



American Association
of Independent Music

March 6, 2013

VIA EMAIL (steve.crocker@icann.org; fadi.chehade@icann.org; cherine.chalaby@icann.org; heather.dryden@ic.gc.ca; ocl@qih.com; john.jeffrey@icann.org; ssene@ntia.doc.gov; erik.wilbers@wipo.int; arb@iccwbo.org; falexander@ntia.doc.gov; lstrickling@ntia.doc.gov)

Dr. Steve Crocker, Chairman of the ICANN Board
Fadi Chehadé, ICANN President & CEO
Cherine Chalaby, Chair of the New gTLD Committee
Heather Dryden, Chair of Government Advisory Committee
Dr. Olivier M.J. Crépin-Leblond, Chair, ICANN At Large Advisory Committee
John Jeffrey, ICANN General Counsel
Suzanne Sene, U.S. Representative to ICANN Government Advisory Committee
Fiona Alexander, Associate Administrator, NTIA
Lawrence E. Strickling, Assistant Secretary, Communications & Information, Dep. Of Commerce
Secretariat of the International Court of Arbitration of the International Chamber of Commerce
Erik Wilbers, Director, WIPO Arbitration and Mediation Center

Re: gTLD Applications for music-themed TLDs and Anti-Competitive “Closed” Registries

Dear Dr. Crocker, et al.

I am writing on behalf of the American Association of Independent Music (“A2IM”) and the Worldwide Independent Network (“WIN”).

This document represents letters from all 14 A2IM board representatives (<http://a2im.org>), whose labels were elected by our membership to represent the U.S. Independent label community as well as additional letters from former A2IM board members and other A2IM members. Attached to this letter please find my letter and letters from the chair of WIN which represents label creators in over 20 countries (<http://www.winformusic.org>) and chair of the Association of Independent Music (AIM) in the U.K. (<http://musicindie.com>), Alison Wenham, The Secretary General of the Independent Music Companies Association (IMPALA), which represents the European music label community (<http://impalamusic.org>), Helen Smith, and the President of Merlin Network, the rights licensing organization (<http://www.merlinnetwork.org>), Charles Caldas. Collectively we represent the worldwide independent music label community which constitutes “a significant portion of the music community to which music-themed TLD strings may be explicitly or implicitly targeted.” By my separate e-mail we are also forwarding additional international member letters along with the additional U.S. member letters referenced above.

We thank ICANN for this opportunity to send this objection letter on the selection process related to music-themed TLDs. We are writing as we hope that only a legitimate music community-based applicant, with knowledge and understanding of the music community, is selected to operate music-themed gTLDs to fully serve the interests of the music community in

context of the needs of music-themed strings. Portfolio applicants' insufficient music-focused enhanced safeguards and inadequate policies indicate a strong conflict of interest to maximize their revenues at the expense of the music community. It is highly likely that portfolio applicants, given their scale, complexity and breadth of applications, will not give music-themed TLDs the attention they warrant. We also have some serious anti-competitive concerns against some of the applicants as voiced by a majority in the ICANN community. We are against closed, single-registrant applications that create "walled gardens", thwart rivals and eliminate competition except for the case of branded gTLD strings with legitimate trademarks. Collectively these issues create a strong likelihood of material detriment to the legitimate interests of a significant portion of the music community we represent. Additionally, as outlined in the attached letters, we enumerate numerous concerns about the applicant bids that do not meet certain enhanced safeguards and other essential operating criteria. Entities that do not meet these criteria should not be eligible to operate music-themed strings. We will also be formally sending community objections outlining these concerns to the International Chamber of Commerce, the independent body that ICANN has chosen to administer formal community objections.

As background about our independent music label community, the American Association of Independent Music ("A2IM") is a 501(c)(6) not-for-profit trade organization representing a broad coalition of over 300 independently owned U.S. music labels (http://a2im.org/contents/?taxonomy=c_sitewide_group&term=label). A2IM members also include non-music label associate member service providers that represent the music community (http://a2im.org/contents/?taxonomy=c_sitewide_group&term=associate).

Billboard Magazine, using Nielsen SoundScan data, identified the Independent music label sector as comprising 32.6% percent of the music industry's U.S. recorded music sales market in 2012 (and by our computation over 39 percent of digital album sales) and well over 90 percent of all music released by music labels in the U.S. A2IM's music label community includes small and medium-Sized Music Enterprises (SMEs) of all sizes across the United States, from Hawaii to Florida, representing musical genres as diverse as our membership. Our community meets the standards for a formal objection as our community meets all 4 criteria tests for objection. We (i) are a clearly defined community; (ii) represent a significant portion of the music community; (iii) have a strong association between the community invoked and music-themed strings; and (iv) have strong concerns for the likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. (See attached letters). A2IM and our WIN colleague organizations from around the world, Impala and Merlin, and their members, all meet the ICANN objector criteria as publicly and internationally recognized, established institutions with ongoing relationships with a clearly delineated music community (3.5.4 - <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>).

All of our label members have one thing in common; they are smaller business people with a love for music who are trying to make a living. A2IM members also share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music both at home and abroad. But we need your help to remain economically viable as musical Intellectual Property, one of the core pillars of US economic competitiveness as music creates an economic multiplier effect as it is used in film, games, ads, television, etc. and is a vital export, has become difficult to protect in the digital age.

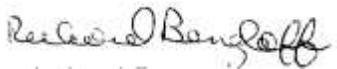
Independent music labels are not luddites and the Internet has been the great equalizer for us and our ability to create, market, promote, monetize and introduce new music. The Internet has

opened up countless opportunities for us and we would not do anything to jeopardize this improved access to music consumers and limit competition. Additionally, our members have embraced new business models that allow for efficient distribution of music, such as the licensing of free-to-the user streaming services and webcasting, one-price-per-month subscription services, bundled mobile services, etc. We honestly feel there is no other industry that has embraced new forms of economic and delivery models as completely as the music industry. Many of our members also, on their own terms, give away free content to reward existing fans and cultivate new fans of their label's artists.

Unfortunately due to the ever-shrinking overall music market revenue base, A2IM member music labels as SME's and the thousands of smaller U.S. labels simply do not have the financial means or resources to engage in widespread copyright monitoring on the Internet. The time and capital investment required for our community of like-minded, but proudly independent small business people to monitor the web for usage and take subsequent legal action simply does not exist. A2IM member music labels do not have the financial means or resources to house a stable of systems people and lawyers to monitor the Internet and bombard users with DMCA takedown notices for seemingly endless illegal links to our musical copyrights. Our members have limited budgets and whatever revenues and profits they can eke out are directed toward their primary goals, music creation by their music label's artists and then the marketing and promotion of this music to the American public so they are able to continue this creation process. For our members whose livelihoods depend on the ability to license copyrights in a free market, it is essential to have partners like ICANN to support and help advance a worldwide enforceable regime for the protection of intellectual property online that enhances accountability at all levels of the online distribution chain and that deals effectively with unauthorized usages.

In closing, A2IM, AIM, WIN, Impala and Merlin collectively represent a significant portion of the music community around the world. We hope that ICANN will take into consideration our concerns relating to bad actors and applications that do not serve the best interests of the music community if and not allow them to participate in any bidding process, as they will not institute effective enhanced security protections to safeguard the music community as outlined in our attached letters, and decide to designate a music community-based applicant to operate new music-themed TLDs. We thank you again for your time and consideration.

Truly yours,



Rich Bengloff
President, A2IM

Attachments: Letters as referenced below



American Association
of Independent Music

February 6, 2013

To Whom It May Concern:

Subject: Music-Themed Top-Level Domain (TLD) Objection Letter

We write this letter for two purposes.

First as members of the music community we want to ensure that the music-themed TLD is operated in the best interests of the legitimate music community and not auctioned off in a bidding process. Only an all-inclusive, multi-stakeholder community-based application should be selected to operate a music-themed TLD representing the music community with the knowledge and understanding of the music business and music community operating in a manner that respects and protects musical Intellectual Property and ensuring that there is only legitimate distribution of music. We urge ICANN to select a music community applicant that fulfills these criteria to administer any music-themed TLD.

Second we write to request that ICANN not accept any bids from TLD applicants who have music-themed TLD applications that have a likelihood of creating material detriment to the rights or legitimate interests of the music community. Concerns include:

- Monopoly issues and registration policies that exclude significant portions of the music community from participating or registering their name(s) under the music-themed TLD.
- The absence of enhanced safeguards to protect intellectual property to help reduce piracy.
- The absence of an enhanced name selection policy or appropriate verification methods that would decrease cybersquatting and music community costs to protect their brand names.
- The absence of a music-only use policy that would positively affect TLD content quality and mitigate reputational damage to community members.
- Lack of a neutral TLD operator and multi-stakeholder governance structure representing and serving all music constituents without conflicts of interest or serving publicly-traded companies.
- History of activities that negatively affect the rights or interests of the music community, such as benefiting from piracy or malware distribution or any other malicious activity.

In advance we thank you for your consideration.

Signature Richard Bengloff

Print Name RICHARD BENGLOFF

Title PRESIDENT

Company Name AMERICAN ASSOCIATION OF INDEPENDENT MUSIC ("A2IM")

Date February 6, 2013



**ASSOCIATION OF
INDEPENDENT MUSIC**

Lamb House,
Church Street
London W4 2PD

25th February 2013

To Whom It May Concern:

Subject: Music-Themed Top-Level Domain (TLD) Objection Letter

We write this letter for two purposes.

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☐ History of activities that negatively affect the rights or interests of the music community, such as benefiting from piracy or malware distribution or any other malicious activity.

In advance we thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Alison Wenham', with a long, sweeping underline.

Alison Wenham
Chairman, Association of Independent Music

Mr. Steve Crocker
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

Dear Mr. Steve Crocker,

February 14, 2013

Applications for the Music Themed Top-Level Domain (TLD)

The purpose of this letter is to draw attention to two concerns that IMPALA members have regarding the selection of an operator of music-themed Top-Level Domains.

On behalf of over 4,000 independent music companies and national associations across Europe¹, representing 99% of music actors in Europe which are micro, small and medium sized enterprises, IMPALA welcomes the opportunity provided by this consultation to share our views on the application process for the music themed TLD.

Firstly, we would like to ensure that the music-themed TLD preserves the interests of the legitimate music community. To achieve this, it is vital that the successful applicant has widespread support from stakeholders within the music business and possesses an acute awareness of the issues the industry faces. Rather than making the selection through an auction, we would insist that ICANN picks a music community applicant that would protect the legitimate distribution of music and defend intellectual property rights.

Secondly, we seek guarantees from ICANN that inclusion in the bidding process for a music-themed TLD is dependent on applicants subscribing to a number of best practices. We believe that the operator should:

- Strive to foster participation from all parties within the music community and permit registration of all legitimate names under the music-themed TLD.
- Guarantee safeguards protecting intellectual property and deterring piracy by promoting the lawful use of music-themed TLDs; by providing balanced copyright protections measures; and by ensuring that such domains are not used to damage the rights of right holders (more information about these safeguards is available at www.onlineaccountability.net).
- Enact a strict and thorough vetting policy that certifies the legality of domain applicants and protects brand names.
- Ensure that the use of the music-themed TLD is limited to music organisations, thereby cultivating an association between content quality and the TLD.
- Serve the interests of all music constituents equally and impartially under a multi-stakeholder governance structure that insures neutrality.
- Have a proven track record of actively promoting and aiding the rights and interests of the music community.

With thanks in advance for your consideration.

Yours sincerely,



Helen Smith
Executive Chair
IMPALA

¹ IMPALA has 4,000 members including the top independents: IK7 (Germany), Anaconda Productions (Poland), Beggars Group (UK), Cosmos Music Group (Sweden), CLS Music (Hungary), CNR (NL), Cooking Vinyl (UK), Edel (Germany), Epitaph (US/NL), Everlasting (Spain), Gazell (Sweden), Kobalt (Sweden), Menart (Croatia), Musicvertrieb (Switzerland), Naïve (France), [PIAS] Entertainment Group (Benelux, UK and France), Playground (Sweden), Red Bullet (NL), Wagram (France), as well as national trade associations from the UK (AIM), France (UPFI), Germany (VUT), Spain (UFI), Italy (PMI), Belgium (BIMA), Denmark (DUP), Netherlands (STOMP), Norway (FONO), Israel (PIL), Finland (Indieco), Portugal (AMAEI) and Sweden (SOM).



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Monday, 25 February 2013

To Whom It May Concern:

Subject: Music-Themed Top-Level Domain (TLD) Objection Letter

We write this letter for two purposes.

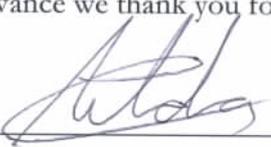
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In advance we thank you for your consideration.


_____ Signature

Charles Caldas
_____ Print Name

CEO
_____ Title

MERLIN B.V.
_____ Company Name

25/02/2013
_____ Date