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April 24, 2016

Re: DotMusic Public Comments on Amazon's Launch of Registration Authentication Platform for .MOI TLD

Amazon's change request to its .MOI gTLD Registry Agreement (the "Request") requires a material change to its respective Registry Agreement with ICANN. As such, an amendment is needed in order to effect the change requested by Amazon. The amendment requires the Registry Operator to provide, receive, and validate authentication tokens from registrars via EPP. As part of this Registry Service, Amazon would also be permitted to offer optional customer value products and/or services. As described in Amazon's RSEP request:

[t]he Registry may offer the customer the opportunity to select technology tools or applications to support use of the .MOI domain name of interest (collectively, "Technology Tools"). The Registry may also offer to the customer ancillary products or services (other than the Technology Tools) to further complement the customer's use of the domain name of interest. Customers will not be required to purchase Technology Tools or the offered ancillary products or services in order to register and use a .MOI domain name.¹

However, Amazon is required to obtain prior approval pursuant to the Registry Services Evaluation Policy ("RSEP")² before offering a customer value product or service that is a Registry Service, provided that the offering of a customer value product or service on the Registration Authentication Platform will not cause such a customer value product or service to be a Registry Service. According to Amazon's RSEP request:

Amazon Registry reached out to several registrars to have general discussions about their experience with pre-registration policy verification and how that experience (including customer experience) could be improved. Any consultations that may have occurred regarding the Technology Tools and the ancillary products and services would have occurred subject to a Mutual Non-Disclosure Agreement and cannot be disclosed.³

It is noted that in the past, DotMusic has opposed Amazon's exclusive access policies via Community Objections filed with the International Chamber of Commerce (in the cases of Amazon's exclusive access Applications for .MUSIC, .SONG and .TUNES). DotMusic also filed two Reconsideration Requests with the ICANN Board Governance Committee concerning Amazon's exclusive access applications for .MUSIC, .SONG and .TUNES:

¹ <https://www.icann.org/en/system/files/files/rsep-2014162-moi-request-21dec15-en.pdf>, p.1

² <http://www.icann.org/en/registries/rsep/rsep.html>

³ <https://www.icann.org/en/system/files/files/rsep-2014162-moi-request-21dec15-en.pdf>, p.2



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1.
 - i. *For not properly supervising and ensuring that appropriately qualified Expert candidates of the International Chamber of Commerce (“ICC”) were a) selected; and b) adequately, trained to address the unique issues presented by Community Objections and the gTLD Program. The community expected that the ICC would be required to appoint and advise an appropriately qualified “expert,” (not just an arbitrator) familiar with the unique needs and requirements presented in the gTLD Program, intellectual property and anti-competitive issues, and the needs and composition of the relevant community (e.g. a music or intellectual property expert for music-themed Objections);*
 - ii. *For not recognizing the relevance and impact of the exceptional GAC Advice on the Community Objection process and Community Applicants, and in not advising the ICC and Community Objection Panelists on the GAC Beijing Communique of April 11, 2013 and subsequent GAC related issues: Responses to GAC Advice, Board Resolutions, Material Changes in Applicant positions through their GAC Advice Category 2 Exclusive Access Responses, and revisions to the new gTLD Registry Agreement that addressed GAC Concerns pertaining to exclusive access which were directly related to the anti-competitive issues raised in Community Objections;*
 - iii. *For not creating an appropriate appeal process for Community Objections and denying parties procedures to protect their fundamental rights and legitimate interests.⁴*
2.
 - i. *For approving material change requests in reference to Amazon’s exclusive access Applications for .MUSIC, .SONG and .TUNES. ICANN failed to apply (let alone balance) the 7 criteria required by the Applicant Guidebook (AGB, Section 1.2.7) to approve a change request and has allowed Amazon to make significant material changes, such as materially altering their mission statement (Question 18) by deleting all exclusive access language. Other relevant changes included Questions 22, 28, 29, 46, 47, 48, 49, and 50;*
 - ii. *For failing to recognize the material relevance and impact of the exceptional GAC Advice on new binding contractual material changes in the Program arising from GAC Toronto and Beijing Communique and subsequent GAC Category 2 Exclusive Access Advice, related NGPC Resolutions and revisions to the new gTLD Registry Agreement⁵ that provide that registry operators of a “generic string” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (2.9(c) of Registry Agreement. Such changes are material changes to the new gTLD Program which have been accepted by the ICANN NGPC in Resolutions;*
 - iii. *For failing to take into consideration the significant financial and legal costs imposed on both Legal Rights Objectors and Community Objectors and their corresponding communities who objected against the exclusive access language that was removed by Amazon in its new version of the Applications for .MUSIC, .SONG and .TUNES that was*

⁴ DotMusic Reconsideration Request 13-22, <https://www.icann.org/en/groups/board/governance/reconsideration/13-22/request-dotmusic-23dec13-en.pdf>



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approved by ICANN as a non-material change. Amazon defended its exclusive access language position in all Legal Rights Objections and Community Objections proceedings with the International Chamber of Commerce (ICC) and the World Intellectual Property Organization (WIPO). This material language was deleted in the updated versions of these Applications that were previously objected-to. Amazon's updated Applications have completely deviated from Amazon's position in all of the Objections (relating to .MUSIC, .SONG and .TUNES) by removing the entire language that was objected-to. Without such language such Objections would not have been filed (emphasis added). Such action by Amazon to remove material language from their .MUSIC, .SONG and .TUNES Applications proves beyond reasonable doubt that Amazon was providing misleading and false information to Panelists and highlights the inappropriateness and material harm their Applications posed to the Objectors consistent with the position of the Objectors;

- iv. *For failing to take into consideration the .MOBILE Expert Determination against Amazon which was upheld based on same exclusive access language found in the Applications for .MUSIC, .SONG and .TUNES (which were identical to those for .MOBILE). Amazon's new versions for .MUSIC, .SONG and .TUNES were approved by ICANN despite the critical deletion of the original applications' exclusive access language (While highlighting that the Amazon Application for .MOBILE was an exact match to the .MUSIC, .SONG and .TUNES Amazon Applications); and*
- v. *For failing to take into consideration DotMusic's Re-Consideration Requests relating to material changes in Amazon's Applications, inconsistent decisions and the provision of misleading, false and self-serving information by Applicants to Panelists to circumvent Objections... It is clear that ICANN is treating certain Applicants differently...ICANN was already notified that such inaction harms other Applicants in the contention set and Objectors but still decided to ignore its accountability mechanisms and such a reasonable, consistent and transparent request to ensure equal treatment and non-discrimination of Applicants in the new gTLD Program.⁵*

DotMusic also filed public comments on the ICANN New gTLD Program microsite on May 26, 2014 objecting to Amazon's material change requests for .MUSIC,⁶ .TUNES,⁷ and .SONG⁸ that were improperly accepted by ICANN in violation of established processes and ICANN's Bylaws.

⁵ DotMusic Reconsideration Request 14-28, <https://icann.org/en/system/files/files/request-dotmusic-07jun14-en.pdf>

⁶ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12481>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12480>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12479>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12478>

⁷ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12489>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12488>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12487>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12486>

⁸ <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12485>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12484>
<https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12483>
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Amazon filed a material change Request to its .MOI Registry Agreement that appears to resemble policies for an exclusive access registry. This may be an attempt to create precedent to introduce similar restricted policies for other Amazon-operated generic strings. DotMusic cannot provide adequate public comments on Amazon's "*Launch of Registration Authentication Platform for .MOI TLD*" policies because they are not detailed completely in its Request. Amazon admittedly states that Amazon cannot disclose precise details on the .MOI "*pre-registration policy verification*," its "*Technology Tools*" and the "*ancillary products and services*" without a "*Mutual Non-Disclosure Agreement*." As such, it is difficult to effectively provide public comments on whether such a Request would benefit the public interest or not (i.e. whether social benefits exceed social costs).

Amazon's Request for .MOI appears to be another attempt by Amazon to find a workaround for its original exclusive access application language that DotMusic opposed on generic strings (specifically for .MUSIC, .TUNES and .SONG). It is noted that Amazon's TLDs are not community-based that would warrant sensible restrictions, community-tailored policies and enhanced safeguards to serve a particular community's legitimate interests.

DotMusic requests that ICANN denies Amazon's Request because Amazon's complete registration policies are not publicly disclosed and lack clarity. In light of Amazon's exclusive access registry history, Amazon's requirement of signing a Non-Disclosure Agreement ("NDA") to reveal critically-relevant registration policies is problematic. Material amendments with respect to Registry Agreements for generic strings should be publicly and transparently disclosed in full prior to any ICANN reasonable deliberation and potential acceptance of such a request.

Respectfully Submitted,

Constantine Roussos
Founder

DotMusic
<http://www.music.us>