

**DETERMINATION  
OF THE BOARD GOVERNANCE COMMITTEE (BGC)  
RECONSIDERATION REQUEST 14-28**

**24 July 2014**

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The Requester, DotMusic Limited, seeks reconsideration of ICANN’s approval of application change requests for Amazon EU S.à.r.l.’s (“Amazon”) applications for .MUSIC, .SONG, and .TUNES and of ICANN’s alleged failure to invite .music LLC to submit a change request for .music LLC’s application for .MUSIC.

**I. Brief Summary.**

The Requester applied for .MUSIC. Amazon applied for .MUSIC, .SONG, and .TUNES (collectively, the “Amazon Applications”). .music LLC also applied for .MUSIC (“.music LLC .MUSIC Application”).

On 11 April 2013, the GAC<sup>1</sup> issued its Beijing Communiqué. Among other advice, the GAC expressed concern with strings representing generic terms being operated as exclusive access registries, advising that “[f]or strings representing generic terms, exclusive registry access should serve a public interest goal” (“Category 2 Advice”).<sup>2</sup> The GAC identified .MUSIC, .SONG, and .TUNES, among others, as strings representing generic terms for which applicants were proposing to provide exclusive registry access (“Category 2 Strings”).<sup>3</sup>

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<sup>1</sup> Governmental Advisory Committee.

<sup>2</sup> Beijing Communiqué, Annex I, Pg. 11 *available at* <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>.

<sup>3</sup> *See id.*

The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters. (Bylaws, Art. XI, § 2.1.j.) In the context of the New gTLD Program, there are also specific procedures pursuant to which the GAC may provide advice to ICANN on new gTLDs. (Applicant Guidebook, § 3.1, *available at* <http://newgtlds.icann.org/en/applicants/agb>.)

In response to the GAC's Category 2 Advice and ICANN's request for clarification regarding the intended use of Category 2 Strings, many applicants for Category 2 Strings that had stated in their applications the intent to provide exclusive registry access informed ICANN that they wanted to submit change requests to provide non-exclusive access. Amazon submitted material change requests for the Amazon Applications, which were posted and approved by ICANN on 30 April 2014. The 30-day comment period for Amazon's change requests concluded on 30 May 2014.

On 7 June 2014, the Requester submitted the instant Request, seeking reconsideration of ICANN's approval of Amazon's change requests and of ICANN's alleged failure to invite .music LLC to submit a change request for the .music LLC .MUSIC Application. The Requester argues that ICANN staff approved Amazon's change requests without properly considering the seven factors for change requests and despite the fact that the requested changes "materially alter[ed]" the Amazon Applications. The Requester also argues that ICANN staff failed to treat all applicants for Category 2 Strings similarly, specifically by inviting Amazon to submit a change request for the Amazon Applications but failing to invite .music LLC to submit a change request for the .music LLC .MUSIC Application.

The BGC concludes that the Requester has not demonstrated that ICANN staff violated established policy in approving Amazon's change requests or failing to invite .music LLC to submit a change request. Specifically, the Requester has not demonstrated that ICANN staff failed to properly consider the seven factors for change requests, has not demonstrated that ICANN staff improperly approved changes that "materially alter[ed]" the Amazon Applications," and has not demonstrated that ICANN staff failed to treat all applicants for Category 2 Strings similarly. The BGC therefore determines that the Request be denied.

## II. Facts.

### A. Background Facts.

The Requester applied for .MUSIC. Amazon applied for .MUSIC, .SONG, and .TUNES. .music LLC also applied for .MUSIC.

On 13 March 2013, the American Association of Independent Music (“A2IM”), an organization represented by the Requester,<sup>4</sup> filed Community Objections to Amazon’s Applications.<sup>5</sup> (*See, e.g.*, <http://newgtlds.icann.org/sites/default/files/drsp/16dec13/determination-1-1-1317-30761-en.pdf>.)

On 13 March 2014, the Requester filed a Legal Rights Objection (“LRO”) to Amazon’s application for .MUSIC. (*See* <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1316-18029-en.pdf>.)

On 14 March 2013, the Requester filed an LRO to the .music LLC .MUSIC Application. (*See* <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-959-51046-en.pdf>.)

On 11 April 2013, the GAC issued its Beijing Communiqué. Among other advice, the GAC provided Category 2 Advice expressing concern with strings representing generic terms being operated as exclusive access registries, advising that “[f]or strings representing generic terms, exclusive registry access should serve a public interest goal.” (Beijing Communiqué, Annex I, Pg. 11 *available at* <https://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>.)

The GAC identified .MUSIC, .SONG, and .TUNES, among others, as Category 2 Strings that represent generic terms for which applicants were proposing to provide exclusive registry

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<sup>4</sup> The Request was filed by Constantinos Roussos on behalf of DotMusic Ltd.

<sup>5</sup> On 24 April 2013, the International Centre for Expertise of the International Chamber of Commerce (“ICC”) consolidated the Objections.

access.<sup>6</sup> (*See id.*)

On 25 June 2013, the NGPC<sup>7</sup> accepted the GAC's Category 2 Advice and directed ICANN staff to defer contracting with applicants for Category 2 Strings "pending a dialogue with the GAC" regarding an appropriate definition of "public interest goal" ("25 June 2013 Resolution"). (*See* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm>; *see also* ICANN NGPC Paper No. 2013-06-25-2b: GAC Advice in Beijing Communiqué regarding Safeguard Advice Applicable to Category 2 Strings, Briefing Materials 1, Pgs. 25-31, *available at* <http://www.icann.org/en/groups/board/documents/briefing-materials-1-25jun13-en.pdf>.)

On 2 July 2013, the NGPC approved revisions to the New gTLD Registry Agreement, including a provision prohibiting registry operators from limiting registrations in "generic term" TLDs exclusively to "a single person or entity and/or that person's or entity's 'Affiliates.'" (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.d>; *see also* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-item-1d-02jul13-en.pdf>, Annex I, New gTLD Agreement.)

On 14 July 2013, 22 July 2013, and 23 July 2013, the Panels considering the LROs to, respectively, Amazon's application for .TUNES, Amazon's application for .SONG, and the .music LLC .MUSIC Application, dismissed those objections. (*See* <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1317-30761-en.pdf>, <http://newgtlds.icann.org/sites/default/files/drsp/14oct13/determination-1-1-1317-53837-en.pdf>, <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-959-51046-en.pdf>.)

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<sup>6</sup> The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters. (Bylaws, Art. XI, § 2.1.j.) In the context of the New gTLD Program, there are also specific procedures pursuant to which the GAC may provide advice to ICANN on new gTLDs. (Guidebook, § 3.1.)

<sup>7</sup> New gTLD Program Committee.

On 19 August 2013, ICANN sent an email to all applicants for Category 2 Strings (“19 August 2013 Email”), informing them of the GAC’s Category 2 Advice and asking each applicant to advise ICANN whether: (i) its application indicated that it intended to provide exclusive access, which it had no current plans to change; (ii) its application indicated that it intended to provide exclusive access, but it wanted to submit a change request to provide non-exclusive access; or (iii) its application did not indicate that it intended to provide exclusive access. (See <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>.)

On 21 August 2013, the Panel considering the Requester’s LRO to Amazon’s application for .MUSIC dismissed that objection. (See <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-2-1-1316-18029-en.pdf>.)

On or before 4 September 2013, Amazon, .music LLC, and the Requester responded to ICANN’s 19 August 2013 email. Amazon informed ICANN that although the Amazon Applications stated that the applied-for gTLDs would be operated as exclusive access registries, Amazon would not operate the gTLDs as exclusive access registries.

(<http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1317-53837-en.pdf>.) Both .music LLC and the Requester informed ICANN that their applications did not state that their applied-for gTLDs would be operated as an exclusive access registries. (<http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-959-51046-en.pdf>; <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1115-14110-en.pdf>.)

On 28 September 2013, the NGPC adopted a resolution allowing Category 2 String applicants that were prepared to enter into the amended Registry Agreement as approved (which

prohibited exclusive registry access for generic strings), to move forward with the contracting process (“28 September 2013 Resolution”).

(<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a.rationale>; *see also* Annex 1 to Resolution *available at* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>.)

On 9 October 2013, ICANN announced that, based on the 28 September 2013 Resolution, ICANN would request the submission of change requests from any Category 2 String applicant who had responded to the 19 August 2013 email with a statement that while its application indicated that it intended to provide exclusive access, it wanted to submit change requests to provide non-exclusive access. ICANN further provided that if the change requests were approved by ICANN and the applications became eligible, those applicants would be invited to begin the contracting process in order of priority number.

(<http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>.)

On 6 December 2013, the Panel considering the Community Objections to the Amazon Applications dismissed those objections. (*See, e.g.*, <http://newgtlds.icann.org/sites/default/files/drsp/16dec13/determination-1-1-1317-30761-en.pdf>.)

On 23 December 2013, the Requester filed Reconsideration Request 13-22, seeking reconsideration of alleged ICANN staff inactions with respect to its Community Objections to the Amazon Applications and arguing, among other things, that ICANN had failed to advise the ICC and the Panel on the GAC’s Category 2 Advice. (Request 13-22, *available at* <https://www.icann.org/en/system/files/files/request-dotmusic-23dec13-en.pdf>.)

On 5 February 2014, the BGC denied Request 13-22. Among other things, the BGC examined the Requester’s argument that the Panel had “completely ignored material changes to

the Program by GAC Advice, NGPC Resolutions and Applicant[’s] misleading statements,” and concluded that: (i) the Requester had in fact sent a letter to ICANN specifically requesting that ICANN advise the ICC and the Panel to ignore those changes; (ii) ICANN had, consistent with procedure, left it to the discretion of the Panel whether to consider the impact of those changes; and (iii) in any event, Amazon’s intent to change its registries from exclusive access to non-exclusive access would not have altered the Panel’s determination on the likelihood of material harm, because that change would in fact eliminate the purported harm. (Determination on Request 13-22, Pgs. 13-16, *available at* <https://www.icann.org/en/system/files/files/determination-dotmusic-05feb14-en.pdf>.)

On 4 March 2014, the Requester filed Reconsideration Request 14-8, seeking reconsideration of alleged ICANN staff inactions with respect to its Community Objections to various applications for .MUSIC, including to the .music LLC .MUSIC Application. The Requester raised many of the same arguments it had raised in Request 13-22, including the argument that ICANN had failed to advise the ICC and the Panel<sup>8</sup> on the GAC’s Category 2 Advice. (Request 14-8, *available at* <https://www.icann.org/en/system/files/files/request-dotmusic-04mar14-en.pdf>)

On 22 March 2014, the BGC denied Request 14-8. In responding to the Requester’s argument regarding ICANN’s alleged failure to advise the ICC and the Panel on the GAC’s Category 2 Advice, the BGC noted, as it had in its determination on Request 13-22, that: (i) the Requester had in fact sent letters to ICANN specifically requesting that ICANN advise the ICC and the Panel to ignore those changes; and (ii) ICANN had, consistent with procedure, left it to the discretion of the Panel whether to consider the impact of those changes. (Determination on

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<sup>8</sup> The ICC appointed one Panel to evaluate the Requester’s Community Objections to the various applications.

Request 14-8, Pgs. 13-14, *available at* <https://www.icann.org/en/system/files/files/determination-dotmusic-22mar14-en.pdf>.) The BGC further noted that the Panel both granted the Requester leave to submit new information arising out of the GAC’s Category 2 Advice and considered that information before rendering its determination. (*Id.*, Pg. 14.)

Amazon submitted change requests for the Amazon Applications, which were posted and approved by ICANN on 30 April 2014. The 30-day comment period for those requests concluded on 30 May 2014.

On 7 June 2014, the Requester submitted the instant Request, seeking reconsideration of ICANN’s approval of Amazon’s change requests and of ICANN’s failure to invite .music LLC to submit a material change request for the .music LLC .MUSIC Application.

**B. The Requester’s Claims.**

The Requester contends that reconsideration is warranted because ICANN staff:

1. Approved Amazon’s change requests for the Amazon Applications without properly considering or balancing the seven factors for such requests, (Request, § 6, Pgs. 4-9);
2. Approved Amazon’s change requests for the Amazon Applications despite the fact that those changes “materially alter[ed]” those applications, (Request, § 7, Pgs. 13-14);
3. Failed to treat all applicants for Category 2 Strings similarly, specifically by inviting Amazon to submit a change request for the Amazon Applications but failing to invite .music LLC to submit a change request for the .music LLC .MUSIC Application, (Request, § 3, Pg. 4; *Id.* § 6, Pg. 10, *Id.* § 8, Pg. 16).

**C. Relief Requested.**



The Requester asks the Board to: (i) “reimburse the Legal Rights and Community Objectors” for all expenses associated with filing past objections to the Amazon Applications and the .music LLC .MUSIC Application; (ii) allow new Legal Rights and Community Objections to be filed against the Amazon Applications and .music LLC .MUSIC Application; (iii) determine that .music LLC’s response to the GAC regarding its application is “material and inconsistent with [its] position in Community Objection Responses and policies in [its] current Application;” (iv) initiate a material change request for the .music LLC .MUSIC Application; (v) “require re-evaluation in a subsequent round” for the Amazon Applications and the .music LLC .MUSIC Application; and (vi) allow the Requester “to make policy changes to its Application if it does not pass” Community Priority Evaluation. (Request, § 9, Pgs. 18-21.)

### **III. Issues.**

In view of the claims set forth in Request 14-28, the issues for reconsideration are whether ICANN staff violated established policy by:

1. Approving Amazon’s change requests for the Amazon Applications without properly considering or balancing the seven factors for such requests, (Request, § 6, Pgs. 4-9);
2. Approving Amazon’s change requests for the Amazon Applications despite the fact that those changes “materially alter[ed]” those applications, (Request, § 7, Pgs. 13-14);
3. Failing to treat all applicants for Category 2 Strings similarly, including by inviting Amazon to submit change requests for the Amazon Applications but failing to invite .music LLC to submit a change request for the .music LLC .MUSIC Application, (Request, § 3, Pg. 4; *Id.* § 6, Pg. 10; *Id.* § 8, Pg. 16).

#### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.<sup>9</sup> (Bylaws, Art. IV, § 2.) Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, or if the Board or the New gTLD Program Committee (NGPC) agrees to the extent that the BGC deems that further consideration is necessary, that the requesting party failed to satisfy the reconsideration criteria set forth in the Bylaws.

#### **V. Analysis and Rationale.**

##### **A. The Requester Has Not Demonstrated that ICANN Staff Failed to Properly Apply and Balance the Required Factors In Approving Amazon's Material Change Requests.**

The Requester argues that ICANN staff violated policy or process because it failed to properly apply and balance the established criteria for change requests in approving Amazon's change requests for the Amazon Applications. (Request, § 6, Pgs. 4-9.) In determining whether to approve a change request, ICANN staff consider the following factors:

1. *Explanation* – Is a reasonable explanation provided?
2. *Evidence that original submission was in error* – Are there indicia to support an assertion that the change merely corrects an error?
3. *Other third parties affected* – Does the change affect other third parties materially?

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<sup>9</sup> Article IV, Section 2.2 of ICANN's Bylaws, states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

4. *Precedents* – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. *Fairness to applicants* – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. *Materiality* – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. *Timing* – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

(See <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.)

The Requester argues that the foregoing factors weigh against approving Amazon’s change requests. (Request, § 6, Pgs. 7-9.) In support, the Requester argues that “[i]t is without question that there are other third parties affected” because “[s]ignificant resources and costs were spent by Legal Rights Objectors and Community Objectors” in their objections to the Amazon Applications, that “[i]t is certain that allowing such a policy-related material change in an application . . . would not be construed as fair to applicants the general community, and that “the timing interferes with the evaluation process and creates additional delays and inconsistencies.” (Request, § 6, Pg. 8.) However, the Requester’s argument simply reflects its substantive disagreement with ICANN’s decision to approve the change requests. The Requester presents no evidence that ICANN staff in fact failed to apply the required factors in violation of established policy.

Further, the Requester contends that Amazon provided no explanation for its changed position on exclusive access and/or cannot demonstrate that its original application was submitted in error, and that allowing Amazon’s change requests would therefore result in

“precedents and undesirable effects on the [gTLD] program.” (Request, § 6, Pgs. 7-8.) None of the foregoing contentions even suggest an ICANN staff violation of policy or process that could support Reconsideration. Moreover, as is discussed in greater detail below, Amazon’s change requests were submitted in response to the GAC’s Category 2 Advice and Board action based on that advice, both of which came months *after* the Amazon Applications were submitted.<sup>10</sup> Not only is there a clear and reasonable explanation for Amazon’s changed position, but approving a change request made in response to GAC Advice would not result in “precedents and undesirable effects on the [gTLD] program.”

**B. No Established Procedure Prohibits ICANN From Approving Material Change Requests That “Materially Alter” gTLD Applications.**

The Requester argues that ICANN’s approval of Amazon’s change requests was improper because, in the Requester’s view, the changes “materially alter[ed]” the Amazon Applications. (Request, § 7, Pg. 13-14.) However, the Requester points to no established policy or procedure that prevents ICANN from approving a change request that “materially alters” a gTLD application.

As recognized by the Requester, pursuant to the New gTLD Applicant Guidebook (“Guidebook”), “ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent round.” (Guidebook, § 1.2.7; Request, § 6, Pg. 10.) This provision explicitly contemplates that a material change may be made and reserves ICANN’s right to assess additional fees and/or delay its evaluation of an application in the event of such a change. Contrary to the Requester’s

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<sup>10</sup> As the BGC has noted in its determinations on the Requester’s previous reconsideration requests, ICANN’s Bylaws require the Board to take into account GAC advice on public policy matters, and the New gTLD Applicant Guidebook further sets out specific procedures pursuant to which the GAC may provide advice on new gTLDs. (Determination on Request 13-22, Pg. 3 n.4; Determination on Request 14-8, Pg. 3 n.5.)

claims, nothing in the Guidebook prevents ICANN from approving a material change to a gTLD application. As such, and because the Requester cites to no policy or procedure that prohibits ICANN from making such a change, the Requester’s claim does not support reconsideration.

The Requester also argues that ICANN improperly approved changes to the Amazon Applications’ registry access provisions despite the fact that Amazon previously defended its exclusive access provisions in its responses to the Requester’s Objections.<sup>11</sup> (Request, § 6, Pg. 7.) However, the Requester cites to no established policy or procedure that would prohibit ICANN to approve change requests brought after objection proceedings have been initiated and/or concluded.

Further, the crux of the Requester’s complaint is that ICANN, in approving the change requests, has unfairly disregarded the “significant resources and costs spent by Objectors to fight against the exclusive access language which is now non-existent.” (Request, § 6, Pg. 10.) However, the Request fails to even suggest how this might be a violation of policy or procedure. Moreover, as the BGC has twice noted—in its response to Requester’s Reconsideration Requests 13-22 and 14-8—the Requester asked ICANN to instruct the Panels considering its Community Objections *not* to consider “new material changes made . . . in response to GAC advice . . . .” (Determination on Request 13-22, Pg. 13-14; Determination on Request 14-8, Pg. 13.)

**C. ICANN Has Applied A Consistent, Transparent Policy to Handling Change Requests From Applicants for Category 2 Strings.**

The Requester argues that ICANN’s position with respect to change requests is “inconsistent since some Applicants (such as Amazon) have been asked to submit a change request, while others (such as .music LLC) have not been asked to submit a change request.”

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<sup>11</sup> The Requester also suggests that ICANN improperly let .music LLC “fix” its application, despite the fact that, as the Requester repeatedly acknowledges, .music LLC did not submit a change request. (Request, § 6, Pg. 10.)

(Request § 8, Pg. 16.) The Requester's argument is unsupported—the record demonstrates that ICANN has applied a consistent process with respect to change requests from applicants for Category 2 Strings.

Following the GAC's issuance of its Category 2 Advice, ICANN sent the 19 August 2013 email to *all* applicants for Category 2 Strings. In the 19 August 2013 email, ICANN asked each applicant to advise ICANN as to whether: (i) its application indicated that it intended to provide exclusive access, which it had no current plans to change; (ii) its application indicated that it intended to provide exclusive access, but it wanted to submit a change request to provide non-exclusive access; or (iii) its application did not indicate that it intended to provide exclusive access. (See <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>.)

In response, Amazon informed ICANN that although the Amazon Applications stated that the applied-for gTLDs would be operated as exclusive access registries, Amazon would not operate the gTLDs as exclusive access registries.

(<http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1317-53837-en.pdf>.) .music LLC and the Requester both informed ICANN that their applications did not state that their applied-for gTLDs would be operated as an exclusive access registries.

(<http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-959-51046-en.pdf>; <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1115-14110-en.pdf>.)

On 9 October 2013, ICANN publicly announced that, based on the 28 September 2013 Resolution, Category 2 String applicants who had responded to the 19 August 2013 email by stating that although their applications indicated that they intended to provide exclusive access

they now wanted to submit change requests to provide non-exclusive access, would be asked to submit change requests. (<http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>.)

Thereafter, Amazon, like all other Category 2 String applicants that responded to the 19 August email stating a desire to submit change requests to provide non-exclusive access, was asked to submit a change request. .music LLC and the Requester, like all other Category 2 String applicants that responded to the 19 August email by stating that their applications *did not* indicate an intent to provide exclusive access, were not asked to submit a change request.<sup>12</sup> The Requester's claim that ICANN should have invited change requests from applicants who stated that their applications did not reflect an intention to provide exclusive access is nonsensical. Indeed, those applicants were not proposing any changes to their applications in response to the Category 2 Advice.

The record demonstrates that ICANN applied a consistent, transparent procedure in determining which Category 2 String applicants would be asked to submit change requests. Because Requester provides no evidence to the contrary, and has not stated any policy or procedure that ICANN staff violated, the argument does not support reconsideration.

## **VI. Determination.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 14-28. As there is no indication that ICANN violated any policy or procedure by approving Amazon's change requests for the

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<sup>12</sup> The Requester appears to argue that the .music LLC .MUSIC Application does in fact indicate that .music LLC intends to operate its applied-for string as an exclusive access registry. (Request, § 6, Pgs. 9-10.) In fact, the .music LLC .MUSIC Application indicates that the registry will be open to all those who are "members of or affiliated with at least one Member Organization of the Global Music Community." (.music LLC Application, *available at* [file:///C:/Users/JP018911/Downloads/1-959-51046\\_MUSIC.html](file:///C:/Users/JP018911/Downloads/1-959-51046_MUSIC.html).) Further, ICANN's revised Registry Agreement includes a provision prohibiting registry operators from operating "generic term" registries, such as .MUSIC, as exclusive access registries.

Amazon Applications or not inviting .music LLC to submit a change request, this Request should not proceed. If the Requester believes that it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC concludes that this determination is final and that no further consideration by the Board (or the New gTLD Program Committee) is warranted.

In terms of the timing of the BGC's Determination, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. (*See* Bylaws, Article IV, § 2.16.) To satisfy the thirty-day deadline, the BGC would have to have acted by 7 July 2014. Due to the volume of Reconsideration Requests received within recent weeks, it was impractical for the BGC to consider Request 14-28 prior to 24 July 2014. Upon reaching that conclusion, staff notified the Requester of the BGC's anticipated timing for the review of Request 14-28.