



August 27th, 2013

## Introduction

DotMusic welcomes the opportunity to comment on ICANN's Revisions to Rights Protection Mechanism (RPM) Requirements. RPMs must ensure that if they are launched in a manner that protects intellectual property rights holders which are highly relevant to each string, not a "blanket license" opportunity for intellectual property owners to claim domains in classifications their trademark does not belong in.

A balanced approach must be followed, lest the RPM create its own "abuses" that could hobble the ability of gTLDs to effectively operate and protect their community. Moreover, any final decision on the RPMs must balance the appropriate scope of intellectual property rights with the fact that each community string has an inherent central focus, identity and purpose to promote. If a Registry Operator has included a Globally Protected Marks List (GPML) in their Application it must be given priority to any other mechanism to serve the interests of those intellectual property holders conducting business in the relevant classes corresponding to the string in question. Therefore, DotMusic respectfully seeks the appropriate amendments to and exceptions from the RPMs that will allow specific strings (those with community identities be they subject, geographic, or business specific) to be allowed to have a robust and effective pre-Sunrise Founder's Program – one that allows the Registry to launch while giving priority to those entities, persons and businesses that have a nexus to the community.

## Allocation of Names for Registry

DotMusic respectfully requests that the proposed language of Section 2.2.5 be modified to allow Registry Operators to protect as many names as needed to protect the intellectual property interests of relevant, famous marks involved in the classes or business pertinent or related to the string, in this case, the music community. The Proposal for Allocation of 100 names is an arbitrary proposal which is insufficient in cases where communities are large and in strings where there are many famous marks pertaining to the activities in question. In the case of the music community, there are literally thousands of famous music artists and brands. Allocating merely 100 is unrealistic, ineffective and creates unintended consequences, including the impossibility of determining which 100 famous Marks (or famous artists) should be given such a priority. ICANN should allow Registry Operators to fully protect all famous Marks that are pertinent to their corresponding string without such arbitrary limitations. It is a priority to protect the interests of the most famous artists given their popularity on the Internet and high likelihood of abuse by illegitimate registrants or pirates.

Globally Protected Marks Lists (famous marks highly relevant to a string) should be given priority over any Sunrise Registration. While we respect brand rights and the laudable intent behind the existing limitations, the limitations and arguments in favor of such restraints have the potential to squash the ability for any community and subject or geographic specific gTLD to effectively launch and promote the community. Any "abuses" can be addressed without limiting the ability of a community from promoting itself in a proper manner. For example, Marks such



as “Universal” (major music label) or “Prince” (music artist) under the string .MUSIC should be protected and reserved only for those famous entities that have activities highly associated with the string. Validated entries in the Trademark Clearinghouse should not be given blanket, universal protection across all strings if their class(es) or business activities is/are unrelated to the string in question.

### **Registry Operator’s Community-Based Founders Program**

Each community-based Registry Operator should be allowed to reserve semantic keywords that are highly relevant to their respective string’s community, even if these terms are trademarked words. For example, in the case of a music-themed gTLD, semantic words (such as “Pop,” “Rock,” “Rap”) or cultural/location-based words (such as “Latin”), and so forth, should not be allowed to be given registration priority to a trademark holder if the Registry Operator has them reserved in their Founder’s Program to serve the interests of its Community given their semantic significance to the string in question and to serve its community and the global public interest. Furthermore, registries must be allowed to launch a Founders’ Program that allows prominent entities (or Music Community Member Organizations) in the respective community to register and promote domain names to benefit those corresponding communities.

### **Community-based Music Community Member Organization Sunrise**

DotMusic’s community-based .MUSIC objective is to ensure all relevant music-related entities register their names and cybersquatting is mitigated. In order to ensure .MUSIC is launched in a responsible manner, all registrations must have a music-related Use and Eligibility to serve the music community as described in our community-based Application. Any entities not related to the music space should not be allowed to register .MUSIC domains because it would compromise the DotMusic Application (which has passed Initial Evaluation), its community-based purpose and its content quality focused exclusively on music. This means the DotMusic Registry should give priority to those organizations and individuals with a nexus to music. Others – including trademark holders – who have no association with music and do not meet DotMusic’s community-based Application’s eligibility policies should not be allowed to register.

While we understand the TMCH is intended to do so, it should be clear that trademark holders are not to be given any priority if their rights are unrelated to the class of music or do not pass our Application’s Eligibility, Name Selection or Use policies. If this is the case, then an appropriate, robust, yet protective Founder’s Program should not present a problem for rights holders. Conversely, allowing such an ineffective TMCH mechanism to be given priority would create detrimental unintended consequences, compromise the quality level of the .MUSIC string (indeed any community string) and limit the adoption of .MUSIC by the music community. Entities with businesses or trademarks unrelated to music activities should not be given any trademark priority in the string. Any new proposals that are not in the Applicant Guidebook, and which compromise DotMusic’s community-based .MUSIC application objectives and intellectual property protection mechanisms should also be rejected.

The mechanisms proposed in our community-based application serve the music community because they ensure the string is launched in a responsible manner and that .MUSIC



registrants are validated, have legal activities in the music space and only reserved for those that pass the music-related eligibility criteria. These policies were created to ensure .MUSIC is successfully adopted by the music community and those music entities with intellectual property rights in the music sector. Our community-based application has a registration period reserved for Music Community Member Organizations (MCMOs) with hundreds of thousands of highly relevant music members. This period is critical to the success of the community-based .MUSIC string because it ensures all relevant music entities can register their domains and the .MUSIC string is adopted by the most highly relevant entities only associated to the music space. It is also significant to mention that the MCMOs have given support for the DotMusic community-based application relying on our launch, enhanced safeguards and intellectual property mechanisms that were incorporated to serve the music community.

Any changes made by ICANN that negatively affects the way the .MUSIC string is launched, creating trademark loopholes that could be abused by parties which do not meet the .MUSIC Eligibility/Use criteria and the Application's music-focused policies. The music community that has supported DotMusic (<http://music.us/supporters.htm>) relied on these crucial policies to give their support. Any new policies adopted by ICANN that compromise the Application's community-based purpose or its music-centric policies will be deemed as Material Changes<sup>1</sup> negatively affecting the DotMusic Application, the music community and DotMusic's highly-crucial Launch phases which were set-up to protect music entities with intellectual property rights and to prevent domain registration abuse.

DotMusic concludes that legitimate rights should be protected in a manner that is most appropriate for each corresponding string. If the string is generic in nature – such as .WEB, .SITE or .ONLINE – a TMCH generic approach to trademark clearance is most appropriate. If a string targets a specific audience and classification – in this case music-related activities – then the string's intellectual property mechanisms should reflect that. Giving a blanket license to intellectual property holders with trademarks registered in unrelated classes should not be allowed because they have no rights to register domains if their trademarks do not cover those classes. Community-based Applications – such as that of DotMusic – have incorporated additional and alternative intellectual property mechanisms to serve the relevant communities in question. ICANN must allow trademark validation alternatives to the ICANN-designated TMCH if deemed appropriate, especially given the TMCH limitation of focusing primarily on a few global, famous brands, not smaller trademark owners (in this case artists from different countries).

We look forward to resolving these outstanding issues to protect music intellectual property holders and all relevant stakeholders in the music community.

Respectfully Submitted,

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<sup>1</sup> <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>