

Fiona M. Alexander  
Associate Administrator  
International Affairs  
National Telecommunications and  
Information Administration (NTIA)  
U.S. Department of Commerce  
1401 Constitution Avenue, Room 4701  
Washington, DC 20230

Reference: Docket No. 110207099-1319-2  
RIN 0660-XA23  
Further Notice of Inquiry on  
The Internet Assigned Numbers Authority (IANA) Functions

Dear Ms. Alexander,

I write to you on behalf of a coalition of several national and international trade associations and labor organizations that represent songwriters, recording artists, music publishers, record labels, and performing rights societies around the world. The coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's commercial music, and are further described in [Appendix A](#). We care about music, and how it is created, used and consumed over the Internet.

Our coalition welcomes the opportunity to submit these comments in connection with NTIA's Further Notice of Inquiry regarding the IANA Functions. Our overriding concern is to ensure that any music themed gTLD, or any gTLD that is based or focused on driving music discovery or consumption, is used productively and responsibly, and not as a means to facilitate copyright or trademark infringement. This concern is justified when one considers the devastating impact online copyright theft and related fraud and abuse has caused the world's music community in the last decade.

We strongly support paragraph C.2.2.1.3.2 of NTIA's proposed Statement of Work (SOW) which would require the future contractor of the IANA functions to document "how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest" before any new gTLD is introduced into the root. We agree with NTIA that this is part of the "checks and balances" that are needed "to ensure the continued stability and security of the DNS." Furthermore, it is consistent with the goal of responsible allocation and oversight of this resource.

Unfortunately, we don't believe that ICANN has adequately addressed all of the concerns raised by relevant stakeholders in deciding to open up the new gTLDs in the manner which was recently approved by ICANN's board. For example, as noted in the January 4, 2011 comments to ICANN from some of our members attached hereto as [Appendix B](#), we are concerned about malicious conduct, such as wide scale copyright infringement, over any music themed gTLD, or for that matter over any gTLD that is focused or based on music discovery or consumption, and would like to see best practices developed to ensure this type of malicious behavior does not occur. Yet there are no concrete obligations in the latest application guidebook to implement heightened security measures for these types of gTLDs that are focused on particular industries such as recorded music. Given the risk that such a gTLD application could pass through the ICANN process without committing to such measures, it should be incumbent on

the IANA contractor to document how its entry into the root would meet the “global public interest” standard.

Similarly, despite ICANN’s “consensus”, multi-stakeholder model, ICANN approved the applicant guidebook over the objections or criticisms of several of its constituencies, including the IP and business communities, and the Governmental Advisory Committee. The process adopted by ICANN does not guarantee consensus support from relevant stakeholders for approved new gTLDs.

Furthermore, while there may be several benefits from opening up new gTLDs in the manner ICANN has chosen, there are also very real risks, including consumer confusion, wasteful defensive registrations, and other fraud and abuse. Many parties have noted these concerns to ICANN. It would not be justified to assume a priori that ICANN has adequately addressed all these concerns in the new gTLD process it has chosen to approve.

Given these concerns, we believe NTIA’s proposal noted above is sound and provides a prudent approach to any expansion of gTLDs. As currently drafted, NTIA cannot rely on the ICANN evaluation process alone to ensure that new gTLDs are in the global public interest. NTIA’s draft SOW provision helps “fill the gap” left by the ICANN evaluation process to ensure that this resource is used responsibly, and we welcome this measure.

Sincerely,



Victoria Sheckler  
Deputy General Counsel  
Recording Industry Association of America

of behalf of:

*American Association of Independent Music (A2IM)*  
*Association of Independent Music (AIM)*  
*American Federation of Musicians of the United States and Canada*  
*American Society of Composers, Authors and Publishers (ASCAP)*  
*Bureau International Des Societies Gerant Les Droits D’enregistrement et de Reproduction Mecanique (BIEM)*  
*Broadcast Music, Inc. (BMI)*  
*International Confederation of Authors and Composers Societies (CISAC)*  
*International Federation of Musicians (FIM)*  
*International Confederation of Music Publishers (ICMP)*  
*IMPALA - Independent Music Companies Association*  
*International Federation of the Phonographic Industry (IFPI)*  
*Nashville Songwriters Association International (NSAI)*  
*National Academy of Recording Arts and Sciences (NARAS)*  
*National Music Council (NMC)*  
*National Music Publishers' Association (NMPA)*  
*Recording Industry Association of America (RIAA)*  
*SESAC*  
*Songwriters Guild of America (SGA)*

## Appendix A

American Association of Independent Music (A2IM). A2IM is a not-for-profit trade organization serving the independent music community as a unified voice representing a sector that comprises over 30% of the music industry's market share in the United States (and 38% of SoundScan digital sales). The organization represents the Independents' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. A2IM is headquartered in New York City. Currently, the organization counts over 250 music label members and 120 associate members (companies who don't own masters but rely upon, provide services for, or otherwise support independent music labels). A2IM members share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music.

Association of Independent Music (AIM). AIM is a non-profit-making trade organization for independent record companies and distributors in the UK. Its job is to help its individual members' businesses, and to support the needs of the independent sector through information, advice, seminars, mentoring, networking, legal and business affairs guidance, work experience scheme, commercial negotiation, lobbying and bargaining, and opening access to international markets.

American Federation of Musicians of the United States and Canada (AFM). The American Federation of Musicians of the United States and Canada (AFM) is the largest union in the world representing professional musicians, with over 80,000 members in the United States and Canada. Musicians represented by the AFM record music for sound recordings, movie sound tracks, commercials, and television and radio programming under industry-wide collective bargaining agreements. The AFM works to ensure that musicians not only receive fair wages and benefits, but also participate in the proceeds from the sale or other exploitation of their recorded performances in physical or digital formats, and have a voice in cultural and policy debates that affect them at home and abroad.

American Society of Composers, Authors and Publishers (ASCAP). ASCAP is a membership association of more than 350,000 U.S. composers, songwriters, lyricists, and music publishers of every kind of music. Through agreements with affiliated international societies, ASCAP also represents hundreds of thousands of music creators worldwide. ASCAP is the only U.S. performing rights organization created and controlled by composers, songwriters and music publishers, with a Board of Directors elected by and from the membership. ASCAP protects the rights of its members by licensing and distributing royalties for the non-dramatic public performances of their copyrighted works. ASCAP's licensees encompass all who want to perform copyrighted music publicly. ASCAP makes giving and obtaining permission to perform music simple for both creators and users of music.

Broadcast Music, Inc. (BMI). BMI is an American performing right organization that represents more than 375,000 songwriters, composers and music publishers in all genres of music and more than 6.5 million works. The U.S. corporation collects license fees from businesses that use music, which it then distributes as royalties to the musical creators and copyright owners it represents.

Bureau International Des Societies Gerant Les Droits D'enregistrement et de Reproduction Mecanique (BIEM). BIEM is the international organization representing mechanical rights societies. Mechanical rights societies exist in most countries. They license the reproduction of songs (including musical, literary and dramatic works). Their members are composers, authors and publishers and their clients are record companies and other users of recorded music. They also license mechanical aspects of the downloading of music via the Internet.

International Confederation of Authors and Composers Societies (CISAC). CISAC works towards increased recognition and protection of creators' rights. CISAC was founded in 1926 and is a non-governmental, non-profit organisation. Its headquarters are in Paris, with regional offices in Budapest, Buenos Aires, Johannesburg and Singapore. CISAC's main activities and member services aim to: strengthen and develop the international network of copyright societies; secure a position for creators and their collective management organizations in the international scene; adopt and implement quality and technical efficiency criteria to increase copyright societies' interoperability; support societies' strategic development in each region and in each repertoire; retain a central database allowing societies to exchange information efficiently; and participate in improving national and international copyright laws and practices.

International Confederation of Music Publishers (ICMP). ICMP is the world trade association representing the interests of the music publishing community internationally. The constituent members of ICMP are music publisher associations from Europe, the Middle East, North and South America, Africa and Asia-Pacific. Included are the leading independent multinational and international companies and regional and national music publishers, mainly SMEs, throughout the world. As the voice and point of reference of music publishers, and the community of composers and songwriters, ICMP's mission is to increase copyright protection internationally, encourage a better environment for our business and act as an industry forum for consolidating global positions.

IMPALA – Independent Music Companies Association. IMPALA was established in April 2000 at the initiative of prominent independent labels and national trade associations in Europe. It is a non profit-making organisation with a scientific and artistic purpose. Impala has over 4,000 members including top independents and national trade associations across Europe..

International Federation of Musicians (FIM). FIM, founded in 1948, is the international organisation for musicians and is now counting 72 unions throughout the world. The Federation's main objective is to protect and further the economic, social and artistic interests of musicians organised in member unions.

International Federation of Phonographic Industries (IFPI). IFPI represents the recording industry worldwide, with a membership comprising some 1400 record companies in 72 countries and affiliated industry associations in 44 countries. IFPI's mission is to promote the value of recorded music, safeguard the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate.

Nashville Songwriters Association International (NSAI). NSAI consists of a body of creative minds, including songwriters from all genres of music, professional and amateur, who are committed to protecting the rights and future of the profession of songwriting, and to educate, elevate, and celebrate the songwriter and to act as a unifying force within the music community and the community at large.

National Academy of Recording Arts and Sciences (NARAS). Established in 1957, NARAS is a U.S. organization of musicians, producers, recording engineers and other recording professionals dedicated to improving the quality of life and cultural condition for music and its makers. Over the last decade particularly, the Academy has expanded its goals from the important work of recognizing the best in music through the GRAMMY Awards to establishing itself as the preeminent arts advocacy and outreach organization in the country. The Academy's mission statement is simple, but represents the heart and soul of the organization's efforts: to positively impact the lives of musicians, industry members and our society at large.

National Music Council (NMC). The National Music Council is celebrating its 70th Anniversary as a forum for the free discussion of this country's national music affairs and problems. It was founded in 1940 to act as a clearinghouse for the joint opinion and decision of its members and to work to strengthen the

importance of music in our life and culture. The Council's initial membership of 13 has grown to almost 50 national music organizations, encompassing every important form of professional and commercial musical activity. The Council provides for the exchange of information and coordination of efforts among its member organizations and speaks with one voice for the music community whenever an authoritative expression of opinion is desirable.

National Music Publishers Association (NMPA). NMPA is the largest U.S. music publishing trade association with over 700 members. Its mission is to protect, promote, and advance the interests of music's creators. The NMPA is the voice of both small and large music publishers, the leading advocate for publishers and their songwriter partners in the nation's capital and in every area where publishers do business. The goal of NMPA is to protect its members' property rights on the legislative, litigation, and regulatory fronts. In this vein, the NMPA continues to represent its members in negotiations to shape the future of the music industry by fostering a business environment that furthers both creative and financial success. The NMPA has remained the most active and vocal proponent for the interests of music publishers in the U.S. and throughout the world, a continuing tradition of which the association is very proud.

SESAC. SESAC is a performing rights organization with headquarters in Nashville and offices in New York, Los Angeles, Atlanta, Miami and London. It is designed to represent songwriters and publishers and their right to be compensated for having their music performed in public. With an international reach and a vast repertory that spans virtually every genre of music, SESAC is the fastest growing and most technologically adept of the nation's performing rights companies.

Recording Industry Association of America (RIAA). RIAA is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes its members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate sound recordings produced and sold in the United States. In support of this mission, the RIAA works to protect intellectual property rights worldwide and the First Amendment rights of artists; conducts consumer, industry and technical research; monitors and reviews state and federal laws, regulations and policies; and certifies sales awards with its Gold and Platinum program.

Songwriters Guild of America (SGA). Since the enactment of the Copyright Act, the SGA has continued to take a stand on every issue of importance to songwriters and the music industry in general, including home taping, source licensing, derivative rights, author's moral rights, the deductibility of business expenses, compulsory license, copyright registration fees and, most recently, infringement of royalty payment due to digital/Internet piracy. Its president and board members spend considerable time and energy talking to the media, lobbying, negotiating and coordinating with other industry groups, and raising the funds needed to get the songwriter's message through. True to its history, the Guild maintains its efforts to advance, promote and benefit the profession of songwriting.

## Appendix B

Letter to ICANN

January 5, 2011

Peter Dengate-Thrush  
Chairman of the Board  
ICANN

Rod Beckstrom  
CEO  
ICANN

Dear Messrs. Dengate-Thrush and Beckstrom,

I write to you on behalf of a coalition of 15 national and international trade associations that represent songwriters, recording artists, music publishers, record labels, and performing rights societies around the world. The coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's commercial music, and are further described in Appendix A.

This letter is to document the concerns that were raised on our behalf by Steve Metalitz in the Board's public forum session at the ICANN meeting in Cartagena, Colombia. As Steve explained, we care about music, and how it is created, used and consumed over the Internet. Our overriding concern is to ensure that any music themed gTLD is used productively and responsibly, and not as a means to facilitate copyright or trademark infringement.

In connection with this overall theme, we note the following concerns with the latest draft application guidebook (DAG):

- Ultra-high standard for community objection: The proposed final guidebook has without adequate explanation suddenly raised the bar dramatically for community objections to the point where it seems unlikely that any community objection will prevail. Under the current proposed standard, we fear that we will have no realistic ability to object if a pirate chooses to hijack a music themed gTLD to enable wide scale copyright infringement of our works. We do not believe this is appropriate, or in the interests of the global community, and respectfully request that the "material detriment" standard revert back to the prior standard, and that the requirement to show material detriment to the broader Internet community be removed.
- Lack of Transparency: We had taken comfort in the amount of application material that would be made public, so that we would have information to assess whether or not to comment or take other action in connection with applications for music themed gTLDs. By sharply curtailing the transparency requirement, ICANN has effectively blocked our ability to use this information to assess when or how to comment on the fitness of the applicant or the sufficiency of safeguards against malicious conduct, leaving us, and the rest of the public, in the dark. This seems contrary to ICANN's role and mission statement.
- Malicious conduct: As noted above, we are concerned that a music themed gTLD will be used to enable wide scale copyright and trademark infringement. This fear is justified when we look at the massive online copyright infringement battle our industries have faced over the past decade. We would like to work with ICANN and others to ensure that best practices are developed and used to ensure this type of malicious behavior does not occur.

We strongly urge you to take these concerns seriously, and expeditiously implement appropriate changes to the DAG to address these critical concerns. We prefer a practical solution to these issues, and hope to avoid the need to escalate the issue further. Please contact us if you have any comments or questions, or would like to meet to discuss the best practices to avoid malicious behavior noted above.

Regards,



Victoria Sheckler  
Deputy General Counsel  
Recording Industry Association of America

of behalf of:

*American Association of Independent Music (A2IM)*

*Association of Independent Music (AIM)*

*American Society of Composers, Authors and Publishers (ASCAP)*

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