

**Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of)

“CIRCLE SECTION” §)
FIRST SALE COPYRIGHT)
REGISTRATION)
FOR ONLINE MEDIA)
MATERIAL OBJECTS)

Docket No. _____

**PETITION FOR WAIVER OR SUSPENSION OF RULES
(OR CONSOLIDATION MOTION IN THE ALTERNATIVE)
RE: DOCKET 2011-07**

Because of the broad scope and implications of the above captioned “CIRCLE SECTION” FIRST SALE COPYRIGHT REGISTRATION FOR ONLINE MEDIA MATERIAL OBJECTS (hereafter “Petition”) before the United States Copyright Office, Petitioner, Vibme LLC,¹ requests that General Counsel to the Register of the United States Copyright Office waives or suspends rules to consider the Petition in unrelated rulemaking proceedings.²

The unrelated rulemaking proceedings in question involve several ongoing matters concerning the Digital Millennium Copyright Act (“DMCA”) 17 U.S.C. §1201 ban on circumvention of copyright protection systems. *See Dkt. 2011-07*. Every three years the U.S. Copyright Office convenes a rulemaking to consider granting exemptions for certain acts to circumvent copyright protections systems, and particularly considers specific instances of

¹ Petitioner, Vibme LLC, of 305 N 1130 E, Lindon, UT 84042, is small business incorporated in the State of Utah, USA, providing cloud media distribution services.

² Part 205.3 in Title 37 of Code of Federal Regulations gives this authority to the General Counsel in the U.S. Copyright Office.

circumventing of the Content Scrambling System (“CSS”) as found on many media material objects such as DVDs and Blurays. *See 77 FR 18742.*

When the Copyright Office amends its regulations through rulemakings, the Office issues notice through the Federal Register and commences its duties under title 17 “to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register” *17 U.S.C. §702.* Part 205 of Subchapter A of the Copyright Office and Procedures relates to both “legal proceedings, process, requests and demands relating to the Copyright Office’s performance of its duties pursuant to title 17 of the United States Code.” *See 37 C.F.R. §205.5.* Therefore all rulemaking proceedings are subject to such a waiver or suspension of the rules in extraordinary situations. Petitioner, herein, submits that the current situation is extraordinary.

BASES AND JUSTIFICATION

A potential new copyright registration for online media material objects will make moot most of the disagreements in the industry over what is and what is not exemptible under the DMCA §1201. The Copyright Office Report to Congress clearly states that Title I of the DMCA does not affect sections 109 and 117 of the code.³ While rules for the enforcement of section 1201 do not seem to affect section 109 or section 117, the reverse is not true. Changes in how the office performs its enforcement duties under §109, §117, and even under §107 could affect the need for exemptions from enforcement under §1201.

Circle Section registration of viewing rights and listening rights will protect consumers without the need to exempt particular circumventions of file encryption. Consequently, if the Copyright Office grants our Petition, adopts Circle Section registration and officially recognizes

³ U.S. Copyright Office, August 2001, *A Report of the Register of Copyrights Pursuant to §104 of the Digital Millennium Copyright Act*, pg. 74 (“... argument is without merit”)

ownership rights in online media material objects, there would be no need for new rules exempting circumvention of the encryption systems for online media. In addition, consolidation of this Petition with the §1201 rulemaking proceedings will avoid duplication of evidence, reduce the overall cost of the proceedings, and yield timely results. Furthermore, the alternative suspension of the §1201 rulemaking until after a schedule is set regarding the present Petition will not affect the substantive rights of the parties to present their evidence in both matters nor will it cause them prejudice.

RELIEF REQUESTED

The Office is under no obligation to adopt or reject specific rules proposed regarding one area of Copyright law when rule changes in another unrelated area of Copyright Law have the effect to make the former proposal moot. In this case, enforcement of §109 and §117 of the code has been deemed not affected by rules concerning enforcement of §1201. However, it has not been conclusively established that registration of online media material objects would not affect enforcement of §1201 of the DMCA. Therefore, Petitioner requests that the General Counsel to the Register of Copyrights, in the interest of justice, will allow waiver or suspension of the rules to consolidate the above captioned Petition with the present DMCA rulemaking, or, in the alternative, postpone rulemakings under its triennial consideration of DMCA to allow prior consideration of this Petition.

Respectfully submitted this 4th day of June, 2012

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CERTIFICATE OF MAILING

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as Express Mail # EG 971311204 US return receipt requested on the date of deposit shown above with sufficient postage and in an envelope addressed to

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