ASCEND COUNSEL
3000 Lawrence Street
Denver, Colorado, 80205
www.ascendcounsel.co

E. Milo Schwab
(303) 888-4407
milo@ascendcounsel.co

Mr. Adam Zarazinski
Inca Digital Securities
1712 N Street NW # 101
Washington, DC 20036

December 17, 2018

Dear Mr. Zarazinski:

Thanks for our recent discussions regarding the status of intellectual property rights in certain data used by Inca Digital Securities. As I understand the facts, Inca provides data aggregation and analysis from the digital asset ecosystem to its clients. Inca collects data from multiple crypto-exchanges, among other sources, and uses that data as an input into a broader offering for its clients. The data from exchanges, which includes but is not limited to, bid and ask prices, OHLC, and last price, is then cleaned, standardized, and mixed with data from other sources and provided to clients in their required format. In addition to aggregating and standardizing this data, Inca also provides insight and analysis using proprietary algorithms to analyze data from multiple exchanges. You asked whether Inca's use of this data infringes on the intellectual property rights of the individual exchanges. I do not believe that Inca's conduct creates potential liability on such basis.

The primary question on potential liability for infringement of the intellectual property of these exchanges is whether the datasets or the underlying data is protectable under copyright. Data and the compilation of data is not protectable under patent nor trademark, and under the facts as presented above, this data and datasets are published publicly, rendering protection as a trade secret unavailable as well.

It is a well-established principle of copyright law that facts are not copyrightable. *Feist Pubs., Inc. v. Rural Tel. Svc. Co., Inc.*, 499 U.S. 340, 344 (1991). However, compilations of facts are generally copyrightable. *Id*. The Court in *Feist* acknowledged the tension between these two principles – that facts themselves are not protected, but a listing of those same facts might somehow "magically change their status when gathered together in one place." In evaluating this tension, the Court points to the underlying theory of copyright, and indeed a constitutional requirement: that in order to qualify for protection, a work must be original. This helps to explain why facts, even novel facts, are not protected. A person who discovers a fact has not created that fact. The discoverer merely finds and records. Thus, the data that Inca collects is not protected and therefore creates no risk of infringing the rights of other parties.

The question then turns to the use of wholesale datasets. As the *Feist* Court explains, for a compilation of facts to possess the requisite originality, the author must typically choose which facts to include, what order to place them, and how to arrange the collected data. However, this protection is limited. "The mere fact that a work is copyrighted does not mean that every element of the work may be protected…Thus, if the compilation author clothes facts with an original collocation of words, he or she may be able to claim a copyright in this written expression. Others may copy the underlying facts from the publication, but not the precise words used to present them." *Feist* at 348. "A subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement." *Feist* at 349.

Based on the parameters set out by the *Feist* Court for protection of a dataset or compilation of data, the information collected by Inca does not create a risk of liability to these third party exchanges. As a preliminary matter, it does not appear that Inca reproduces the datasets based solely on the third-party exchanges' compilation or taxonomy. By applying its own analysis, cleaning and standardizing, and then presenting the data along with similar data from other sources, Inca is divorcing any original aspect of the collected datasets and imprinting its own originality on the data Inca provides. While the *Feist* case may appear different, the analogy between a phone company providing phone numbers and then printing those number in alphabetical order based on the customers' last name and an exchange that lists trading prices based on the name of the currency is quite similar. In *Feist*, the Court held that an alphabetical

listing of data is "devoid of even the slightest trace of creativity." *Feist* at 362. Under the circumstances presented, the collection of datasets from third-parties and the subsequent alterations make it highly unlikely that Inca risks liability for infringement of the intellectual property rights of others.

My analysis is based on the facts summarized above. As you can appreciate, application of copyright law depends on the specific facts and circumstances. If any of the facts that I summarized are incorrect or incomplete, please let me know so that I may consider them and, if warranted, revise the analysis accordingly. Additionally, copyright is an area of law highly fact-specific and based primarily in the development of caselaw. Any Court may interpret any set of facts in an unusual manner, but given the controlling caselaw and the facts presented above, it is highly unlikely that the use of data and datasets from third-party exchanges infringes on any intellectual property rights of those third-parties.

Please let me know if there's anything else you need or any questions I can answer.

Sincerely,

Milo Schwab

E. Milo Schwab