



.MUSIC
 468 N. Camden Drive, Suite 123
 Beverly Hills, CA 90210, U.S.A
 Tel: +1 310 985 8661
 Email: costa@music.us

Response by .MUSIC on the Expression of Interest initiative for new gTLDs

The .music gTLD initiative is powered by Music.us, a multi-stakeholder community led by musicians, bands, artists, producers, engineers, managers, record labels, publishers, promoters, performance rights organizations, government music export offices & arts councils, industry associations, non-profit organizations, music societies, broadcasters, DJs, podcasters, studios, retailers, music conferences & expos, digital aggregators, digital stores, instrument & music software manufacturers, distributors, educational universities & institutions, music educators, researchers, music consultants, researchers, music lawyers, journalists, writers, music community websites and other music industry professionals.

The demand for the .music gTLD powered by Music.us can be quantified in mere numbers: We have amassed nearly 1,000,000 signatures on our Music.us site and over 400,000 followers on Twitter and Myspace alone, supporting the .music initiative which is comprised of:

- Launching the .music gTLD
- Supporting our 23-point initiative for the global music industry
- Representing multiple stakeholder interests represented by our rotating Board
- Providing innovation via our 360-degree commercial platform powered by Music.us to help the music community monetize on their works/services, fight piracy and connect with other .music members and music fans.

In response to the Expressions of Interest proposal by ICANN:

- 1) How do we ensure that participation in the EOI accurately represents the level of interest?

Oral interest claims hold no legal or financial implication and represents the biggest hurdle for ICANN in regards to determining how many new gTLDs will be applied for and launched. ICANN's approach on this important issue has been one of pure guesswork and ineffective economic studies. Economic studies can help but do not offer the most concrete form of evidence for interest. The reality of new ventures in business is that only the market can determine if a company is successful or not.

With that said, the only way to figure out the true representation of the number of applications and corresponding strings is to require applicants to put down at least \$50,000 or the proposed ICANN full amount of \$185,000 per gTLD string applied for. There might be concessions for some non-profit entities or less-financially privileged groups in regards to the fee. If the string they are applying for is similar but in a different language (gTLD IDN of their Latin-based string), then the additional fee is significantly reduced since the application still is the same, with only the language of the translated string changing.

For someone to participate there must be an incentive to do so. This means participation is mandatory as well as binding. The fee must be consistent with ICANN's goal of requiring serious entities with financial backing to manage new TLDs.



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- 2) Should only those who participate in the EOI be eligible to participate in the first round when the program officially launches?

Yes. Only the serious entities should be allowed to participate in the round. If the EOI is optional, there is no incentive to participate. Also there must only be one round not two because participants will choose to opt-out of the first and only participate in the second if the first round is not binding.

- 3) Should a deposit be required for participation in the EOI?

Yes. The fee should be consistent with ICANN's \$185,000 application fee. The full price will accurately correspond to the exact number of applications. However, a \$50,000 deposit can be sufficient to provide ICANN with accurate information about the number of applicants and strings.

Choosing lower fees will invite frivolous bids as well as provide with ICANN inaccurate numbers as well as a plethora applicants that are not committed entirely to the process and new gTLDs. Serious, competent and committed applicants will have no problem giving a deposit if they know there is progress being made in the whole gTLD process and it benefits both ICANN and the applicants in general.

- 4) If there is a fee, under what circumstances should there be refund?

Refunds should be given by ICANN if the entire application process is abandoned by a certain date. In the case of 2-character IDNs, there should be a refund if ICANN chooses not to go with 2-character IDN gTLDs. These are examples of .music translated in multiple languages that result in 2-character string gTLDs:

.音乐 (Chinese)
 .音楽 (Japanese)
 .음악 (Korean)

If ICANN makes 2-character IDN gTLDs invalid, then a refund should be made for the corresponding applied-for strings.

- 5) What information should be collected from EOI participants?

The information collected should be as accurate, simple and measureable as possible. Our recommendation:

- The string
- The applying entity
- Contact info
- Application type:
 - Standard e.g .web
 - Geographic e.g .nyc
 - Single-stakeholder community e.g .gay
 - Multiple-stakeholder community e.g .music



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It is important that disclosure of all information is made public for all to see. This will identify potential trademark abuse, enable accurate economic studies, allow for early conflict resolution, and identify possibly public order issues.

6) Must the responder commit to go live within a certain time of delegation?

This is a case by case scenario, especially for brand name gTLDs. However, if the extension is a generic and is of general public interest then a commitment to launch must be made.

7) What are the implications for potential changes to the Applicant Guidebook after the EOI participation closes?

The advantages of the EOI is that it will provide ICANN with the relevant information it needs to improve upon issues such timing and costs associated with the gTLD launch as well as overarching issues such as stability and root scaling.

Solving the overarching issues in the future applicant guidebook, that are regarded as the missing components, will have no bearing to the level of interest from applicants since those issues are beyond the control of any applicant. For example:

Economic Demand

There is economic demand for .music, which is highlighted by the support of multi-stakeholder community groups, musicians and the Internet community at-large. Our .music initiative petition has reached 1 million signatures and we have amassed over 400,000 followers across social media sites such as Twitter, Myspace and Facebook alone. Under the same token, the demand for other gTLD strings reflects the interest of other niche interest groups that would like to be represented on the Internet.

Today's Internet users identify themselves via email addresses, domain names as well as selecting vanity names on websites they associate themselves with. For example, on Twitter, users identify themselves with a @name tag. Other examples include Facebook.com and Myspace.com, which enable their users to select their own name to represent their unique identity and URL on the web. The same scenario will apply to the introduction of new gTLDs: users will register their corresponding name under the gTLD that would best represent them. User choice, competition and economic demand is what new gTLDs are all about.

Root Scaling

The EOI is perfect in determining the number of serious applicants. ICANN must seek measurable statistics that is reliable and consistent with the ICANN fee: \$185,000. Lowering the deposit amount will invite a bad sample size that will statistically be significant enough to give incorrect measurement assumptions. Root scaling will have no effect on applicant's propensity to apply for new gTLDs.



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Registry/Registrar Vertical Integration

With or without registry/registrar separation, all applicants will still go for their applications. Regulations currently state that there is separation. That is a moot point. Registry/Registrar Vertical Integration change will have no effect on applicant's propensity to apply for new gTLDs.

Trademarks

As a musician, rights holder and entrepreneur, I strongly believe in intellectual capital protections and safeguards. This is also a core focus of the Fight Piracy Organization which I am a part of. We do not think any decisions to protect intellectual capital will change anyone's opinion on applying. I believe some of the mechanisms proposed are effective. Furthermore, additional steps will be made by gTLD applicants to notify known brand trademark holders to further protect their trademarks. Applicants know who the key players are in their corresponding industry and would be in their best interest to get those key players to use their gTLD string. Any trademark safeguarding policy changes will have no effect on applicant's propensity to apply for new gTLDs.

Malicious Conduct

Malicious conduct is one aspect that again has no bearing to applicants. Restrictive communities that control the pool of applicants via verification mechanisms can reduce this kind of behavior to minimal levels. The .music initiative will implement mechanisms to prevent this kind of behavior and we believe all applicants will diligently focus on preventing this kind of behavior. We believe the percentage increase of malicious/fraudulent behavior will be negligible if any. Any malicious conduct policy changes will have no effect on an applicant's propensity to apply for new gTLDs.

Any argument that future applicants can not measure whether to apply to the EOI now because the DAG is not finalized essentially states that such prospective applicants are not TLD competent. All remaining issues have been excessively addressed and publically debated at several ICANN meetings and other events.

8) What are the potential risks associated with the EOI?

The primary benefit of the EOI is to reduce risk and provide ICANN with information that can be used to address risks such as root scaling, inaccurate economic studies, trademark infringement and public order. Also it can enable objecting parties to initiate discussions and reach amicable agreements.

The integrity of the Internet is at stake here and ICANN needs to address issues in a pragmatic and accurate manner, devoid of guesswork. The EOI also eliminates the notion of "stealth" non-brand applicants that have been in hiding and have not reached out, listened nor addressed their respective communities in a public and transparent manner. gTLDs should not be treated like premium domains that are exclusively reserved for auction, where applicants show up in the last second to put their bid in. Open competition is enhanced by the EOI, which is consistent with the ICANN policy-making process of transparency and publically available information.



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The risk that can arise from the EOI is one of timing. Anti-gTLD supporters can say that, again, more time is needed as well as accuse EOI applicants of putting themselves in an advantageous position. The problem with that argument is that ICANN's plan for the "introduction for new gTLDs" was part of the strategy which goes back to September 2004 (<http://www.icann.org/en/tlds/new-gtld-strategy.pdf>)

Five years have gone by, during which many have invested money, time and efforts to participate in the ICANN process and provide the relevant information to multiple-stakeholder groups. ICANN itself conducted major interviews which included ex-ICANN CEO and President's statements to French newspaper Les Echos on June 23rd, 2008: *"Apart from the .com, .net or .org, the 1.3 billion web users will be able from early 2009 to acquire generic addresses by lodging common words such as .love, .hate or .city or proper names."* The date given was *early 2009* and now we are one month away from 2010.

ICANN also has gone to considerable outreach efforts to publicize new gTLDs such as their ad in the Economist in January 2009 on page 155, where ICANN publically gave a timeline: *"In the second half of 2009, ICANN is planning to open up a process that could create more names at the top level."* An additional timeline of Q1, 2010 was presented as well that was once again abandoned by ICANN (<http://www.icann.org/en/announcements/announcement-07may09-en.htm>).

In retrospect, it is reasonable to say that all gTLD applicants expected to have their applications already processed given the timelines provided by ICANN. The risk of other applicants coming late in to the process and claiming that they were not given a reasonable time-frame to apply within the EOI framework is flawed because time was one element in this process that has been abused. Since the ICANN Paris meeting in June 2008, the gTLD process was of public knowledge and widely broadcasted across all media.

Conclusion

We believe it is time that a commitment is made by ICANN with an EOI process that facilitates the whole gTLD application process by moving it forward effectively. In a cost-benefit analysis, there are no compelling arguments that an EOI brings about significant costs. Some may claim there is a risk that the DAG is yet to be finalized without the overarching issues addressed and an EOI is hence not useful or feasible. However, the expectations on the remaining overarching issues are publically known, debated and their resolution will have no impact upon prospective applicants' likelihood to apply for new gTLDs. The advantages outweigh the costs significantly.

Taking a broader perspective, the ICANN Board unanimously voted for the implementation of the Fast Track ccTLD IDNs without addressing any overarching issues that currently overshadow the gTLD process. It would seem like unequal treatment (resulting in competitive disadvantages to the gTLD community) from ICANN if the gTLD process is not moved forward in a similar manner.

In fact, the Fast Track process included a similar call for expressions of interest which helped form and finalize it. In addition, despite extensive discussions, the issues in the Fast Track process remained unresolved and no community consensus was reached. However, the ICANN Board decided to make final decisions on the issues, and voted to launch the process in order to address the community need for IDN ccTLDs. The solution made was not 100% perfect, but was still launched in a careful manner with a review mechanism and a ICANN Board resolution specifying that any future revisions would need ICANN Board approval. The same should apply for the remaining issues in the gTLD process.



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The community will not reach consensus on these remaining overarching issues, and hence a Board decision is necessary to enable the launch of the process and in that way at least address the need for more gTLDs in the global community. Revision and review mechanisms can be built into the process, with ICANN Board oversight and the EOI will help ICANN Staff to be operationally prepared for receiving the initial round of applications.

I hope ICANN can join me and other applicants so that we can move forward and introduce the new Internet landscape,

Sincerely,

Constantine Roussos
CEO & Founder
.music
www.music.us

468 N. Camden Drive, Suite 123
Beverly Hills, CA 90210
Tel: +1 310 460 4745
Fax: +1 213 688 8900

19 Mesolongiou St
Limassol 3032, Cyprus
Tel: +357 25 374000
Fax: +357 25363193

Social Media:

- ✦ Twitter - [@musicextension](#) & other [.music accounts](#)
- ✦ Myspace - Myspace.com/musicextension
- ✦ Facebook Group: [.music on Facebook](#)
- ✦ LinkedIn: [.music on LinkedIn](#)