across all music constituent types addressed by DotMusic's Application. As such, Reverbnation is representative of all the music categories and music subset categories delineated in community addressed in their entirety without discrimination globally.

21. According to the CPE Report, in relation to "Pre-Existence," the "community as defined in the application was not active prior to September 2007."<sup>102</sup> The EIU does not provide evidence or research to prove that the organized and delineated community defined did not exist before 2007. With respect to "Pre-existence," DotMusic described in 20A that "the Community has bought, sold, and bartered music for as long as it has been made... The foundation for the structured and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century ("PRE-EXISTING")."<sup>103</sup> The "Pre-existence" criterion only inquires "when the community was formed as explicitly defined according to the statements in the application" (emphasis added).<sup>104</sup> Per the "statements in the application," the 18<sup>th</sup> century pre-dates September 2007. Moreover, the CPE Report states: DotMusic's Application "bounds community membership by way of well-defined categories. Therefore the Panel has determined that the applicant provides a clear and straightforward membership definition."<sup>105</sup>
22. If the CPE Report's purported Community definition of "member categories"<sup>106</sup> is considered then again the CPE Report fails to show how these "member categories" did not pre-exist 2007. In fact, all these Music Constituent categories (or constituent types) that delineate the "logical alliance of music communities" pre-existed 2007 and are essential for the Community to function as it does today. As such, the community definition cannot be construed. Furthermore, as I noted earlier, globally-recognized organizations such as the IFPI and the FIM were founded in 1933 and 1948 respectively with documented records of activity beginning before 2007.<sup>107</sup> As such, any assertion

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and <https://reverbnation.com/fan-promotion> (Fans); Also see DotMusic Application 20F, DotMusic Support Letters, Reverbnation at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, pp. 338 to 339 of 413; Also see PIC, Appendix B, p. 158 of 311

<sup>102</sup> *Ibid*, p.4

<sup>103</sup> *Ibid*, 20A, last paragraph.

<sup>104</sup> According to the BGC Determination 16-6, the BGC determined that: "The CPE Panel is only asked to inquire when the community defined by the applicant was formed." See BGC Determination 16-6, <https://www.icann.org/en/system/files/files/reconsideration-16-6-dotkids-bgc-21jul16-en.pdf>, p.11; Furthermore, the BGC Determination 16-6 specified that "the first CPE criterion 'relates to the community as explicitly identified and defined according to the ... application.'" See BGC 16-6, footnote 40, p.11

<sup>105</sup> See .MUSIC CPE Report, p.3

<sup>106</sup> *Ibid*

<sup>107</sup> 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*

that the community as defined in the form of member categories or an alliance of music communities united under general principles of international copyright law and conventions did not pre-exist 2007 must be viewed as incorrect. Again, not only did the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, the EIU did not provide any supporting research and documented evidence that I have seen to substantiate this particular CPE Report conclusion.

### ***Extension – Size***

23. In relation to “Size,” the CPE Report states that the “community as defined in the application is of considerable size, both in terms of geographical reach and number of members” but “does not show evidence of “cohesion” among its members, as required by the AGB. Therefore, it fails the second criterion for Size.”<sup>108</sup> According to the 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 - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have “only” some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of “considerable size.”<sup>109</sup> The AGB does not specify that “cohesion” is a “second criterion for Size” to fulfill the requirements under “Size.” As such, any assertion that the Community defined is not of considerable size must be viewed as incorrect. Again, not only did the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, the EIU did not provide any supporting research and documented evidence that I am aware of to substantiate this particular CPE Report conclusion.

### ***Extension – Longevity***

24. In relation to “Longevity,” the CPE Report states that “the Panel acknowledges that as an activity, music has a long history and that many parts of the defined community show longevity. However, because the community is construed, the longevity of the defined

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*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>), the IFPI, FIM, ReverbNation and A2IM all have documented “records of activity before 2007” and are “mainly dedicated to the community” as defined by DotMusic.*

<sup>108</sup> *Ibid*, p.4.

<sup>109</sup> AGB, § 4.2.3, 4-11



community as a whole cannot be demonstrated.”<sup>110</sup> According to the AGB: “‘Longevity’ means that the pursuits of a community are of a lasting, non-transient nature.” The Panel does not provide evidence that the community defined is not of “a lasting, non-transient nature.” With respect to “Longevity,” DotMusic described in 20A that “the Community has bought, sold, and bartered music for as long (“LONGEVITY”) as it has been made...”<sup>111</sup> In other words, as long as music is being made then the Community defined will continue to exist. As mentioned earlier, even if the CPE Report’s purported Community definition of “member categories”<sup>112</sup> is considered as the Community defined then again the CPE Report fails to show how these “member categories” will not continue into the future. In fact, all these Music Constituent categories (or constituent types) that delineate the “logical alliance of music communities” are essential for the Community to function as it does today and all are expected to have an extended tenure given the Community’s symbiotic nature. As such, the community definition cannot be construed. Any assertion that the community defined will not have an “extended tenure or longevity—non transience—into the future” cannot in my view be considered credible. There is no ambiguity or contradiction concerning the Community’s permanency because the music sector’s regulated structure has a long history of sustainability, which includes conventions that date from 1886 that will continue to exist into the future. Even certain rules or guidelines are modified to reflect the digital age or to adapt to other changes in the regulatory environment, the regulatory framework of the music sector will never disappear. Furthermore, the alliance of communities of similar nature that relate to music will not disappear as a whole. The alliance of music communities are expected to evolve over time but not disappear or be “ephemeral.” Again, not only did the EIU the EIU not fulfill its obligations by providing conclusions that are compelling and defensible, the EIU did not provide any supporting research and documented evidence to substantiate this particular CPE Report conclusion.

25. In my expert opinion, DotMusic’s Application meets all the criteria under the *Community Establishment* section.

### **Nexus between Proposed String and Community CPE Criterion Is Satisfied**

26. My Expert Ethnomusicologist Opinion also agrees with the Expert Legal Opinion of Honorary Professor of International Copyright Dr. Jørgen Blomqvist with respect to the “Nexus between Proposed String and Community.” DotMusic was improperly graded 3 out of 4 points under the “Nexus between Proposed String and Community” CPE criterion. DotMusic fully meets the “Nexus between Proposed String and Community” CPE criterion for a score of 4 points.

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<sup>110</sup> See .MUSIC CPE Report, p.5

<sup>111</sup> *Ibid*, 20A, last paragraph.

<sup>112</sup> *Ibid*



27. My Expert Ethnomusicologist Opinion disagrees with the CPE Report’s statement that “the community defined in the application is a collection of many categories of individuals and organizations, and because there is no single entity that serves all of these categories in all their geographic breadth, there is no “established name” for the applied-for string to match, as required by the AGB for a full score on Nexus.”<sup>113</sup> Per the AGB, the Nexus requirement relates to the “Name” provided by the Applicant as the established name of the Community and whether the “Name” matches the .MUSIC string i.e. “[t]he string matches the name of the community”<sup>114</sup> not whether or not “there is a single entity that serves all the categories,” which is not a pre-requisite under the Nexus criterion based on the language of the AGB’s Nexus section. DotMusic’s Application Materials do not define the Community as “a collection of many categories.” The “member categories” relate specifically to the “delineation”<sup>115</sup> component of the Community definition. The Community definition relates to an “organized alliance of communities of similar nature that relate to music.”
28. As mentioned earlier, the AGB mandated that “[f]or a community consisting of an alliance of groups, details about the constituent parts are required.”<sup>116</sup> According to DotMusic’s Application Materials, the “Name” of the Community was the “Music Community,” the “Definition” of the Community was a “organized and delineated logical alliance of communities of similar nature that relate to music” and, because the community consisted of an “alliance of groups,” DotMusic delineated in detail all the “constituent parts” as “required” by the AGB. Under Nexus, the CPE Report concludes that DotMusic was not awarded the full points under “Nexus” “because there is no single entity that serves all of these categories in all their geographic breadth, there is no “established name” for the applied-for string to match, as required by the AGB for a full score on Nexus.”<sup>117</sup> As I see it, there is no such requirement for “Nexus” under the AGB. The “mainly dedicated” and “recognized” community member organization requirements relate to the “Community Establishment” and “Support” sections of CPE not “Nexus.” The “established name” of the Community (the “Music Community”) is unrelated to whether or not any music community organization is “recognized” or “mainly dedicated.” As mentioned earlier, according to DotMusic’s Application, the “[t]he name of the community served is the “Music Community” (“Community”).”<sup>118</sup> As evidenced in the Nielsen Poll and the Application Materials, “[t]he “MUSIC” string *matches* the name (“Name”) of the Community and is the established name by which

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<sup>113</sup> See CPE Report, p.5

<sup>114</sup> See AGB, p.4-12

<sup>115</sup> See Application 20A. The defined Community’s “constituent parts” were delineated based on music stakeholder type (i.e. member categories) in 20A: “[M]usic stakeholders [are] structurally organized using pre-existing, strictly delineated classes (“DELINEATION”).”

<sup>116</sup> See 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

<sup>117</sup> See CPE Report, p.5

<sup>118</sup> Application, 20A, para.1

the Community is commonly known by others”<sup>119</sup> and “the .MUSIC string relates to the Community by [...] completely representing the entire Community.”<sup>120</sup> The entire Community is represented by the string and those unrelated to “music” are not part of the Community defined as per DotMusic’s Application Materials binding commitments “adhering to the DotMusic Eligibility policy of non-discrimination that restricts eligibility to Music Community members ... that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community,”<sup>121</sup> “to exclude those with a passive, casual or peripheral association with the applied-for string”<sup>122</sup> and to “include[] all music constituents represented by the string.”<sup>123</sup>

29. In my expert opinion, DotMusic’s Application meets all the criteria under the *Nexus between Proposed String and Community* section.

### **Community Endorsement – Support CPE Criterion Is Satisfied**

30. My Expert Ethnomusicologist Opinion agrees with the Expert Legal Opinion of Honorary Professor of International Copyright Dr. Jørgen Blomqvist with respect to “Support.”<sup>124</sup> DotMusic was improperly graded 1 out of 2 points under the “Support” CPE criterion. DotMusic fully meets the “Support” CPE criterion for a score of 2 points.

31. According to the CPE Report, “[t]he panel has not found evidence of a single organization recognized by all of the defined community’s members as representative of the defined community in its entirety.”<sup>125</sup> The explicit language of the AGB and the CPE Guidelines do not explicitly describe any requirement to fulfill the “Support” criterion that mandates that “a single organization is recognized by all of the defined community’s members as representative of the defined community in its entirety.” The AGB requirement is that either an Application has documented support from a “recognized” organization or has support from the “majority” of the community defined. According to the AGB, “Support” means that the “Applicant is, or has documented support from, the recognized”<sup>126</sup> community institution(s) / member organization(s).”<sup>127</sup> “With respect to “Support,” the plurals in brackets for a score of 2,

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<sup>119</sup> *Ibid*, 20A, para.3 (emphasis added)

<sup>120</sup> *Ibid*, 20D, para.1 (emphasis added)

<sup>121</sup> See DotMusic Public Interest Commitments (PIC) at

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

Enumerated Public Interest Commitment #3, p.1

<sup>122</sup> *Ibid*, Enumerated Public Interest Commitment #4, p.2

<sup>123</sup> *Ibid*, Enumerated Public Interest Commitment #5, p.2

<sup>124</sup> Honorary Professor Dr. Jørgen Blomqvist, § 70, p. 47

<sup>125</sup> See DotMusic CPE Report, p.8

<sup>126</sup> See 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

<sup>127</sup> See AGB, p.4-17

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.”<sup>128</sup>

32. 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.”<sup>129 130</sup> 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.”<sup>131</sup> According to the DotMusic Application Materials, DotMusic’s Support letters and my Expert Ethnomusicologist Opinion, the .MUSIC Application is supported by multiple 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.”<sup>132</sup>
33. According to the AGB, another alternative for a score of 2 points under “Support” is possessing “documented support from, the recognized<sup>133</sup> community institution(s)/ member organization(s).”<sup>134</sup> In my Expert Ethnomusicologist Opinion, 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 general public in general. It is not expected that the general public at large will have knowledge of recognized music community organizations, even though DotMusic supporting organizations (such as the IFPI, the RIAA and the FIM) have global recognition.
34. Furthermore, there is nothing in the AGB that mandates that one organization represent an “entire” community. Despite that, in my Expert Ethnomusicologist Opinion, the music organizations supporting the DotMusic Application are the most recognized and trusted

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<sup>128</sup> See AGB, p.4-18

<sup>129</sup> AGB, §4.2.3, Module 4, p.4-18 (emphasis added)

<sup>130</sup> CPE Guidelines, p.18

<sup>131</sup> Application, 20D, last paragraph

<sup>132</sup> 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>

<sup>133</sup> 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

<sup>134</sup> AGB, p.4-17

music organizations, including multiple globally-recognized organizations that constitute a majority of all music that is consumed at a global level. It is indisputable that DotMusic's application possesses documented support from the recognized community member organizations.<sup>135</sup>

35. My Expert Ethnomusicologist Opinion also agrees with the accuracy of the statements by the IFPI, submitted to the ICANN BGC on the 24<sup>th</sup> of February, 2016, concerning the CPE Report:<sup>136</sup>

We believe the finding to be flawed, not least in view of the support for the application provided by representative organisations from all areas of the music community, including IF PI. 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.

On 5th March, IFPI co-signed a letter to ICANN from a coalition of national and international trade associations representing songwriters; recordings artists, music publishers, record labels, studio professionals, and performing rights societies around the world. In that letter we expressed our shared disappointment with 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 have read DotMusic limited's Request for Reconsideration, and 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 organisation representing 1,300 record companies. Our members operate in 61 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.

36. Furthermore, as noted earlier, other recognized supporting organizations, such as A2IM<sup>137</sup> and Reverbnation, are representative of the addressed community defined in

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<sup>135</sup> 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.

<sup>136</sup> See IFPI letter to ICANN BGC, <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-ifpi-to-icann-24feb16-en.pdf>

its entirety<sup>138</sup> without discrimination, with members across all the music categories and music subset of categories delineated by DotMusic's Application. As such, both A2IM and Reverbnation qualify as "recognized" community member organizations as per the AGB.

37. 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)" <sup>139</sup> and "documented support from institutions/organizations representing a majority of the overall community addressed."<sup>140</sup> DotMusic's Application meets all the criteria for "Support" under the *Community Endorsement* section.

## Conclusion

38. Given the evidence presented, I am in agreement with the Expert Legal Opinion of Honorary Professor of International Copyright Dr. Jørgen Blomqvist and 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.
39. 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*.

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<sup>137</sup> The prevailing .HOTEL community applicant received a full grade for "Support" because the Panel found the nationally-focused China Hotel Association and American Hotel & Lodging Association were determined of be "recognized community institution(s)/member organization(s)." According to the .HOTEL CPE Report: "*The applicant possesses documented support from the recognized community institution(s)/member organization(s)*" (See .HOTEL CPE Report, at <https://icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.6). Similarly, A2IM with its breadth and size of membership also qualifies as a "recognized" organization."

<sup>138</sup> There is no explicit language in the AGB that requires that an organization covers all community types in their entirety. Both A2IM and Reverbnation would still qualify if such a requirement applied.

<sup>139</sup> 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.

<sup>140</sup> 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.

40. It is my Expert Ethnomusicologist Opinion that DotMusic's application meets the full criteria under *Community Establishment*, the *Nexus Between the Proposed String and Community*, and *Support*.

Dr. Richard James Burgess  
Ph.D in Ethnomusicology

September 12, 2016

## Appendix A

### About Dr. Richard Burgess<sup>141</sup>

Dr. Richard James Burgess is an Ethnomusicologist who is an English-born, New Zealand raised, American citizen. His professional experience includes studio drummer, music association executive, music-computer programmer, recording artist, record producer, composer, author, manager, marketer and inventor.

Burgess's music career spans more than 45 years. He came to prominence in the early 1980s as co-founder and co-lead singer of the Synthpop band Landscape, which released a top 10 hit in 1981 with the single "Einstein A Go-Go." Burgess is one of the main composers of Landscape's music, and made major lyrical contributions to the band's songs. After the band's break-up, he pursued a brief, moderately successful solo career releasing one mini-album, Richard James Burgess in 1984.

He launched his career as a producer with Spandau Ballet's debut UK hit "To Cut a Long Story Short," which marked the commercial beginnings of the New Romantic movement.

Burgess currently serves as the CEO of A2IM: the American Association of Independent Music.

### Early Years

Richard Burgess was born in London, England, and his family migrated to New Zealand in 1959. He showed an early interest in music, especially drums, and bought his first drum set at the age of 14. As a drummer, he gained experience in local bands including Fred Henry, Orange, Easy Street, The Lordships and Barry Saunders. Burgess also showed an early interest in recording production, buying a portable Tandberg tape recorder when he was sixteen to make amateur recordings.

Burgess studied electronics at college before turning to studies in music. In 1972 he left New Zealand to attend Berklee College of Music in Boston, and in 1973 moved to London to study at the Guildhall School of Music and Drama. He holds a PhD in Ethnomusicology from the University of Glamorgan (now the University of South Wales).

### Career

#### *Producer:*

In the early 1980s, Burgess emerged as the first producer of the New Romantic movement, producing Spandau Ballet's first two gold albums and first six charting singles. He won a Music

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<sup>141</sup> See <http://www.richardjamesburgess.com>, <http://www.audioculture.co.nz/people/richard-james-burgess> and [https://en.wikipedia.org/wiki/Richard\\_James\\_Burgess](https://en.wikipedia.org/wiki/Richard_James_Burgess)

Week magazine sales award as a producer, and has created twenty-four chart singles and fourteen charting albums. Other productions included recordings for Adam Ant, King, New Edition, Melba Moore, Colonel Abrams, America, Kim Wilde, Five Star, Tony Banks and Fish. He was also an ambient pioneer in producing the British group Praise. He produced, engineered and mixed albums by Rubicon and X-CNN under the pseudonym Caleb Kadesh and did several mixes using the pseudonym Cadillac Jack. He was co-producer, co-executive producer, project manager and an author for *Jazz: The Smithsonian Anthology* and is credited as associate producer on Tony Trischka's *Territory* and as a compiler of *Classic Piano Blues* for Smithsonian Folkways Recordings. Burgess's mixes and remixes include tracks for 9½ Weeks, *About Last Night* and artists Thomas Dolby, Lou Reed, Youssou N'Dour, and Luba.

#### *Musician and Recording Artist:*

Burgess has played on many albums as a studio-drummer and percussionist, having worked with producers such as Tony Visconti, Peter Collins, Trevor Horn, Ian Levine, Robin Millar, Hugh Padgham, Mike Stone, Gary Langan, Barry Mason, Peter Dawkins, John Sinclair, Gary Lyons, and Junior Campbell. These include albums such as Adam Ant's *Strip* and The Buggles' *The Age of Plastic*. He also recorded jazz with the British National Youth Jazz Orchestra, Neil Ardley, Ian Carr and Nucleus, and the early *Landscape* recordings. He performed live with Graham Collier, OBE.

From 1975 through the early 1980s, Burgess co-produced, co-wrote, programmed, sang and played drums for the European electronica group *Landscape* with Christopher Heaton, Andy Pask, Peter Thoms and John Walters. The band's RCA Records album *From the Tea-rooms of Mars... To the Hell-holes of Uranus* yielded the international hits "Einstein A Go-Go" and "Norman Bates." As a Capitol Records solo artist, he charted singles on the Billboard Hot Dance Club Play chart, reaching No. 1 on the New York Dance Music Report chart.

#### *Innovator:*

Burgess defined the computer programmer's and sampler's role in modern music via his work in the 1970s, creating the first computer driven hit, "Einstein A Go-Go," using the Roland MC-8 Microcomposer. He is believed to be the first to record digital samples on a commercial recording with his programming of the Fairlight CMI on Kate Bush's *Never for Ever* album and Visage's single "Fade To Grey." He conceptualised and co-designed the first standalone electronic drum set, the hexagonal shaped Simmons SDS-V. He appeared on three separate occasions on the BBC Television program *Tomorrow's World* demonstrating his prototype of the SDSV, the Roland MC-8 Microcomposer, and the Fairlight CMI. He coined the name for the New Romantic movement of the early 1980s. His New York City productions of Colonel Abrams' gold singles "Trapped" and "I'm Not Gonna Let You" are widely considered to have been the precursors to house music.

#### *Educator and academic:*



Burgess is a member of the academic advisory committee for The Association for the Study of the Art of Record Production (ASARP, London College of Music). He has lectured on the subject of record production and the music business in the United States and in the United Kingdom. He wrote and presented the BBC World Service radio series Let There Be Drums. He taught drums at the Annapolis Music School in Maryland, and has taught classes on record production and the music business at The Omega Studios' School of Applied Recording Arts And Sciences.

#### *Author:*

Burgess' Oxford University Press book The Art of Music Production: The Theory and Practice, which was in 1994 originally entitled The Art of Record Production, is now in its fourth edition. In 2014 he published his second book for Oxford University Press, The History of Music Production. He has written many articles for technical and music magazines, as well as articles, papers and interviews for the academic Journal on the Association Art of Record Production (JARP), for which he is joint editor-in-chief.

#### *Manager and Marketer:*

In 1978 Burgess founded a management company, Heisenberg Ltd, which managed producers and engineers such as Phill Brown, Andy Jackson and Rafe McKenna in the UK and US. The company changed its name to Burgess World Co in the mid-eighties, and relocated from Los Angeles and New York in the mid-nineties where it managed many mid-Atlantic based artists including Jimmie's Chicken Shack.

From 2001 to 2016, Burgess was employed at Smithsonian Folkways Recordings where he was Associate Director for Business Strategies and Acting Director.

#### *Committees:*

Burgess was a member of the national steering committee for the Recording Academy's Producer and Engineer Wing and served as co-chair of the executive committee for Smithsonian Music, a pan-institutional music initiative. He has been Vice-President of the Washington, D.C. Chapter of the National Academy of Recording Arts and Sciences and co-chair for both the DC Chapter of the Producer and Engineer Wing, and the national Producer Compensation Committee.

#### **Awards and Achievements**

As a member of the avant-garde electronic group Accord (with Christopher Heaton and Roger Cawkwell), he was featured on BBC Radio 3 programmes Music in Our Time and Improvisation Workshop. With Landscape, he received the Greater London Arts Association's Young Jazz Musicians 1976 award, and the Vitavox Live Sound award. Accord was also selected by the Arts Council of Great Britain for its Park Lane Group Purcell Room concert series. He was featured in The A to Z of Rock Drummers.

## Curriculum Vitae of Dr. Richard Hames Burgess<sup>142</sup>

### ***Position***

CEO of American Association of Independent Music (A2IM)

### ***Sub disciplines***

Music, ethnomusicology, musicology, record/music production, history of the recording industry, jazz, blues, electronic music, music industry, music technology, audio technology, intellectual property, entrepreneurship, drums, history of the American drum set, drumming

### ***Education***

Ph.D., Cardiff School of Creative and Cultural Industries, University of South Wales,

Berklee College of Music: Jazz Performance and Composition,

Guildhall School of Music and Drama: Orchestral Percussion,

Christchurch Polytechnic Institute of Technology: Electronics and Communications

Smithsonian Institution, Senior Leadership Development Program

George Washington University, DC, USA, Project management certificate by ESI

Alan Dawson, Boston, USA, Drum set

Peter Ind, London, UK, Jazz theory and improvisation

Tony Oxley, London, UK, Drum set, percussion, theory and improvisation

Kurt Hans Goedicke, London, UK (London Symphony Orchestra), Timpani

James Blades, London, UK (LSO), Timpani and orchestral percussion

David Arnold, London, UK (Royal Philharmonic Orchestra), orchestral percussion

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<sup>142</sup> See <http://www.richardjamesburgess.com/c-v>

Bruno Tonioli, London, UK, Movement

Uta Hagen, New York City, USA, Drama

Pamela Dodds, London, UK, Voice training

Harry Voice, Christchurch, NZ, Music theory

Pete Ward, Christchurch, NZ, Drum set

Leon Jayet, Christchurch, NZ, Drum set

### ***Professional Employment Experience***

2016 – Present: President, American Association of Independent Music (A2IM)

2014 – 2016: Associate Director of Business Strategies at Smithsonian Folkways Recordings, Smithsonian Museum

2013 – 2014: Director of Marketing, Sales and Licensing at Smithsonian Folkways Recordings, Smithsonian Museum

2003 – 2013: Director of Marketing and Sales at Smithsonian Folkways Recordings, Smithsonian Museum

2001 – 2003: Director of Marketing at Smithsonian Folkways Recordings, Smithsonian museum

2007 – 2013: Director Resource Development, Center for Folklife and Cultural Heritage

2005 – present: Adjunct Professor Omega Studios School of Applied Recording Arts and Sciences

1996 – 2001: CEO and Chairman: Fowl Records Inc (USA), independent record label

CEO and Chairman: Creative Booking International Inc (USA), artist booking agency

CEO and Chairman: Burgess World Co (USA), major label artist management

1979-1998: CEO and Chairman: Longrally Ltd (London)

Independent music producer: US, UK and European major labels

Commercial studio owner and operator: (London)

1986-1990: President: Burgess Worldco Inc (Los Angeles, CA, NYC, NY, and London, UK), Management company for music producers, audio engineers and recording artists

Independent music producer: US, UK and European major labels

1990-1996: CEO and Chairman: Longrally Ltd (London)

Independent music producer: US, UK and European major labels Studio owner and operator:

1986-1990: President: Burgess Worldco Inc (Los Angeles, CA, NYC, NY and London, UK),  
Management company for music producers, audio engineers and recording artists

1980-1986: Co-owner Heisenberg Ltd, London, producer, engineer, and artist management  
company

1979-1996: Independent music producer: US, UK and European major labels

1971-1984: Major label recording artist (EMI, CBS, Polydor, RCA, Capitol)

1971-1979: Major label studio musician (drums and percussion)

### ***Book Publications***

1981 Rock Hardware: The Instruments, Equipment and Technology of Rock, ed. Tony Bacon, pub.  
Blandford Press. Contributed chapter on drums and electronic drums

1996 The Art of Record Production, 1st Edition, Omnibus Press/Music Sales

2000 The Art of Music Production, 2nd Edition, Omnibus Press/Music Sales

2002 The Art of Music Production, 3rd Edition, Omnibus Press/Music Sales

2012 The Art of Record Production, Ed. Frith/Zagorski-Thomas, Ashgate Publishing, Contributed  
interstitials.

2013 The Art of Music Production: The Theory and Practice, 4th Edition, Oxford University Press

2014 The History of Music Production, Oxford University Press

### ***Partial Discography***

2014 Serenata Guyanesa, Recording Engineer, Smithsonian Folkways Recordings (to be released)

2011 Various, Jazz: The Smithsonian Anthology, co-Prod, co-Exec. Prod., Project Director, co-  
liner notes writer, Smithsonian Folkways Recordings

2010 Ace Elijah, The Lonely Nights Are All That's Left, Producer, Engineer, Mixer, Drums, Marva

2009 Electrofied, Bad Case of the Blues, Producer, Engineer, Mixer, Drums, Composer, Artist, Marva

2008 Jimmie's Chicken Shack Fail on Cue, Mastering Engineer, Fowl

2008 Nethers, What the Wind Will Never Say, Mastering Engineer, Trade Root

2008 Various Artists, Classic Piano Blues, Co-Compiler, Smithsonian Folkways Recordings

2008 Tony Trischka, Territory, Associate Producer, Smithsonian Folkways Recordings

2007 Ace Elijah, Only a Fool Would Say, Producer, Mixer, Drums, Marva

2006 Electrofied, Sunday Morning Blues, Producer, Engineer, Mixer, Drums, Artist, Marva

2006 Ace Elijah, Deja Visite, Producer, Engineer, Mixer, Drums, Marva

2004 Jimmie's Chicken Shack, Re.Present, Manager, Executive Producer, Koch

2004 Various artists, cELLABration, DVD, Production supervisor, Smithsonian Folkways

2002 Shock, Dream Games/R.E.R.B. (Mix), Prod., eng., mix, prog., Keys, Memory Boy Records

1999 Imagination, Double Gold, Producer, Percussion, Programming, Arcade

1999 Jimmie's Chicken Shack, Bring Your Own Stereo, Manager, additional drums, Island

1997 Various Artists, Various Artists, Executive Producer, Fowl

1997 Jimmie's Chicken Shack, Pushing The Salmanilla Envelope, Manager, A&M

1996 Manfred Mann, Soft Vengeance, Producer, Engineer, Mixer, Drums, Grapevine

1996 Jimmie's Chicken Shack, 2 for 1, Record Label, Fowl

1995 Rubicon, Room 101, Prod., Eng., Mixer (Caleb Kadesh Pseudonym), prog., Beggars Banquet

1995 Libera, Libera, Producer, Mixer, Programmer, Percussion, Mercury

1994 Adam Ant, Strip, Producer, Engineer, Drums, Programmer, Epic

1994 XCNN, XCNN, Producer, Engineer, Sony

1994 Roman, Naked Stories, Producer, Engineer, Mixer, WEA

1992 George Lamond, In My Life, Writer, Columbia

1992 Neil Ardley, Kaleidoscope of Rainbows, Writer, Programmer, Keyboards, Amp

1992 Praise, Praise, Producer, Engineer, Mixer, Giant/Warner Bros

1991 Milli Vanilli, Real Milli Vanilli, Writer, Arista

1991 The Party, In My Life, Writer, Producer, Drums, Percussion, Keyboards, Programming, Hollywood

1990 Guys Next Door, Guys Next Door, Prod., Eng., Mix, Writer, Dm & Comp. Prog., Keys, Capitol

1990 Atooz, Shine A Light, Writer, Prod., Eng., Mix, Writer, Dm & Comp. Prog., Keys, EMI America

1989 Thomas Dolby, Aliens Ate My Buick, Producer, Mixer, Capitol

1989 Strength, Breaking Hearts, Producer, Engineer, Programming, Arista

1989 Don Johnson, Let It Roll Writer, Epic

1989 Pandance, Pandance, Producer, Engineer, Mixer, Programming, RCA

1988 Empire, Talk Free, Producer, Percussion, Programming, Parlophone

1988 Empire, This is My Word, Producer, Percussion, Programming, Parlophone

1988 Empire, My Imagination, Producer, Percussion, Programming, Parlophone

1988 Eighth Wonder, Fearless, Producer, Percussion, Programming, CBS

1988 Shriekback, Go Bang!, Programming, Percussion, Keyboards, Producer, Island

1988 When in Rome, When in Rome, Keyboards, Producer, Drum Programming, Virgin

1988 Mark Gregory, Someone's Been Sleeping in My Bed, Prod., Mix., Prog, Keys, Motown

1988 Funkrew, Funkrew, Producer, Mixer, Programmer, Keys, Arista

1988 Jaki Graham, Producer, Mixer, EMI

1988 Angie Dylan, Beast of Burden, Vinyl 12", Mixer, Engineer, Injection disco dance

1988 Brother Beyond, Chain-Gang Smile, Producer, Parlophone

1988 Eddie Chacon, Eddie Chacon, Producer, Mixer, programmer, percussion

1987 Lou Reed & Yossour N'Dour, The Secret Policeman's Third Ball, Producer, Mixer, Virgin

1987 Errol Brown, Body Rockin' 7" and 12" remixes, Producer, Percussion, Programming, RAK

1987 Five Star, Between the Lines, Producer, Percussion, Programming, RCA

1987 Imagination/Lee John, Closer, Producer, Percussion, Programming, RCA

1987 Living in a Box Living in a Box Producer, Percussion, Programming Chrysalis

1987 Heroes, Here We Are, Producer, Percussion, Programming, RCA

1987 Princess, Red Hot 7" and 12" remixes, Producer, Percussion, Keyboards, Programming, Polydor

1987 Princess, All For Love, Producer, Percussion, Keyboards, Programming, Polydor

1986 Red Bamboo, On The Line, Producer, Percussion, Keyboards, Programming, EMI

1986 Colonel Abrams, Colonel Abrams, Prod., Mix., Keys, Prog., Percussion, MCA

1986 Kim Wilde, Another Step, Producer, Percussion, Programming, MCA

1986 Five Star, Silk and Steel Producer, Drums, Percussion, Programming, RCA

1986 Chakk, 10 Days in an Elevator, Producer, Percussion, Programming, MCA

1986 Tony Banks, Shortcut To Somewhere, Producer., Dms., Perc., Prog., Charisma

1986 Virginia Astley, Hope in a Darkened Heart, Producer, Mixer, Percussion WEA

1985 Strange Advance, We Run, Remix, Capitol

1985 Doppelganger, Communication Breakdown, Producer, EMI-Manhattan Records

1985 King, Bitter Sweet, Producer, Mixer, Percussion, CBS

1985 The Nails, Let It All Hang Out, Remixer, RCA

1985 Nina Hagen, In Ekstasy, Producer, CBS

1985 Melba Moore, Read My Lips, Producer, Drum Programming, Percussion Programming, Capitol

1985 Spandau Ballet, The Singles Collection, Producer, Mixer, Chrysalis

1984 King, Steps in Time, Producer, Mixer, Remixer, Drums, Perc., Prog., CBS

1984 Adam Ant, Strip, Producer, Keyboards, Drums, Percussion, Programming, CBS

1984 Richard James Burgess, Richard James Burgess, Prod., Keys, Dms, Perc., Prog, artist, Capitol

1984 New Edition, New Edition, Prod., Eng., Mixer, Prog., Perc., Keys., MCA

1984 America, Perspective, Arr., Dms, Rhythm, Prod., Dm Prog., Synth Arr., Perc. Prog., Capitol

1987 Luba, Let It Go, Remixer, Percussion, Programming, (Producer – Daniel Lanois), Capitol

1984 Luba, Storm Before the Calm, Remixer (Producer – Daniel Lanois), Capitol

1983 Landscape III, You Know How To Hurt Me., L.Vox, Comp & Dm Prog., Perc., Writer, artist, RCA

1983 Landscape III, So Good, So Pure, So Kind., L.Vox, Comp & Dm Prog., Perc., Writer, artist, RCA

1982 Pamela Stephenson, Mr Wrong, Prod., Keys., Dms., Perc., Prog., Mix, Writer, Mercury

1982 Pamela Stephenson, Pretty Boys, Prod., Keys., Dms., Perc., Prog., Mix, Writer, Mercury

1982 Pamela Stephenson, Music Bitch Weekly, Prod., Keys., Dms., Perc., Prog., Mix, Mercury

1982 Pamela Stephenson, Italian Shoes, Prod., Keys., Dms., Perc., Prog., Mix, Writer, Mercury

1982 Spandau Ballet, Diamond, Producer, Mixer, Remixer, Percussion, Chrysalis



1982 Landscape, Manhattan Boogie-Woogie, Prod, LVox, Comp. & Dm Prog., Perc., Writer, art., RCA

1981 Shock, Dynamo Beat, Producer, Computer & drum Programming, Writer, RCA

1981 Spandau Ballet Journeys to Glory, Producer, Mixer, Remixer, Percussion, Chrysalis

1981 Landscape, Manhattan Boogie-Woogie, Prod., LV, Cmpt & Dm Prog., Perc., Writer, artist , RCA

1980 Visage, Visage, Fairlight, Computer and Drum Programming, Polydor

1980 Shock, Angel Face, Producer, Computer & Drum Programming, RCA

1980 Kate Bush, Never Forever, Fairlight Programmer, EMI

1979 Driver 67, Hey Mister Record Man, Drums, Logo Records

1979 Ian Carr, Jazzbuhne Berlin '79, Drums, Amiga

1979 Nucleus, Out of the Long Dark, Percussion, Capitol

1979 Neil Ardley, Harmony of the Spheres, Drums, Percussion, Decca

1979 Landscape, Landscape, Drums, Perc., Electronic Perc, Writer, artist, RCA

1979 Buggles, The Age of Plastic, Drums, Island

1979 James Wells, Explosion, Drums, AVI Records

1978 Landscape, Worker's Playtime, Drums, Percussion, artist, Event Horizon

1977 Easy Street, Under The Glass, Drums, Congas, Perc., Elec. Perc., artist, Polydor/ Capricorn

1977 Tony Visconti, Visconti's Inventory, Drums, Orchard

1977 Landscape, U2XME1X2MUCH, Drums, Percussion, Writer, artist, Event Horizon

1977 Charlie, No Second Chance, Percussion, Janus

1976 Easy Street, Easy Street, Drums, Percussion, artist, co-Producer Polydor/ Capricorn

1976 Robin Sarstedt, Drums, Percussion, London

1976 Barbara Dickson, Answer Me, Drums, Percussion, RSO Records

1975 Tim Rose, The Musician, Drums, Atlantic

1975 National Youth Jazz Orchestra, Return Trip, Drums, RCA

1975 Landscape, Thursday the Twelfth, Drums, Percussion, Artist, Jaguar

1971 Quincy Conserve, Epitaph, Drums, Percussion, EMI

1971 Suzanne, Drums, EMI

1971 Serenity, Piece of Mind, Drums, EMI

1971 Craig Scott, Smiley, Drums, EMI

1971 Hogsnort Rupert, Ways of Making You Laugh, Drums, EMI

1971 Shane, Straight Straight Straight, Drums, Percussion, EMI

### ***Articles***

2009 Smithsonian Folkways, Northern Irish Pipe Band Drumming (as yet unpublished), a study of Northern Irish Pipe Band Drumming

2008 Smithsonian Channel, The History of the American Drum Set (As yet unpublished) the multicultural history of the evolution and development of the American Drum Set

2008 Art of Record Production peer reviewed journal, Producer Compensation: Challenges and Options in the New Music Business, 6200 word article focusing on the challenges that producers are facing in seeking out sustainable sources of compensation in the changing music business environment of 2008.

1984 Trans Atlantic Films/ Channel 4, 4 American Composers by Peter Greenaway, Interviewed Philip Glass on camera regarding his work in the context of the history and development of 20th Century Music.

1981 Sounds, Einstein A Go-Go, review of the brand new Roland TR808 drum machine as part of a 12 page overview of new technology including Keyboards, Percussion, FX, TR808 etc

1982 Melody Maker, Synth Percussion: The New Age Beat (on the Musicians World Page). Evaluation of the present and future of technocussion including the Linn LM1, Roland TR808, TR606, Movement Computer Systems Percussion Synthesizer, Linn Drum, Oberheim DMX,

## Simmons Sequencer

1980, Musicians Only Road Test: The All Electronic Kit? A discussion of the capabilities of the, as then unreleased, SDS5 drum synthesizer.

1980 Musicians Only Road Test: What's the Use? Testing and reporting on the results of tests of AKG D12, D190 and D100 microphones.

1980, Musicians Only Staccato – with flare: Richard Burgess (Landscape) tests out the Cadency Theory Full page article reviewing the conceptually revolutionary Staccato flared drums

1980 Musicians Only Road Test: Fairlight Computer Keyboard Test of the very first commercial sampling machine the Fairlight CMI (cost £13,000) outside of Australia. RJB explains the system, its capabilities and shortcomings to Paul Colbert.

1979 Sound International, Skin and Syn: Drum Synthesis and Treatment examined by Richard Burgess, Six page comprehensive overview of the state of the art of electronic percussion

1979 Melody Maker, The Electric Almanac: Pew-pew-pewwww....! Review of the SDS3 drum synthesizer.

### ***Selected Features about Dr. Richard James Burgess***

1992 Audio Media, Tracks: Only U Ballad/Brand Nu Day, Feature on Praise Album and the use of the innovative and now obsolete quasi-surround sound technology Q sound and studio techniques and rationale utilized

1986 Sound Engineer and Producer, Going for Gold: Richard James Burgess – maintaining chart momentum

1982 Melody Maker, Talking Drums

1982 Eclectic Rock, The complete A-Z of Electronic Rock (Sb Publishing & Promotions Ltd

1982 International Musician, Picture This: Janet Angus brushes up on her Landscape Jun, 1981, The A-Z of Rock Drummers (pub. Proteus)

1981 Electronics and Music Maker, Landscape Explored. Discussion about the technology that RJB invented, discovered or used in an unusual or unique way with emphasis on the evolution of the sound creation and touch sensitivity features of the SDSV drum synthesizer, triggering it using MC-8 MicroComposer computer. Included the compositional rationale for and uses of technology and Landscape's innovative self-built 32 channel PA system using Quad 405 amps and Vitavox folded horn enclosures.

## ***Radio***

1984 BBC World Service, Let There Be Drums. Thirteen part BBC world service radio series featuring thirteen seminal rock drummers, negotiated, curated, wrote script, recorded, and presented.

## ***Television***

1984 Trans Atlantic Films/ Channel 4, 4 American Composers by Peter Greenaway, Interviewed Philip Glass on camera regarding his work in the context of the history and development of 20th Century Music. Many appearances on television as a musician and artist (performing and being interviewed) including the BBC's Top of the Pops from London, The Old Grey Whistle Test, Tomorrow's World, ITV's New Faces, Don Cornelius's Soul Train and other UK, US and European shows.

## ***Film Soundtracks***

1987 Tony Banks & Fish, Title track from Quicksilver, Producer., Dms., Perc., Prog., Charisma

1986 Nancy Shanks, About Last Night Producer, Programming, Percussion, Keyboards, EMI America

1986 Luba, Nine And A Half Weeks Remixer, Engineer, Percussion, Programming, Capitol

## ***Awards***

Music Week UK, Top Producer award;

British Arts Council, Young Musician;

Vitavox, Live Sound Award;

Park Lane Group, Young Musician Series

Greater London Arts Association, Young Jazz Musician,

Quadruple platinum album

Double platinum album

Two single Platinum albums,

Six Gold albums

Two Gold singles

Multiple Ampex Golden Reel awards

NARM Best Magazine Ad (Trade) 2006

One gold and two silver ADDY advertising awards

### ***Professional Affiliations***

MENSA

Society of Authors

Recording Academy (ex VP Board of Governors, DC, national steering committee member  
Producer and Engineer Wing)

Music Managers Forum (executive board member)

Musicians' Union (UK)

PPL (Phonographic Performance Ltd)

MCPS-PRS (Mechanical Copyright Protection Society-Performing Right Society)

Music Producer's Guild (UK)

Society for Ethnomusicology

Association for the Study of the Art of Record Production (executive committee member),

Journal on the Art of Record Production, Joint-Editor-In-Chief, (London College of Music)

Washington Area Music Association (WAMA)

### ***Miscellany***

Frequent Speaker

Panelist

Moderator

Facilitator

Debater

Guest lecturer on the topics of music, the music business, record production, entrepreneurship, marketing, intellectual property (related to music) and the impact of technology on the music industry. Taught drums privately, drum clinician for Pearl Drums.

## Appendix B

### DotMusic's Application Materials for .MUSIC

1. 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,"<sup>143</sup>
  - b) The "Community" was defined in 20A: "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,"<sup>144</sup>
  - c) According to the AGB: "[For] a community consisting of an alliance of groups, details about the constituent parts are required."<sup>145</sup> The defined Community's "constituent parts" were delineated based on music stakeholder type (i.e. member categories) in 20A: "[M]usic stakeholders [are] structurally organized using pre-existing, strictly delineated classes ("*DELINEATION*")";"<sup>146</sup>
  - d) 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

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<sup>143</sup> See .MUSIC Application, 18A. Also see 20C, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1392?t:ac=1392> (emphasis added)

<sup>144</sup> 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

<sup>145</sup> See AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, 4-12, Notes, 20(a)

<sup>146</sup> See Application 20A

- particularities” that “invoke a formal membership” without discrimination.”<sup>147</sup> Community cohesion was also established by member participation, alignment and compliance with DotMusic’s eligibility requirements, values, purpose and mission as described in 20E: “[O]nly eligible members of the Music Community who comply with the values, purpose and mission...can participate;”<sup>148</sup>
- e) Examples of other forms of Music Community “cohesion” included “commonly used [...] classification systems such as ISMN, ISRC, ISWC, ISNI [...]”<sup>149</sup>
- f) The breadth and size of the community defined 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’);”<sup>150</sup>
- g) With respect to “Pre-existence” and “Longevity” (i.e. transience into the future) DotMusic described in 20A that “the Community has bought, sold, and bartered music for as long (“LONGEVITY”) as it has been made... The foundation for the structured and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century (“PRE-EXISTING”),”<sup>151</sup>

<sup>147</sup> See .MUSIC Application, 20A, para.1

<sup>148</sup> *Ibid*, 20E

<sup>149</sup> *Ibid*, 20A, para.3; Also see DotMusic letter submitted to ICANN and the EIU on August 12<sup>th</sup>, 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](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](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](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](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

<sup>150</sup> See .MUSIC Application, 20A, para.4 at

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

<sup>151</sup> *Ibid*, 20A, last paragraph



- h) The “Name” of the community defined was described in 20A: “The name of the community served is the ‘Music Community’ (‘Community’);”<sup>152</sup>
- i) 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.”<sup>153</sup> 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;”<sup>154</sup>
- j) According to the DotMusic Application Materials and Support letters, the Community members’ “requisite awareness and recognition” of the community defined was met through the proactive, explicit and purposeful action of submitting expressed letters of support that were aligned cohesively with DotMusic’s articulated Mission and Purpose: “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;”<sup>155</sup> “To be aligned with its Mission, DotMusic has focused on expressions of support that cover an all-inclusive global, balanced and multi-stakeholder representation of the Community, as delineated in response to question 20(a), that collectively represents the majority of the recognized Community by size;”<sup>156</sup> and “[...] the Community relates to the ... constituents represented or covered by the recognized institutions, federations, associations, organizations, Coalitions or any other music entities that have expressed their support.”<sup>157</sup> Member “requisite awareness and recognition” of the Community addressed was also established by member participation, alignment and compliance with DotMusic’s eligibility requirements, values, purpose and mission as described in 20E: “[O]nly eligible members of the Music Community who comply with the values, purpose and mission...can participate;”<sup>158</sup> and
- k) According to the DotMusic Application Materials and 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.”<sup>159</sup>

<sup>152</sup> *Ibid*, 20A, para.1

<sup>153</sup> *Ibid*, 20A, para.3 (emphasis added)

<sup>154</sup> *Ibid*, 20D, para.1 (emphasis added)

<sup>155</sup> *Ibid*, 20D, last paragraph

<sup>156</sup> See Application 20F at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, p.2

<sup>157</sup> *Ibid*

<sup>158</sup> See Application 20E

<sup>159</sup> 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

2. DotMusic also submitted “Public Interest Commitments” (PIC) with ICANN.<sup>160</sup> Both ICANN Staff and the BGC reviewed DotMusic’s PIC and determined that the PIC and the PIC Clarifications were “fully consistent with the [DotMusic’s] application for .MUSIC.”<sup>161</sup> The PIC document was also utilized by the CPE Panel during DotMusic’s CPE process as a clarification document as part of DotMusic’s Application Materials to verify statements from DotMusic’s Application<sup>162</sup> (emphasis added). According to its “Enumerated DotMusic Public Interest Commitments,” DotMusic “affirms its commitment to run a responsible TLD under a community-based governance structure, consistent with the following commitments and obligations,” including:

3. A commitment to not discriminate against any legitimate members of the global music community by adhering to the DotMusic Eligibility policy of non-discrimination that 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<sup>163</sup> [...]

4. ...DotMusic Limited commits to its Eligibility policy as explicitly stated in DotMusic’s Application to exclude those with a passive, casual or peripheral association with the applied-for string<sup>164</sup> [...]

5. A commitment that the string will be launched under a multi-stakeholder governance structure of representation that includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents, as explicitly stated in DotMusic’s Application. As explicitly stated in its Application, DotMusic commits to: i. uphold its Community definition of a “logical alliance of communities of

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<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>. According to the Worldwide Independent Network and MIDiA Research, DotMusic supporting organizations (representing the majors and the independents), constitute nearly all music consumption. See Worldwide Independent Market Report, “Global Music Market Share Model (05/16),” p.28 at <http://winformusic.org/files/WINTEL%202015.pdf>.

<sup>160</sup> See DotMusic Public Interest Commitments (PIC) at

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

<sup>161</sup> See Minutes Board Governance Committee (BGC) Meeting Minutes, May 6, 2015, Reconsideration Request 15-6, Item 4 at <https://www.icann.org/resources/board-material/minutes-bgc-2015-05-06-en>

<sup>162</sup> For example, the DotMusic CPE Report shows that the EIU read and referenced the PIC as part of their CPE determination and grading: “The application also references a dispute resolution process, and provides a clear description of an appeals process in the Public Interest Commitments (PIC). The PIC was utilized to verify that the applicant has appropriate appeals mechanisms.” See DotMusic’s .MUSIC CPE Report at <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, p.7

<sup>163</sup> See DotMusic Public Interest Commitments (PIC) at

<https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>, p.1

<sup>164</sup> *Ibid*, p.2

similar nature that relate to music” to incorporate all Music Community members.<sup>165</sup>

3. DotMusic also provided an Appendix to the Public Interest Commitment (PIC) document, for which ICANN added a disclaimer to on May 8, 2015 that it was provided “as clarification to the information provided in the PIC.” The PIC “Appendix PIC Clarification” section clarified its Commitments in relation to its Application’s Community definition that restricted only members that have the requisite awareness of the Community defined associated with the .MUSIC string:

A. Commitment of Community all-inclusiveness, non-discrimination and multi-stakeholder governance: The applied-for string (.MUSIC) will be governed under a multi-stakeholder model and will be restricted to only members of the Community (defined in the Application as “a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) who have an active, non-tangential relationship with the applied-for string and the requisite awareness and recognition that they are a part of the defined Community.<sup>166</sup>

4. Inter alia, the PIC document clarifies that:

The Community definition is a logical alliance of strictly delineated and organized communities of a similar nature relating to music. This defined Community and the expressions of support for the DotMusic Application represent a majority of the overall music community with a clear and straightforward membership. 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).<sup>167</sup>

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 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.<sup>168</sup>

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<sup>165</sup> *Ibid*, p.2

<sup>166</sup> See PIC, Appendix PIC Clarification, p.5

<sup>167</sup> See PIC Appendix PIC Clarification, p.6

<sup>168</sup> *Ibid*, p.10

As stated in DotMusic’s Application, the Community must have the requisite awareness and recognition from its members, who in turn must meet clear and straight-forward membership criteria with the Community:<sup>169</sup> *“The Community and the .MUSIC string share a core value system...subscribing to common ideals. (Application Answer to Question 20d).”*<sup>170</sup>

The defined Community is delineated and organized because it operates in a regulated sector that uses numerous globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless whether the constituent is a commercial, noncommercial or amateur entity: [...] *“such as ISMN, ISRC, ISWC, ISNI). (Application Answer to Question 20a).”*<sup>171</sup>

DotMusic expects that the substantial majority of all of its registrations will originate from the music entity type classified as “Musical groups and artists” (e.g. See North American Industrial Classification System (NAICS) code 71113020 or the United Nations Industrial Classification (ISIC) code 921421). All music constituent types that are associated with the string must have a relationship with “music” and have the requisite awareness of DotMusic’s defined Community to be part of the Community. In accordance with its articulated community-based purpose, DotMusic commits that all music constituent types are eligible for registration.<sup>172</sup>

The defined Community -- the clearly delineated and organized logical alliance of communities related to music -- represents the entire global Music Community in terms of size, locale extension and type: *“The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders (Application Answer to Question 20c).”*<sup>173</sup>

While some music constituent types in DotMusic’s definition and classification might comprise a minority in numbers (e.g. music lawyers) when compared to the primary and core constituent classification type (music groups and artists), the inclusion of every music constituent type is paramount to the purpose of the string. Every music constituent type critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent

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<sup>169</sup> *ibid*

<sup>170</sup> *ibid*

<sup>171</sup> *ibid*, p.11

<sup>172</sup> *ibid*

<sup>173</sup> *ibid*, p.13

types. The inclusion of all music constituent types serves the public interest because it ensures the Community matches the nexus of the string without discrimination, while excluding peripheral, casual entities with a tangential relationship with the Community defined who would not otherwise have any fundamental need for a .music domain given the string's articulated community-based purpose and the string's Content and Use requirements that mandate that usage only relates to music activities and licensed, legitimate music content.<sup>174</sup>

All components of the Application's Community Definition, Delineation and Registration Polices are not mutually exclusive. They must all be met to ensure eligibility and a successful .music domain registration.<sup>175</sup>

The .MUSIC string is restricted to only music Community members with the requisite awareness of the Community as explicitly stated in DotMusic's Application.<sup>176</sup>

Eligibility: Only members of the Community can register a .music domain and must have a clear membership with the defined Community. As explicitly stated in DotMusic's Application, all members of the Community must have a clear membership and the requisite awareness and recognition of the Community they belong to since they have taken pro-active affirmative action to be part of the Community defined (i.e. they opted-in the Community in a formal, straight-forward manner). These eligibility policies ensure that casual entities with a tangential relationship with music and pirates are excluded since they compromise the Purpose of the applied-for string and would not otherwise have a legitimate claim or reason to register a .music. [...] If a member is determined not to be a member of the Community then the registrant would be violating DotMusic's Eligibility criteria resulting in the suspension of the registered .music domain.<sup>177</sup>

5. Inter alia, DotMusic's PIC document re-clarifies that:

The definition of the Community is "a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music. Supporting music-related organizations of relevance constituting a majority of the Community are referred to in the Application as Music Community Member Organizations ("MCMOs"). MCMOs require .music-accreditation from DotMusic which meet community-

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<sup>174</sup> *ibid*, p.15

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*, p.16

<sup>177</sup> *ibid*, p.19

based criteria consistent with ICANN Applicant Guidebook's criteria for Community Establishment.<sup>178</sup>

DotMusic's definition of the Community covers all Community members associated with the string with a requisite awareness of the Community validated through their straight-forward association with a music-related community they identify with. 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.<sup>179</sup>

The defined Community and expressions of support serve the public interest because they represent a majority of the overall music community with a clear and straightforward association and the requisite awareness of participation in the Community as defined. DotMusic's MCMOs collectively represent a majority of the Community.<sup>180</sup>

6. DotMusic's PIC document also describes several "recognized" organizations "mainly dedicated" to the community addressed, such as A2IM, the organization I am the CEO of.<sup>181</sup>

A clear example of an "entity dedicated to the community" with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application, which if accepted requires annual membership dues.<sup>182</sup>

According to DotMusic's PIC document, the "reach of A2IM Associate membership covers hundreds of millions of entities."<sup>183</sup> Members include "organized and strictly delineated communities related to music"<sup>184</sup> with member types that are representative of the DotMusic's defined community in its entirety, including all music constituent types delineated in DotMusic's Application. Furthermore, "A2IM has Affiliate

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<sup>178</sup> PIC, Appendix B, p.48 of 311

<sup>179</sup> *Ibid*

<sup>180</sup> *Ibid*, p.49 of 311

<sup>181</sup> Also see DotMusic Application 20F, DotMusic Support Letters, A2IM at

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, pp. 22 to 26 of 413

<sup>182</sup> PIC, Appendix B, p. 54 of 311

<sup>183</sup> For example, the music community of A2IM Associate Member Soundcloud has over 12 million music creators with a catalog of over 135 million tracks serving over 175 million music listeners. See <https://blog.soundcloud.com/2016/08/23/soundcloud-brings-music-fans-135-million-tracks>, August 23, 2016.

<sup>184</sup> *Ibid*

associations within the global music community. These include Affiliates such as MusicFirst, the Copyright Alliance, the Worldwide Independent Network (WIN) and Merlin. A2IM also represents a Coalition representing the interests of the Global Independent Music Community.”<sup>185</sup> “Cumulatively, A2IM’s Label and Associate Membership, A2IM’s Affiliates and the A2IM’s Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size.”<sup>186</sup>

## Independent Expert Testimonies

7. DotMusic submitted forty-three (43) independent expert testimony letters to ICANN and the Panel that agreed unanimously that DotMusic met the Community Establishment, Nexus and Support criteria.<sup>187</sup> The experts were Dr. Mike Alleyne, Professor Bobby Borg, Stella Black MM, Dr. Sharon Chanley, Dr. Dimitris Constantinou, Dr. Brian E Corner, JD Matthew Covey Esq, Dr. Juan Diego Diaz, Dr. Wilfred Dolfisma, Professor Andrew Dubber, Dr. Kathryn Fitzgerald, Dr. Luis-Manuel Garcia, Dr. Nathan Hesselink, Dr. Jordi Janer, Dr. Manthos Kazantzides, Dr. Juliane Jones, Lecturer David Loscos, Lecturer David Lowery, Dr. Paul McMahan, Dr. Michael Mauskapf, Dr. Joeri Mol, Dr. Askin Noah, Dr. Lisa Overholser, Lecturer Dr. Dean Pierides, Dr. David Michael Ramirez II, Dr. Rachel Resop, Dr. Jordi Bonada Sanjaume, Jonathan Segal MM, Dr. Graham Sewell, Dr. Shain Shapiro, Dr. Jeremy Silver, Dr. John Snyder, Dr. Tom ter Bogt, Dr. Chauntelle Tibbals, Dr. Wendy Tilton, Professor Heidy Vaquerano Esq, Dr. Vassilis Varvaresos, Dr. Argiro Vatakis, Dr. Dimitrios Vatakis, Dr. Deborah L Vietze, Dr. Eric Vogt, Professor Jeffrey Weber Esq and Dr. Daniel James Wolf.
8. Dr. Jørgen Blomqvist is the Honorary Professor of International Copyright at the University of Copenhagen. Dr. Blomqvist 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. Blomqvist was Director of the Copyright Law Division at the World Intellectual Property Organization (WIPO). Dr. Blomqvist is active in international development cooperation undertaking various ad-hoc assignments from WIPO, the European Commission and the Danish Patent and

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<sup>185</sup> *Ibid*, p. 55 of 311

<sup>186</sup> *Ibid*, p. 56 of 311

<sup>187</sup> 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>

Trademark Office. In addition, Dr. Blomqvist is the Secretary of the Danish Copyright Association and the Danish Group of the International Literary and Artistic Association.

Dr. Blomqvist has worked with copyright since 1976. From 1976 to 1990 as Secretary of the Copyright Law Review Commission under the Ministry of Culture, Dr. Blomqvist played a central role in the preparation of the comprehensive law reform of 1995, and for a number of years was also Legal Advisor and Deputy General Manager of KODA, the organization managing the performing rights of composers, writers and music publishers. Dr. Blomqvist obtained his Ph.D in 1987 on transfer of copyright ownership. In 1992, Dr. Blomqvist was employed by the WIPO, a United Nations specialized agency in Geneva, from which Dr. Blomqvist recently retired as the Director of the Copyright Law Division. Dr. Blomqvist is counted among the leading experts in international copyright in the world with 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. Blomqvist was awarded the 2015 Koktvedgaard 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. Blomqvist has also authored the book "Primer on International Copyright and Related Rights."<sup>188</sup>

9. On June 17<sup>th</sup>, 2016, Honorary Professor Dr. Jørgen Blomqvist provided ICANN with an Expert Legal Opinion that established that DotMusic's Application exceeded the criteria to be awarded Community Priority under CPE, meeting the CPE requirements under the Community Establishment, Nexus and Support sections.<sup>189</sup> Dr. Blomqvist concluded:

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. 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).<sup>190</sup>

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<sup>188</sup> Honorary Professor, Dr. Jørgen Blomqvist, Expert Legal Opinion, *About Honorary Professor Dr. Jørgen Blomqvist*, June 17, 2016, pp.3 to 6 at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>,

<sup>189</sup> Honorary Professor, Dr. Jørgen Blomqvist, Expert Legal Opinion, June 17, 2016 at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>

<sup>190</sup> *Ibid*, ¶¶ 76-77, p.49



## The Independent Nielsen QuickQuery Poll

10. Before the .MUSIC CPE commenced, DotMusic submitted an independent poll conducted by Nielsen<sup>191</sup> 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" "commonly-known by others as the name of the community" addressed was the "Music Community"<sup>192</sup> and the definition of the "Community" addressed was "a logical alliance of communities of individuals, organizations and business that relate to music."<sup>193</sup> The independent Nielsen QuickQuery survey was conducted from August 7, 2015, to August 11, 2015, with 2,084 neutral and diverse adults.<sup>194</sup> The survey examined whether or not the applied-for string (.MUSIC) was "commonly-known" and associated with the name 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: (i) that the applied-for string (.MUSIC) corresponds to the name of community addressed by the application (the "music community"); and (ii) that the "music community" definition is "a logical alliance of communities of individuals, organizations and business that relate to music."

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<sup>191</sup> See Nielsen QuickQuery at <http://sites.nielsen.com/meetquickquery/?cid=emtechcrunchquickquery>

<sup>192</sup> 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

<sup>193</sup> 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

<sup>194</sup> 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