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CISAC Comments on Antitrust Division Request relating to US PRO Licensing of Jointly Owned Works

The International Confederation of Societies of Authors and Composers (CISAC) thanks the Department of Justice for this opportunity to submit its comments relating to U.S. PRO licensing of jointly owned works.

CISAC is the leading worldwide organisation of authors' societies (CMO). With 230 member societies in 120 countries, CISAC represents more than 4 million creators from all geographic areas and all artistic repertoires; music, audiovisual, drama, literature and visual arts. CISAC works to protect the rights and promote the interests of creators worldwide. CISAC enables collective management organisations to seamlessly represent creators across the globe and ensure that royalties flow to authors for the use of their works anywhere in the world. To this end, CISAC provides the highest business, legal, and IT standards to protect creators' rights and support the development of the international network of collective management societies.

The purpose of this submission is to underline that CISAC members around the world would be directly affected by the outcome of your proposal relating to U.S. PRO licensing of jointly owned works. Indeed, CISAC would like to emphasize the importance of clarifying that foreign authors, composers, and music publishers of jointly owned works that are publicly performed in the U.S., and the CMOs that represent them, can continue to choose the U.S. PRO through which to license and administer U.S. exploitations of their fractional interests in such works, just as U.S. rightsowners helped to lobby for, and have been able to do, in markets outside of the U.S. where there is a functioning competitive collective licensing landscape.

In particular, CISAC wishes to make the following key points for the Department's consideration:

- CMOs generally obtain the right to license musical works through their direct membership and/or through affiliation agreements with songwriters, composers, and music publishers. Then, CMOs pass those rights along to foreign CMOs to license in other territories through reciprocal representation agreements. Therefore, when a music user in the US wishes to perform one of the millions of non-US songs that are protected by US copyright law under the Berne Convention and other treaties to which the U.S. is a party, it does so by obtaining a license from US PROs, which in turn have reciprocal agreements with foreign CMOs and thus are able to license the rights of non-US songs;
- In many or most countries outside the U.S., if two or more authors create a new work together, authorisation is needed from all of them in order to exploit the work lawfully.
- In many or most countries outside the US and in particular in Europe¹, rightholders have the right to authorise a CMO of their choice to manage their rights, for a territory where there is a functioning competitive collective licensing landscape, such as in the U.S. and, at least with respect to the licensing of digital services. Thus, members and affiliates of CMOs of a jointly-

¹ This opportunity has been recalled in the last EU Directive on Collective Rights Management 2014/26/EU.

owned work may choose different CMOs to license and administer their interests. As an example, a song could be written jointly by two writers who are members of the British CMO, PRS for Music, such as Ed Sheeran's recent hit single, "Thinking Out Loud," which he co-wrote with Amy Wadge. Sheeran's interest is currently licensed in the U.S. by BMI, and Wadge's interest is licensed in the U.S. by ASCAP. The same would be true if a song were jointly written by a German songwriter belonging to GEMA who has chosen ASCAP to represent him in the U.S. and a French songwriter belonging to SACEM who has chosen BMI to represent him. GEMA would be granting only the German songwriter's fractional interest to ASCAP and SACEM would only be granting the French songwriter's fractional interest to BMI.

- Requiring ASCAP or BMI to license the entirety of a jointly-owned foreign musical work where they have only been granted a fractional interest in the work under a reciprocal representation agreement may exceed the scope of the rights granted by the member to the foreign CMO, and could deprive the foreign rightsowner of their choice for representation in the U.S. where their co-owner chooses another U.S. PRO for representation of their interest.
- Additionally, such a model is inconsistent with the approach taken by U.S. rightsowners in markets outside of the U.S. where there is a functioning competitive collective licensing landscape, such as the multi-territory licensing of digital music services in Europe, where jointly-owned U.S. works have been, and continue to be, expressly licensed on a fractional basis.

We hope this submission will be useful, and thank the Department of Justice for taking them into consideration. We remain at your disposal for any question or clarification you may have on the above-mentioned considerations.