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Re: Music Licensing Study - Public Comment

Introduction

.MUSIC™ (DotMusic) appreciates this opportunity to provide comments to the U.S Library of Congress which is seeking to obtain feedback and collect community input concerning the Music Licensing Study. DotMusic further appreciates the Music Licensing Study initiation by the U.S Library of Congress to evaluate the effectiveness of existing methods of licensing music. Our objective is to offer suggestions to assist the U.S Library of Congress report relevant, useful and implementable suggestions to the United States Congress to benefit the music community and rightsholders. Such recommendations would enable Congress to introduce new revisions to the U.S. Copyright Act (17 U.S.C. 101 *et seq*) in light of technological advancements and other developments that impact the creation, dissemination, and use of copyrighted works.

About .MUSIC™ and its Objective to Launch a Global Song Registry for Music Licensing

DotMusic is an initiative focused on introducing a community-based .music generic top-level domain (gTLD). The initiative is supported by a significant portion of the global music community.¹ DotMusic has applied² to the Internet Corporation of Assigned Names and Numbers (ICANN), the governing body of the Internet's global domain namespace, to launch a safe, trusted and accountable .music gTLD governed by a global multi-stakeholder model irrespective of music constituent type, locale or size. DotMusic has incorporated music-focused enhanced safeguards for .music including registrant validation, naming rules, content and use policies and eligibility rules, such as the requirement that registrations are limited only to

¹ <http://music.us/supporters.htm>

² See .MUSIC™ (DotMusic) Application ID 1-1115-14110 for .music community-based generic top-level domain, <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>



verified global music community members belonging to established music organizations. This ensures that intellectual property is protected and any activity conducted on .music domains is legal. The mission of .music is to create a trusted safe haven for legal music consumption or activities where monies generated flow to the global music community as opposed to pirates or unlicensed rogue websites.

According to its Mission and policies submitted to ICANN, DotMusic will:

- *Harness an environment that promotes creation & innovation*
- *Protect creators from unauthorized IP infringement*
- *Facilitate legal exploitation of rights*
- *Stimulate new innovative music business models & licensing opportunities*
- *Enable a more efficient market*³

DotMusic's objective to introduce a trusted, standardized and verified global .music domain, including a global song licensing registry connected to the .music's DNS infrastructure and architecture, is summarized in its application to ICANN:

Community buy-in is critical to establish these legal standards to facilitate safer, trusted and enhanced commerce on the web while fighting piracy and unlicensed sites. The music-themed domain is built with usage policies that will enable taking down infringing sites, protecting trademarks and help the exploitation of copyrights by providing a safe haven for legal music distribution, consumption and licensing.

*The goal is to create a secure Industry standard domain matching Community needs with enhanced safeguards not available in current TLDs. Standards save money and drive productivity. The music-themed TLD will be launched in an intuitive, simple manner to leverage the interoperability, effectiveness and efficiency of the open web and the DNS. By using the same standards communicating data becomes easier and cheaper ensuring more revenue is distributed across the whole digital music supply chain to the rightful entities not rogue sites. The DotMusic Song Registry will also benefit the Community by enabling registrants to legally license their works territorially in a simple, fast and easy way. This way IP can be utilized and commercialized more efficiently to assist the Community to better serve an entire music value chain globally.*⁴

³ <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392> , 18b

⁴ <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392> , 18c



.MUSIC™ Public Comments

Please refer to DotMusic’s public comments below which addresses the Subjects of Inquiry according to the Music Licensing Study’s inquiry numbers and subject headings found on the “Music Licensing Study: Notice and Request for Public Comment” FederalRegister.gov website.⁵

Changes in Music Licensing Practices

14. How prevalent is direct licensing by musical work owners in lieu of licensing through a common agent or PRO? How does direct licensing impact the music marketplace, including the major record labels and music publishers, smaller entities, individual creators, and licensees?

Direct licensing is not as prevalent as it should be to fulfill the needs of rightsholders to provide additional revenue generation. Unfortunately, music licensing today is a complicated process which takes a long time to execute because negotiations take place among countless copyright owners who in many cases have different perspectives or approaches. As such, appropriate changes to the existing copyright law should be introduced to overcome this friction in order to facilitate more efficient direct licensing.

15. Could the government play a role in encouraging the development of alternative licensing models, such as micro-licensing platforms? If so, how and for what types of uses?

The government should play a leading role in encourage alternative licensing models, such as micro-licensing platforms, and to overcome the licensing inefficiencies that exist today in the music marketplace.

The government should provide support and incentives for alternative licensing models which fulfill the needs of users who are interested in legally licensing music under an easily-accessible platform such as a global song database. The government should help create an environment that fosters new creative and innovative licensing models, especially those that can facilitate global licensing in a standardized, quick and efficient manner.

16. In general, what innovations have been or are being developed by copyright owners and users to make the process of music licensing more effective?

⁵ <https://www.federalregister.gov/articles/2014/03/17/2014-05711/music-licensing-study-notice-and-request-for-public-comment>

Currently there are three initiatives to create a global music licensing platform: the International Music Registry (IMR), the Global Repertoire Database (GRD) and the .MUSIC Song Registry (.MUSIC™). All initiatives aim to increase music licensing usage to benefit artists, rights-holders and licensees on a global scale. However all initiatives are in the planning phases.

The International Music Registry (IMR) is led by the World Intellectual Property Organization (WIPO), an agency of the United Nations. It is based on voluntary participation and a platform that is publicly available to enable creating new business models for the management or exploitation of rights.

A second initiative is the Global repertoire Database (GRD) which was established by the Global Repertoire Database Working Group at the request of the European Commission. The objective of GRD is to provide a single, comprehensive and authoritative database which would incorporate the control of musical works and ownership information relating to specific song rights.

The benefits of a global music licensing registry is to eliminate the difficulty of locating rightsholders, while establishing a publicly-available platform for monetizing music at a global scale. Under this infrastructure the prospective licensee will identify the rightsholder, the cost of the license is and how to pay for it. If this overarching issue of global licensing is solved then it would translate to the generation of additional monies for the music community because of the creation of a more effective, simple and affordable global music licensing platform.

The challenges of setting up such a global music registry are many. The IMR and GRD are facing the challenge to determine the appropriate entity (or government agency) to be assigned the responsibility, accountability and cost relating to the creation and maintenance of the global music registry. Another challenge is one of standardizing all metadata and information associated with each song to ensure that song information is accurate and comprehensive throughout so that rightsholders are easily identified, compensated and accounted for. The IMR and GRD rely on a voluntary system in which rightsholders submit their music rights information to their databases. As such, the likelihood of having a comprehensive global music database is very low.

Another initiative relating to a global song database is undertaken by .MUSIC™ which aims to leverage the global and universal nature of the Domain Name System (DNS) to solve the database comprehensiveness and accuracy issues. The Domain Name System is a global addressing system that ensures domain names are located and translated into Internet Protocol (IP) addresses, and vice versa. A domain name such as music.us is a

unique alias for an IP address (a number), which is an actual physical point on the Internet.

The global infrastructure and architecture of the DNS provides distinct advantages that are global in nature. These include its globally-adopted intellectual property protection mechanisms for domain trademark disputes. Other advantages include the adoption of a universal WHOIS policy for all domains which ensures accurate information relating to the ownership of domain names, including information relating to the registrant (the owner), the administrator and the technical contact associated with each specific domain. Other WHOIS information includes the nameservers hosting the domain and the associated registrar.

Domain names function under global system that is publicly accessible and interoperable. They also have comprehensive, standardized policies associated to them which are subject to compliance. Any incompliance may result in domain cancellation. WHOIS is one of these mandatory policies. During the domain name registration process each registrant is required to provide information that is made available to the public by WHOIS services. ICANN requires public disclosure of the domain registrant's contact information (e.g. mailing address, phone number and e-mail address), administrative and technical contacts, and other information. This information, often referred to as "WHOIS data," is made accessible to the public to satisfy many stakeholder needs, including:

- To allow network administrators to find and fix system problems and to generally maintain the stability of the Internet
- To determine the availability of domain names
- To help combat inappropriate uses of the Internet such as spam or fraud
- To facilitate the identification of trademark infringement
- To enhance accountability of domain name registrants⁶

ICANN, the governing body that controls the domain namespace, has incorporated mandatory rules, based on internationally agreed-upon consensus policies for registrars (the retailers that offer domain registration for users), to annually present current WHOIS information to domain registrants and concurrently remind the registrant that the provision of false WHOIS information can be grounds for cancellation of their domain name registration. As such Registrants must review their WHOIS data, and make any corrections to ensure accuracy and comprehensiveness.⁷

ICANN also introduced international legal standards to resolve domain name disputes. ICANN, the organization responsible for managing generic top level domains such as

⁶ <http://www.icann.org/en/resources/policy/background/whois>

⁷ <http://www.icann.org/en/resources/registrars/consensus-policies/wdrp>

.COM, introduced a global solution to the dispute resolution problem to address naming rights of domain names worldwide. The process of negotiating a new international treaty was considered too slow, and new national laws would most likely be too diverse, such as in the case of music licensing. What was needed was to introduce internationally uniform and mandatory procedures to deal with cross-border disputes. ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP). The UDRP went into effect on December 1, 1999, for all ICANN-accredited registrars of Internet domain names to resolve disputes in a uniform manner globally.⁸

The objective of .MUSIC™ is to leverage the global advantages that the DNS provides for domains to associate individual songs with .music domain names. Each .music domain will be verified to ensure that the registrant of the domain is the authoritative owner of the name consistent with globally-enforceable WHOIS rules. This will ensure accuracy and comprehensiveness of information. Such a system will incorporate a “WHOIS for songs” type of system, which will operate under the same globally-established rules that govern domain names but for songs to enable comprehensive global music licensing. This would solve the voluntary issue and the underlying problem that copyright protection is automatic (i.e does not require any formality) since countries, such as the United States, adhere to the Berne Convention for the Protection of Literary and Artistic Works⁹ and are prohibited from requiring formalities.

Revenues and Investment

18. How have developments in the music marketplace affected the income of songwriters, composers, and recording artists?

Technology has paved the way for new developments in the music industry. It has disrupted old business models and transactions relating to copyrights. Unfortunately, negotiations over music rights are complex. Negative externalities and loss of income is not just measured in the revenues generated through a license. It is common practice that all the parties engaging in licensing spend too much time, effort and resources to clear every legal aspect related to licensing music. From a technology perspective the cost for music startups is unusually large and there is a high propensity for music rightsholders to incur high costs connected to the opportunity cost of losing new business. The process for procuring a music license is not currently globally standardized, cost-efficient and simple for any party involved.

Such opportunity costs have negatively affected the income of songwriters, composers, and recording artists. Business is lost because the process of music licensing is too costly,

⁸ <http://www.wipo.int/amc/en/center/faq/domains.html>

⁹ http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html



complicated, time-consuming and fragmented. That results in lost income for the music community.

21. How do licensing concerns impact the ability to invest in new distribution models?

Overall, investment in music has suffered considerably because the high uncertainty and licensing costs associated with music licensing. The lack of consistency and standardization of the licensing process has resulted in less investment for music. Even leading music technology companies such as Spotify, which enjoy one of the largest music audiences on the Internet, are not profitable and relying on an IPO or a strategic acquisition by a large corporation as an exit strategy. Spotify pays about 70% of its revenues to music rightsholders for licensing their music. However, their paid subscriber size and advertising potential is too low to offset the losses incurred.

Data Standards

22. Are there ways the federal government could encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process?

The federal government could encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process by diligently working and supporting initiatives such as IMR, GRD and .MUSIC™. (Please see #16 for more detail on IMR, GRD and .MUSIC™).

Other Issues

24. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

Another pertinent issue is the antiquity of the DMCA to address the needs of rightsholders on the Internet. There seems to be an extraordinarily distorted interpretation of the “safe harbors” introduced by the U.S Congress in 1998 (referred to as “DMCA notice and takedown”). Unfortunately the value of copyright has eroded and replaced by an illegal–multi-billion dollar business fostering one of the greatest income transfers of all time. Access to piracy sites which offer free music are only a click away. Furthermore mainstream advertising networks, such as Google’s AdSense, serve mainstream advertising to these illegal, unlicensed sites at the expense of music rightsholders. The DMCA is ineffective since the same song title on a pirate site is removed more than once.

As soon as it is removed the same song generally re-appears on the pirated site within a few hours. Google's Transparency Report clearly showcases the DMCA-created problem as a constant game of whack-a-mole. According to Google's Transparency Report, Google currently receives over 25 million takedown requests a month representing just over 4,400 copyright holders.¹⁰

Revisions to the current DMCA should include provisions that do not support automatic reposting of links disabled by DMCA takedown action. Under a highly controversial and misleading interpretation by search engines, takedown notices are directed to specific links associated with specific sound recordings. The unintended consequence of such a loophole is the failure to stop the same files from being reposted as fast as they are removed. While it is fair for search engines to claim they have no way of knowing whether a particular link on a specific site represents an illegal copy or not it is disingenuous to make such claims after a multiple notices for the same song originating on the same site.

Thank you for the opportunity to provide input for the Music Licensing Study. Please do not hesitate to contact me if you have any questions or seek additional input about this submission.

Respectfully Submitted,



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.music Community Website:
www.music.us

Supporting Organizations for .music:
www.music.us/supporters.htm

¹⁰ Google Transparency Report for April 2014, <http://www.google.com/transparencyreport/removals/copyright/>