

# ccMIXTER.ORG - REQUEST FOR PROPOSAL



**29 May 2008**

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# 1. Introduction

## 1.1 *Summary; Purpose of this RFP*

Creative Commons (“CC”) is accepting proposals from third parties to acquire and operate the site located at ccMixer.org (“ccMixer”) consistent with the requirements in this RFP, including the Appendices. Proposals must also be consistent with the CC mission and the spirit of ccMixer, regardless of whether the proposal is made by a commercial or noncommercial entity.

The purpose of this Request for Proposal (“RFP”) is to provide third parties that wish to participate in the RFP process (each, a “Participant”) with relevant information relating to ccMixer and the RFP process, in order for them to have the opportunity to submit proposals.

## 1.2 *ccMixer.org*

ccMixer was originally envisioned by former CC Executive Director Neeru Paharia and prototyped by MIT computer science students. ccMixer.org was launched by CC in November 2004 to demonstrate legal mixing and reuse of music content, one area in which CC licenses have found firm footing and support. CC believes that ccMixer.org has fulfilled its initial mission of concretely demonstrating “legal reuse.” However, running a community music site is not one of CC’s core competencies, and accordingly, CC’s Board of Directors has decided that ccMixer should be transitioned to another person or entity with the necessary resources and expertise for ccMixer to continue to grow and reach its full potential.

## 1.3 *Creative Commons*

Creative Commons is a Massachusetts charitable corporation. Creative Commons’ mission is two-fold: to provide tools for legally expressing a “some rights reserved” approach to copyright; and to reduce the transaction costs of re-using works covered by copyright.

Creative Commons desires to dispose of the ccMixer assets through a competitive process while remaining consistent with Creative Commons’ charitable purpose. Creative Commons will comply with applicable law in connection with this conveyance, including any obligations imposed by nonprofit or charitable organizations law.

## 1.4 *Intellectual Property*

The intellectual property assets relating to ccMixer that are to be included in the transaction are identified in Appendix A.

## 1.5 *Commercial Terms*

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Participant's response must address the terms set forth herein and referenced in Section 3, below, as well as reflect Participant's vision for the future of ccMixer and proposed commercial terms for the transaction, which shall incorporate the CC commercial terms attached as Appendix B. No variances from the principles articulated by Larry Lessig and reproduced in Appendix B will be considered. Any other material variances from Appendix B proposed by Participant will require a written rationale that explains the proposed alternative and how it is beneficial to CC and ccMixer.

This document shall not be construed as a contract between the parties and no communication, whether verbal or written by CC personnel or agents of CC during the course of the evaluation process shall create such a contract in respect of the products or services specified in this RFP.

Participant must examine this document and be satisfied that Participant fully understands its obligations. CC shall rely upon the information Participants provide and, if information provided in response to this RFP proves inaccurate, CC reserves the right to terminate any contract awarded.

## 2. **RFP Response Instruction**

The following section provides instruction on the process and the specific details on how to respond to this RFP.

### **2.1** *General Overview*

This is an open and competitive process.

Proposals received after **5:00PM PST, 29 July 2008**, will not be considered and will be rejected.

The proposal must contain the signature of a duly authorized officer or agent of the entity submitting the proposal.

If Participant wishes to submit multiple solutions for disposition of ccMixer by CC, please do so.

Provisions of this RFP and the contents of the successful responses are considered available for inclusion in the final contractual negotiations.

CC may elect to require subsequent phases of the process, in which any finalists may be required to submit supplementary information.

### **2.2** *RFP Timeline*

The RFP timeline is as follows:

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**(a)** This RFP is dated 29 May 2008.

**(b)** Proposals are due no later than 5:00PM PST on 29 July 2008.

**(c)** Proposals will be evaluated thereafter for a period of approximately 30 days. During the evaluation period, we may require interviews with our evaluation team. Participant will be notified if this is necessary.

**(d)** The name of the candidate or candidate organization(s) selected as finalist(s) will be decided on or about 1 September 2008, at which point CC will use commercially reasonable efforts to notify the other candidates who are no longer under consideration.

**(e)** Negotiations will begin immediately with the successful finalist(s) and should conclude no later than 30 September 2008 (subject to extension by CC in its discretion). All negotiations are subject to final approval by the CC Board of Directors.

**(f)** CC anticipates publicly announcing the conclusion of the RFP process when negotiations have concluded or CC terminates the RFP process, whichever occurs first.

### **2.3** *Notice of Intent to Respond*

Participants may, but are not required to, register by sending an email notifying CC of their intent to participate in the RFP process, but in no event later than 5:00PM PST on 18 July 2008. This should be emailed to [ccmixter-rfp@creativecommons.org](mailto:ccmixter-rfp@creativecommons.org). Failure to email a notice of intent means that such Participant will not receive any communications from CC prior to the proposal deadline date relating to this RFP, including, potentially, changes to the RFP process that may be provided to the other registered Participants. Participants alone are responsible for ensuring their proposals comply with all terms of this RFP, including any updates or communications provided by CC and posted on the CC website. Participants should ensure they review the CC web site for any updates, changes or supplementary information relating to this RFP prior to submitting their proposal.

### **2.4** *RFP Questions and Communications*

Participants may ask for clarifications to the RFP until 5:00PM PST on 18 July 2008. After this time, no further questions will be accepted from any Participant. Questions should be documented in a single email whenever possible and sent to [ccmixter-rfp@creativecommons.org](mailto:ccmixter-rfp@creativecommons.org). CC cannot commit to answering questions within any guaranteed time frame.

Answers to questions raised and the questions themselves may be provided to all registered Participants in CC's sole discretion, although CC makes no commitment to do so. Therefore, Participants should not

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submit questions that disclose confidential information unless Participant has entered into a nondisclosure agreement with CC, as discussed in Section 4.12 below. CC cannot be responsible or liable for disclosure of a Participant's confidential information except as otherwise set forth in a nondisclosure agreement.

Except for questions submitted in accordance with the foregoing, due to the complexity of this process and to ensure consistent and fair communication with Participants, CC requires that no further business communication take place between any Participant and CC or ccMixer personnel after the Participant becomes aware of this RFP, unless such communication is initiated by CC or is unrelated to the RFP or ccMixer. **Further, all communications between any Participant and CC or ccMixer personnel must be submitted via CC's or ccMixer.org's email portal, with no other communications taking place between Participants and individuals associated with CC and ccMixer.org.**

CC recognizes that Participants may become or are already involved with ccMixer.org, including involvement on ccMixer.org email discussion lists or other cc.Mixer.org sponsored forums. CC also recognizes that ccMixer.org community members may wish to discuss the RFP process in such forums, and CC is supportive of those conversations. Notwithstanding, CC will look unfavorably on activities by Participants in those forums that could be construed as abusive or unfair promotion of the Participant's proposal. If community members request information from Participants via ccMixer.org sponsored forums, Participants are strongly encouraged to post responses openly so that all forum members may have the benefit of the information Participant provides.

### 3. **Response Requirements**

To allow for an expeditious and comprehensive response evaluation, we ask Participants to adhere to the following response requirements. Failure to conform to this request will delay the evaluation process and may reflect negatively on the Participant during evaluation.

#### **3.1** *Special Response Requirements*

**Participants shall review the restrictions in the attached Appendices and state their compliance with the provisions in general. Further, Participants must clearly state how the requirements of the RFP and Appendices are met by Participant's proposal including, without exception, the points and information specifically raised and requested in Section 2, above, and Section 4, below. Further, Participants must disclose any affiliation with ccMixer.org, CC, its Board of Directors, and employees or consultants of CC and ccMixer.org. The terms set forth in the RFP and Appendices do not represent all of the CC legal terms and CC reserves the right to add**

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**to and/or modify such terms at any time, including in any definitive agreement(s).**

### **3.2** *General Response Requirements*

**(a)** Proposals shall be precise and complete. All relevant assumptions and context required for implementing the proposal shall be provided.

**(b)** Please ensure that responses include sufficient information to clearly detail the advantages of the proposal. Responses should be tailored specifically to answer the requirements and questions provided in the RFP.

**(c)** Participants are encouraged to answer all questions with reference to design mock-ups, manuals, data sheets, product brochures, previous sections, or other supporting material as necessary. All RFP responses, supporting materials, and other documentation submitted with responses will become the property of CC.

**(d)** Proposals shall provide maximum implementation clarity. Participants should provide detailed descriptions on how their proposal will be implemented to meet CC's objectives.

**(e)** CC makes no commitment regarding ongoing affiliation, participation or collaboration by current CC or ccMixer.org employees, consultants or volunteers post-closing. Proposals may not require any such commitments as a condition to closing or entering into a definitive agreement.

**(f)** In the event it becomes necessary to revise the RFP, addenda will be forwarded to all who received the original RFP and registered with the RFP process. For avoidance of doubt, CC expressly reserves the right to extend the response date.

### **3.3** *Proposal Submission*

#### **(a)** Format; Submission Address and Logistics

Proposals should consist of a cover letter and proposal body in OpenOffice, Word, or PDF format, with any spreadsheet attachment in OpenOffice, Excel, or PDF format. Further attachments that describe the candidate or the candidate organization are welcome. Proposals shall be delivered to [ccmixter-rfp@creativecommons.org](mailto:ccmixter-rfp@creativecommons.org).

#### **(b)** General Tips

**(i)** Submissions that are concise and easy to read will inevitably receive more consideration.

**(ii)** Submitted documentation should be confined to that directly relevant to the items requested in the RFP. If this is not practical, Participants must make clear what portion of the documentation pertains directly to the RFP and what portion does not.

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## 4. General Terms and Conditions

### 4.1 *Proposal Validity*

The information included in responses to the RFP (and any CC follow-up requests and questions) must be valid for 120 days from Participant's submission. The contents of any response submitted by the Participant will be considered an offer to contract by the Participant with CC pursuant to this RFP. Any portion of the Participant's response to this RFP may be incorporated into any definitive agreement prepared by CC as a result of this RFP, as well as those modifications mutually agreed upon through negotiations between CC and the Participant, and any terms and conditions required by law, regulation or local ordinance.

A response to this RFP may be submitted on behalf of an individual, provided that such individual is 18 years of age or older and is fully able and competent to enter into a legally binding agreement.

If a response is submitted on behalf of an business, organization or other entity, the response must be submitted by a person who (i) is duly authorized to make the response on behalf of the submitting organization, and expressly makes such representation; (ii) is identified by name and title; (iii) uses an email address associated with the submitting organization; and (iv) includes the physical mailing address of the submitting organization, along with its legal status (e.g., a Delaware corporation) and a representation that it is in good standing in such jurisdiction.

### 4.2 *Right to Accept or Reject*

CC reserves the right to accept or reject any response in its sole discretion. Please note that a response to this RFP does not commit CC to any course of action resulting from its receipt and that CC may, at its discretion:

(a) Reject any submission; CC is not bound to give any reason for the rejection.

(b) Reject any submission which does not conform to the instructions and specifications which are contained herein.

(c) Select a Participant based upon its own unique set of criteria. CC is not bound to disclose the details of such criteria and may at any time alter the criteria to reflect CC's changing needs.

(d) Reject all submissions.

(e) Terminate or modify this RFP process.

CC reserves the right to accept or reject any or all responses, to take exception to these specifications or to waive any formalities. CC

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specifically reserves the right to negotiate a contract with the selected Participant, or to negotiate with one or more finalists, or to pursue any other course that it determines in its sole discretion.

Participant may withdraw a response submitted to CC before 5:00PM on 29 July 2008, provided that such request must be made in writing.

#### **4.3** *Contract Negotiation*

CC may negotiate with one or more Participants who submit proposals that, in CC's sole judgment, may be suitable acquirers, and may negotiate with such Participants or with other firms in any manner that CC determines in its sole discretion to be in its best interests. Either the Participant or CC may suspend or terminate negotiations for any or no reason with no liability. Without limiting the generality of the foregoing, if any Participant fails to provide information requested by CC in a timely manner, or fails to negotiate in good faith, CC may terminate negotiations with that Participant. The decision to commence, continue or terminate negotiations with any Participant or other firm is solely at the discretion of CC and CC may, in its sole discretion, invite any Participant to commence negotiations at any time.

If contract negotiations are commenced, they shall be held in a mutually agreeable location at a date and time to be determined. Participant will be responsible for all of its direct and related costs related to responding to this RFP, any subsequent requests for information, negotiations, advisory fees and expenses (attorneys, accountants, tax, and other costs), including, but not limited to, travel and expenses incurred in connection with interviews and negotiations.

Conclusion of definitive agreements is subject to CC Board approval and CC reserves the right to reopen, suspend, or terminate the process or modify the finalist pool if it determines that this is in the best interest of CC or ccMixer. CC reserves the right to extend the process dates or add process steps by modification of this RFP.

All contracts are subject to review by CC legal counsel. Definitive agreements will include CC's form of agreement setting forth terms of contract, which outlines payment, terms and conditions, and other necessary items.

THIS RFP CONTAINS NO CONTRACTUAL OFFER BY CC OF ANY KIND. ANY PROPOSAL SUBMITTED WILL BE REGARDED AS AN OFFER BY THE PARTICIPANT AND NOT AS AN ACCEPTANCE BY THE PARTICIPANT OF ANY OFFER BY CC. ANY AGREEMENT BETWEEN CC AND THE PARTICIPANT WILL ONLY BE AS SET FORTH IN A DEFINITIVE WRITTEN CONTRACT BETWEEN CC AND THE PARTICIPANT.

#### **4.4** *Participant Selection*

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CC reserves the right to use its own best judgment and consideration in evaluating and selecting Participants, with the final selection to be made its sole discretion as to the solution providing the best overall fit and Participant capabilities, as well as the financial terms proposed by the Participant. The overall selection process will include factors from Participant responses, interviews, presentations, financials and references, including, without limitation:

**(a)** Commitment and ability to conform to the principles described in guidelines above and in Appendix B.

**(b)** Plan and vision for ccMixer after completion of the transaction:

**(i)** Concreteness of plan;

**(ii)** Viability of Participant and Participant's proposal for ccMixer-- long and short term; and

**(iii)** Scale and impact of success (taking into account web site growth plans and other marketing and promotional plans).

**(c)** Amount and terms of financial compensation to CC.

**(d)** Capability to run and further develop a best of breed community music website, including resources and demonstrated expertise in the following:

**(i)** Web technology;

**(ii)** Music industry;

**(iii)** Legal;

**(iv)** Community management; and

**(v)** Finance.

**(e)** Understanding of and sensitivity to the needs of open sharing communities.

**(f)** Understanding of and compatibility with Creative Commons' mission.

#### **4.5** *No Obligation*

CC is under no obligation to accept or consider responses that are received after the due date. Additionally, CC reserves the right to cancel the RFP process or terminate, suspend or modify its planned disposition of ccMixer, at any time and without obligation to those

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Participants that have submitted responses to this RFP. This RFP does not obligate CC in any manner.

#### **4.6** *Supplemental Terms and Conditions*

Responses that include terms and conditions in addition to those contained herein will be evaluated, however any additional terms or conditions that conflict with those contained in this RFP or that would diminish CC's rights (under any contract or otherwise) will be rejected. CC may refuse to include any such terms or conditions in any contract that CC may execute with a Participant. The Participant's response must not contain terms or conditions that directly or indirectly limit CC's relief or remedies for the Participant's failure to perform its obligations.

#### **4.7** *Expenses*

Participant agrees that any costs incurred in the process of responding to this RFP, or in support of activities associated with this RFP, are to be borne fully by the Participant and will not be borne by or billed to CC.

#### **4.8** *Compliance with Law; Non-Discrimination*

CC expects Participants to comply with applicable law including the following: In preparing a proposal, Participants agree not to discriminate against any employee or applicant for employment with respect to hiring and tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, age, handicap, veteran status or national origin or otherwise as prohibited by law.

#### **4.9** *Warranty*

**CC does not make any warranty, express, implied or statutory, with respect to the information provided in this RFP or on which the RFP is based or any of the assets described herein, and expressly disclaims the implied warranties of merchantability, fitness for a particular purpose and noninfringement.**

#### **4.10** *Assignment*

This RFP and any agreement entered into as a result of this RFP may not be assigned in whole or in part, without the express written consent of CC.

#### **4.11** *Independent Contractor Relationship*

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The Participant is and shall perform under this RFP as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents and operations. Neither the Participant nor anyone employed by it shall be, represent, act, and purport to act or be deemed to be the agent, representative, employee or servant of CC.

#### **4.12** *Confidentiality; Publicity*

At any stage in the process, either party may propose entering into a nondisclosure agreement in order to protect sensitive or confidential information. Except as may otherwise be expressly limited by the terms and conditions of a nondisclosure agreement, Participant acknowledges and agrees that CC may publicly disclose any information provided by Participant during the RFP process, including any information contained in a Participant's response to this RFP.

Notwithstanding the foregoing or any nondisclosure agreement entered into between CC and any Participant, CC may disclose any information provided by Participant or otherwise relating to Participant as required, in CC's determination, by law, regulation, or order or requirement of a court, administrative agency, or other governmental body including, without limitation, for CC to comply with applicable tax, nonprofit or charitable organization law.

By submitting a response to this RFP, Participant agrees to the terms and conditions stated herein.

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## **Appendix A: ccMixer Assets**

The following are the intellectual property assets relating to ccMixer to be transferred or licensed:

1. ccMixer.org and ccMixer.net domain names.
2. Web site design content to the extent owned by CC but excluding all trademarks, logos and CC licenses. For clarity, the sampling license and other CC licenses are not a part of this deal, nor are any rights to administer or offer such licenses.
3. Other web site content under CC license subject to the terms of the applicable license.
4. User database, transfer subject to ccMixer privacy policy and user opt-in.

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## **Appendix B: Commercial Terms**

The following terms shall be included as material terms in any successfully negotiated definitive agreement between CC and Participant.

1. Participant's use of ccMixer must conform to the following principles specified by CC's founder, Larry Lessig, at [http://lessig.org/blog/2007/11/ccmixter\\_thinking\\_about\\_where.html](http://lessig.org/blog/2007/11/ccmixter_thinking_about_where.html) (provided that the following is not intended to limit any proposals similar to those mentioned in the foregoing blog post):

**1.1**CC will not profit off of CC artists: We're not an agency; we will set up no arrangement where the success of CC artists translates into financial success for CC. We're happy to receive gifts from our community; we're not about to receive commissions. We are therefore keen to restructure ccMixer so that any commercial benefit flowing to CC artists won't seem an indirect benefit to CC.

**1.2**ccMixer will never lose its current commerce-free face. It will always be "free" in both the costless and free-speech sense. It will never have ads. It will always be an ".org". The community that exists there now can continue just as it exists now. No one will have to make any change to how they contribute to the ccMixer community, if no change is what they want.

**1.3**Any change in ccMixer will be completely transparent, and only with the support of its community. The transparent part of this is simple. The support of the community part is complicated by fiduciary obligations imposed upon a non-profit like CC. But we will work hard to make sure that we do only what the community believes (properly interpreted of course) makes sense. Our ultimate aim here is to enable more for that community. We achieve that aim by understanding it.

**1.4**All the software and creative work will always remain "free": First, the (award-winning) code is free (licensed under the GPL); we will contribute the copyrights to that code to the GNU Project as soon as we can convince the Free Software Foundation of the capabilities of the maintainer. Second, the music is free (all licensed under terms that permit at least noncommercial sharing and remix).

2. Participant's operation of ccMixer must be consistent with the ccMixer.org terms (available at <http://ccmixter.org/terms>) and privacy policy (available at <http://ccmixter.org/privacy>), and shall be subject to the opt-in by members of the ccMixer community on an individual basis.
3. In order to maintain the openness of the proposal process, Participant must disclose any affiliation with ccMixer.org, CC, its Board of Directors, employees or consultants.
4. Any definitive agreement will include, without limitation, the following:

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- 4.1** Express remedies at law and in equity for CC in the event of failure by Participant to comply with terms and conditions;
  - 4.2** Contract is non-assignable without CC's consent;
  - 4.3** Disclaimer of all warranties by CC; transfer is on an "as-is" basis;
  - 4.4** Limitation of liability by CC;
  - 4.5** Indemnification by Participant; and
  - 4.6** Any other terms as required due to CC's non-profit status.
5. Definitive agreements shall not include personnel commitments or key man provisions as a condition of closing or otherwise.
6. Subject to the principles and terms in this Appendix and the RFP, Participant's proposal should describe a specific plan for Participant to maintain and develop ccMixer.org with the overall goal of greatly increasing the impact and success of ccMixer.org in a way that is compatible with and furthers the Creative Commons mission.

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