



September 6, 2013

Re: Community Priority Evaluation Guidelines

Dear Economist Intelligence Unit

By way of introduction, .Music LLC (a Far Further company) is the community-based applicant for the .music gTLD¹. As .Music LLC's parent company, Far Further's mission is to collaboratively launch and grow a successful domain that serves artists, musicians, songwriters as well as the ecosystem that promotes music and nurtures the art ... all for the love of music, and in solidarity with all people who make music their lives around the world.

The **.music** domain will provide the global music community a secure home domain on the Internet -- one which supports the promotion of music, musicians, the protection of intellectual property rights, and the advancement of music education for all.

As founders of Far Further's .Music LLC, we have deep roots within the community, with careers spanning 30 years each in various aspects of music creation, promotion, education, promotion and advocacy. We have dedicated the last five years of our lives to bring to fruition the promise of a trusted and secure namespace dedicated to preserving, promoting and nurturing the art of music.

We are thankful for the opportunity to provide comments and constructive feedback to the EIU on the draft Community Priority Evaluation Guidelines (CPEG) published on August 16th 2013. We acknowledge to date EIU has received numerous comments already. Therefore, to ensure our comments are more readily put in context with other applicants, we have endeavored to echo our support for similar positions where possible, and conversely our rationale for an alternative path when they diverge.

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1659>



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We reiterate our commitment to a constructive dialogue and our gratitude for the opportunity to make our voices heard.

Sincerely,

Loren Balman, CEO
John Styll, President & COO

Guidelines and Principles

1. The Applicant Guide Book (AGB), which formed the basis of all applications submitted, was the 7th and the final iteration of ICANN's guidelines for new gTLD applicants. This last and final version represented the culmination of eight years of study, 47 public comment periods, which produced over 2,400 comments, 55 explanatory memoranda and of course 7 previous draft versions of the AGB. We advise against any significant changes to the AGB framework, since it would materially change the rules under which all applicants agreed to apply, some as standard applications and some as community. The CPE guidelines therefore, should provide further clarification and transparency on the process by which the AGB framework and principles would be implemented. The EIU should resist arguments by applicants (community and non-community alike), which would materially change the fundamental rules, principles or intent of the CPE as described in the AGB. To be specific, the AGB clearly set out stringent guidelines for community applicants, in order to ensure those who do qualify can win against non-community applicants without the need to resort to an auction. That said the requirements outlined for community applicants were stringent but not unattainable.
2. We echo Big Room's comments on asking you to consider the current consensus advice from the ICANN Governmental Advisory Committee (GAC). The GAC advice was published on July 18th, 2013 in Durban, South Africa². The relevant advice is point **IV. 7. b. Community Applications**:

The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications, which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.

ii. Therefore the GAC advises the ICANN Board to:

a. Consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

² <http://www.icann.org/en/news/announcements/announcement-18jul13-en.htm>



Questions on Process

As mentioned above, The CPE guidelines should provide further clarification and transparency on the process by which the AGB framework and principles would be implemented. We believe the next iteration of the Community Priority Evaluation Guidelines should address specific process-related questions. We support comments submitted by CTAG and others to EIU that seek process definition and clarity in the area of fees, assignment, managing divergent opinions, timeline, and interaction between panelists and applicants. The questions include:

1. What are the fees for the CPE? How are these fees determined? And what are the circumstances, if any, which would warrant a variation of these fees?
2. How will evaluators be assigned?
3. Is there a standard process to be followed in case of disagreement, say between the core team and the evaluators and/or between the two evaluators themselves? If so, what is that process?
3. What interaction can occur between the panelists and applicant?
4. What is the process by which applicants can provide additional verified letters of support?
5. How would evaluators use public comments received after Sept 26 2012?



Comments on EIU Guidelines

1-A Community Establishment - Delineation

“Community” definition – The EIU Evaluation Guidelines suggests the following question should be asked when evaluating the application: “Is there at least one entity mainly dedicated to the community”. Although you refer to the “entity” in the singular form, in Criterion 1-A of the AGB, ICANN asserts that a logical alliance of communities is viable provided that there is requisite awareness and recognition. In reality for many communities, including the music community, there are multiple legal entities such as associations and organizations dedicated to various needs of the community such as advocacy, administration, development, education, IP rights protection, standard-setting, etc. To ensure consistency, we support Big Room’s comments that your guideline for “Community” definition be updated to encompass both the singular and plural form (e.g. entity and/or entities), and that this be consistently applied throughout EIU guidelines.

The EIU Evaluation Guidelines in the community definition section also suggests the following question to scored for when evaluating the application: “Was the entity established to administer the community?” The entity in this case is presumed to be the applicant. Although this may be the case for some applicants such as the *Council of Better Business Bureaus Inc.* who applied as a brand and as community applicant for .bbb, this is not the case for other legitimate community applicants. However this evaluation guideline would not apply to other legitimate community applicants, as unless they are an association applying for their brand as a community, or a city or state applying for a geo as a community they would not qualify. Other legitimate communities such as a language community, not-for profits or NGOs, or even the music community are multi-faceted communities with many different organizations and entities dedicated to supporting and or administering a facet of that community. In those cases, it is in fact better that the applicant be a separate organization, who has obtained the support of the all the various organizations dedicated to the community, but is focused on operating the gTLD for the benefit of the community as a whole. This model ensures proper policy input and implementation for the operation and use of shared resources (the new gTLDs) by ensuring all the voices are properly heard and balanced for the greater good of the community as opposed to any one organization in particular.

“Delineation” definition - Under the EIU evaluation guidelines for the “Delineation” definition you outline a list of membership definitions. Membership definition is met within the community if community membership can be demonstrated by straightforward membership in legal entities or associations, by



say accreditation, payment of fees and or privileges and benefits accorded to members. We agree and endorse this approach, as it outlines a clear mechanism to identify and validate definitive affiliation. Although Big Room’s comments suggested that “...clear and straightforward definitions based solely on fees, requirements and/or privileges miss a key dynamic that evidences the existence of a community taking action,” we submit that the very act of applying, receiving and maintaining membership in an community organization is evidence of taking action. The mechanism you outline proves both a deliberate intent and action (apply for membership) and a verifiable outcome (how many, how large? Etc.). We urge you resist and reject evaluation suggestions that deviate from this sound approach.

“Organized” definition - again, we echo Big Room’s comments, as the entity here should not be only singular. As mentioned above under “Community Definition” there are indeed multiple entities responsible for achieving the goals of the community, and each are organized and specialized around a specific aspect such as advocacy, education etc. The evidence of multiple organizations that have specialized to administer or work towards a particular goal for the benefit of the community is a characteristic of an established, robust and vibrant community.

1-B Community Establishment - Extension

Size and Longevity – We endorse the evaluation criteria in the IEU with respect to extension and longevity, namely: demonstrating considerable size (in terms of delineation definition outlined by EIU), geographic dispersion, longevity (non transient and forward-looking). We believe as outlined each evaluation guideline is clear, easily assessed, non-refutable, and concise.

2-A Nexus Between Proposed String and Community

We also concur with others that the **“well known short form”** of the community’s name is not defined in either the ICANN or EIU guidance. We also note that the name may be the name of an organization dedicated to the community (see .bbb example cited above). However, in most cases the name is not, nor does it need to be the name of an organization dedicated to the community.

In establishing what is **“commonly known”** by others, we submit to you that it can be assessed by the looking mission and goals of not only the community applicant, but more importantly the mission, goals and activities of the supporting organizations. For example, our supporting organizations represent artists,



musicians, songwriters, students, teachers, instrument makers, publishers, and other music professionals across the globe. The mission, goals and activities of all of these 60 plus organizations across the globe are all directly related to the promotion, advocacy, and protection and/or nurturing of music. There is no better common denominator - both within and outside this community - than the word "music". Therefore, we support EIU's evaluation guideline in this section, which states: "Consider whether the application mission statement, community responses and websites align."

In addition, we endorse Big Room's suggestions that:

- "In seeking to understand this Criterion, the community's own views on the matter should be taken into account. In other words, the community's wishes, as demonstrated by support, should also be considered as a key indicator of "Identification" of the string by the community itself. "
- And, that " the EIU should consider the context and existence of the gTLD programme itself, including how these criterion may necessitate the applying community seeking to explain itself in a way that it understandable to the Internet community. This may or may not be the exact way in which the community describes itself to those within the community, to those outside the community, or to particular target audiences. "

2-B Uniqueness

"Significant Meaning" definition – In considering if the public at large and the internet users in particular will immediately think of the applying community when thinking of the applied for string, we note the earlier explained distinction between "well known short form" and "community name" and that ICANN itself states that the community name does not need to be the name of the string. We also concur with Big Room's suggestion that "the geographic context (i.e. scale) of the string relative to meaning or meanings should also be taken into account in considering the establishment of uniqueness."

3-A Eligibility

"Eligibility" definition – We endorse and support EIU's evaluation approach with respect to eligibility, since are they consistent with, and in support of the community definition and delineation guidelines set out by the AGB and reaffirmed by the EIU. (Also reference our comments regarding 1-A).



“Name Selection” definition –We endorse and support EIU’s evaluation approach under “Criterion 3-B Guidelines” which state: “... with respect to ‘Name Selection’, scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed.” We agree that a holistic view would take into account a careful mix of restrictions and corresponding enforcement mechanisms that show alignment with community purpose, as well as accountability to the community. Namely, the eligibility restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application. Given this view, we propose that name selection and content/use policies should be considered together and in conjunction with criterion 3 (Registration Policies). In other words, “registration policies and eligibility restrictions” should inform the “name selection” and “content and use policies” in a consistent way so that the desired outcome, from the beginning of the registration lifecycle to the end is supportive of the stated mission and goals of the organization and the demonstrated accountability to the community named in the application. These sub-criteria are interdependent and should not be evaluated in isolation from one another.

4-A Support

We endorse and support EIU’s evaluation approach under “Criterion 4-A Guidelines” which require the applicant to have:

- Documented support from multiple organizations/institutions supporting the application
- That these organizations and institutions represent a majority of the recognized community addressed
- That the “majority of the overall community”, may be determined, but not restricted to, considerations such as headcount, geographic reach of the organizations, and features such as the degree of power of these organizations

We would also suggest that under the evaluation guideline for “relevance” that a practical test would be a review of the organization’s mission, charter and activities for consistency with the mission and the purpose of the community gTLD. If there is a lack of consistent and focused activity and an avowed mission aligned with the mission of the community gTLD, then the organization should be deemed “not relevant”.



We understand other community applicants have raised concerns regarding the difficulties or roadblocks in obtaining verification for existing letters. However, we believe given what is at stake (a community standing to gain or lose forever their own gTLD), it is critical to demonstrate an authentic, sizeable and steadfast support of the community the applicant purports to represent. A steadfast and supportive community will not shy away from the administrative task of verifying support. As Big Room's comments to the EIU emphasized: There is a built-in accountability mechanism of a community gTLD through the Registry Restrictions Dispute Resolution Procedure (RRDRP). According to ICANN:

The RRDRP is one of the proposed mechanisms to address post delegation concerns. The purpose of the RRDRP is to handle complaints from a harmed organization or individual alleging that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the restrictions stated in the terms of the gTLD registry agreement.³

That said, we echo the concerns raised by Big Room that: "Such a mechanism does not exist for non-community gTLDs. This means that if EIU decides to pass a community application even through some in the community – or indeed others - have concerns, the community or others can avail themselves of the RRDRP. If EIU has concerns and decides not to pass the community evaluation, it is in essence rendering a final decision on the matter by removing the possibility of an RRDRP."

We recognize that the criteria documented in the AGB are meant to be stringent enough to dissuade gaming the process (applying under a community designation to thwart fair competition and avoid costly auction), however they must also be attainable by legitimate communities, who are comprised of supporting organizations, entities and associations all dedicated to a common purpose, and not just a handful of brands who have applied for their name under a community application.

That said, we urge the EIU to consider that a "common sense" approach should trump subjective technicalities of a point system to determine whether a Community application should be granted a passing score. Again, in the spirit of the GAC Beijing and Durban Advice, applicants with significant and verifiable support from community stakeholders should be given preference.

³ <http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm>



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Once again, we sincerely appreciate the opportunity to express our comments and suggestions to the EIU, and remain committed to this process and to persevering in our mission to serve the global music community.