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**COU20-0912/BIEM20-0054**

Neuilly sur Seine, October 27, 2020

*Via email*

Regan Smith  
General Counsel and Associate Register of Copyrights  
United States Copyright Office  
Library of Congress  
101 Independence Ave, SE  
Washington, DC 20559-6000

**RE: Docket No. 2020-12.  
Summary of Ex-parte October 22, 2020 Meeting**

Dear Ms. Smith,  
Pursuant to the US Copyright Office (“USCO”) Guidelines, this letter summarizes the ex-parte conference call meeting held on October 22, 2020 at the request of CISAC/BIEM.

Attending the meeting on behalf of CISAC/BIEM, including Member CMOs (“CISAC/BIEM”) were Steve Ambers, Vice President, Corporate Development, SOCAN, Canada; Caroline Champarnaud, International Development Director, SACEM-SDRM, France; Andreas Thiele, Head International Affairs GEMA, Germany; Stefania Ercolani, Counsellor for International Relations, SIAE, Italy; Ingrid Polak, Head of Online Licensing and Legal department, AKM/AUME, Austria; Anja Kroeze, General Counsel, Buma/Stemra, Netherlands, and Cristina Perpiñá-Robert, Director of Legal & Policy, CISAC.

Attending the meeting on behalf of the Copyright Office (“USCO”) were Regan Smith, John Riley, Anna Chauvet, Jason Sloan, Terry Hart, Cassie Sciortino and Megan Efthimiadis.

The following summarizes our discussion:

- CISAC/BIEM started the meeting providing an overview of how mechanical rights are processed and managed outside the US, as this provides the basis for many issues raised in previous submissions to the USCO which CISAC/BIEM wished to reiterate during the meeting. CISAC/BIEM emphasized that outside of the US, and basically in Europe, the principle is based on an exclusive assignment of rights from creators to CMOs both for performing and mechanical rights. CISAC/BIEM further explained that, although mechanical shares are therefore represented and controlled by the CMO itself, CMOs are different from publishers, as these are frequently also members of CMOs. This distinct flow of rights also explains the difference in how royalties are paid: whereas in the US, performing rights are paid based on market share according to usage logs, and in the past, mechanicals were paid out based on works identified, in many other parts of the world, such as EU and Canada, payments and distributions are based on claiming systems after processing the usage reports. In response to a question from the USCO, CISAC/BIEM also clarified how the flow of rights for US uses of non-US works operates,

depending on the terms of the sub-publishing agreements and the percentage assigned to the US sub publisher, and the existence of certain limitations in certain cases, that prevent sub-publishers from collecting 100% of mechanicals (e.g.. 25% limitation in the case of GEMA works).

- Based on the above introduction, CISAC/BIEM raised the potential need for contractual arrangements with The MLC which may differ from standard “publisher” status. CISAC/BIEM clarified how the CMO network operates through reciprocal representation agreements and unilateral agreements in jurisdictions with multiple CMOs and asked if such a framework would comply with your Statute/Regulations. Such a contractual arrangement would also be useful for daily processing and exchange of information, including to process claims for unidentified uses.

USCO explained that in the Statute, the key element to qualify for unclaimed distribution and access to information is whether it is the musical copyright owner or not and assured CISAC/BIEM that since the premise starting point was that the foreign CMO would have the copyright assigned to it, it would qualify as copyright owner. USCO also understood that The MLC can also enter into voluntary agreements and have flexibility regarding how it engages with copyright owners.

- CISAC/BIEM also expressed concerns regarding data protection laws/EU GDPR compliance, and how this was going to be handled by The MLC. The USCO referred to previous written submissions from The MLC where it was already acknowledged that the MLC was designing the system to be GDPR compliant, and there did not seem to be further need to regulate.
- CISAC/BIEM informed the USCO how they have been engaging with the MLC, including the recent appointment to liaise with foreign CMOs, and the need to clarify what type of information is to be made publicly available on the website, especially because data provided by CMOs, including the composer shares, could contain confidential/business sensitive information. Conversations with The MLC however had until now been limited to technical issues, and it seemed opportune to engage with The MLC’s legal counsel to address these issues.

As regards the visibility of copyright ownership shares in the public database, CISAC/BIEM reiterated certain concerns that the Rulings may not be sufficiently clear to confirm that CMOs are to be considered copyright owners. CISAC/BIEM gave certain examples of how works shares are made available in their databases in the case of multiple composer/songwriters and that only the CMO share was visible. The USCO agreed that this does not differ from US domestic cases, where specific agreements on how to pay out composer share may be in place, and such level of detail does not need to be reflected in the database. The USCO agreed that songwriter/composer names need to be included due to the right of attribution but understood that is different from their entitlement to percentages for payment. The USCO considered that the actual copyright ownership of CMOs may be a legal question to be resolved under national laws and that the Statute requires the public database to publish the copyright owner’s share of the work. The USCO understood that if the CMO is the copyright owner, then presumably the CMO would be listed with its’ percentage share.

- CISAC/BIEM also raised further concerns regarding potential competitive advantages that The MLC or its vendors’ access to information may have and risks that such information could potentially be used for purposes outside of Section 115 mechanicals. The USCO assured the CMOs that they were perfectly aware of this issue, which had also been raised by other parties, and considered that these concerns were being addressed in the Confidentiality Rulemaking, and that the Statute requires Regulations to prevent the disclosure or improper use of information or MLC records. The proposed Rule establishes that MLC vendors cannot use the data obtained for processing for other purposes. The USCO further

confirmed that it was very much aware of the need to ensure the necessary balance and that it was still contemplating how best to resolve this, including whether there should be more regulation.

The CMOs CISAC/BIEM considered that some of these concerns were based on the January 1 deadline and whether The MLC would be operating with HFA's database or with its' own DQI processed separate database. USCO noted that there are still open questions regarding this issue, as it seemed that the HFA database would be used as a starting point, but through programmes like DQI data was being updated, so it did not seem as if both databases were identical. The USCO reiterated that the proposed Confidentiality Rulemaking specifies the limitations imposed on proposed vendors and that The MLC had in writing acknowledged that neither The MLC nor its vendor owned the data. The USCO acknowledged that there was a lot of concern expressed about this issue and ensured the CMOs it was going to address this issue.

- The parties also discussed potential contractual arrangements between CISAC/BIEM vis a vis The MLC and the USCO, taking into consideration the need for some stability due to the 5 year mandate, and CISAC/BIEM explained how members and other rights management entities liaise with CISAC through agreements to access CIS tools and the network of CMO nodes. The CMOs also explained that these issues, including how best to determine data exchanges, data protection etc., had been already raised in prior conversations with The MLC, but had yet to be discussed with The MLC legal counsel.

The USCO suggested to keep this dialogue open, and that rules regarding data exchanges should be dealt with The MLC. The USCO understood the need for certain stability to ensure that any future changes would not be disruptive for the US mechanical process.

- Finally, CISAC/BIEM explained how CMOs interexchange information free of charge, including unmatched works lists, as this is essential to improve matching and to reduce future unidentified uses, and it seemed that the Rulemakings would not provide free of charge bulk access to foreign CMOs. The USCO explained that this is already built into the Statute, but invited the CMOs to raise this issue in future conversations with The MLC and come back to the USCO afterwards if this has not been resolved and continued to be a concern for CISAC/BIEM societies.

CISAC/BIEM finished the meeting thanking the USCO for the time and interest in addressing such complex issues of great importance to the CISAC/BIEM community and in particular, to non-US CMOs.

Sincerely,



Cristina Perpiña-Robert  
CISAC Director of Legal & Policy

cc. Steve Ambers - SOCAN; Caroline Champarnaud - SACEM/SDRM; Andreas Thiele - GEMA; Stefania Ercolani - SIAE; Ingrid Polak - AKM/AUME; Anja Kroeze – BUMA/STEMRA.