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21 May 2017

VIA E-MAIL

Jeffrey A. LeVee, Esq.
Jones Day
555 South Flower Street
Los Angeles, CA 90071 2300

Re: ICANN 15 May 2017 Letter Concerning DotMusic

Dear Jeffrey A. LeVee:

I write on behalf of DotMusic Limited (DotMusic), in response to your 15 May 2017 letter. Your letter claims that the “circumstances that have delayed the Board’s consideration of Request 16-5 . . . have been identified and posted on ICANN’s website and on the Reconsideration page under Request 16-5.”¹ We do not consider ICANN’s delays justified.

In addition, while we appreciate your assurance that ICANN will consider the entirety of DotMusic’s submissions and reports, we note that your letter fails to provide any information that was not already public. Regrettably, ICANN continues to breach its transparency obligations, ignoring DotMusic’s information requests concerning the review process currently being conducted by an independent evaluator. Particularly, ICANN has ignored the basic safeguards that DotMusic has proposed, *inter alia*, that the identity of the evaluator be disclosed; that DotMusic be provided access to the materials being reviewed by the evaluator; and that DotMusic’s right to be heard during the evaluation process and comment on the evaluation results be given full effect.²

¹ ICANN’s Letter to DotMusic of 15 May 2017, <https://www.icann.org/en/system/files/correspondence/levee-to-ali-2-15may17-en.pdf>, p.2.

² See DotMusic’s Letter to ICANN of 28 April 2017, for a full list of DotMusic’s proposed safeguards, <https://www.icann.org/en/system/files/correspondence/ali-to-marby-28apr17-en.pdf>, pp.4-5

Mr. Roussos of DotMusic also raised these questions at the recent Madrid GDD summit and learned that ICANN's leadership was unaware of the identity of the external evaluator except that it was a law firm.³ Mr. Disspain also disclosed that the completion of the evaluation had been delayed beyond ICANN's estimates and ICANN does not have a scheduled date for completion. It is clear that the delays and secrecy are thus impairing ICANN's Board from discharging their oversight responsibilities. Withholding materials concerning DotMusic's CPE evaluation does not merely result in a denial of DotMusic's right to be heard; it also hampers the efficiency of the investigation, by disabling us from being able to identify the flaws in the EIU's results.

We urge ICANN to reconsider whether continuing a pattern of secrecy and neglect to the right of applicants to fair treatment serves either ICANN's or the global music community's best interests. ICANN should provide a full and prompt response to our letters of 30 January and 28 April 2017.

Sincerely,



Arif Hyder Ali
Partner

cc: Krista Papac, ICANN Complaints Officer (krista.papac@icann.org)

³ ICANN Madrid GDD Summit, May 9, 2017 at <https://participate.icann.org/p4icilv7esy/?launcher=false&fcsContent=true&pbMode=normal>, between 46:50 and 53:10.