

RECEIVED

ORIGINAL

NOV 21 2003  
GENERAL COUNSEL  
OF COPYRIGHT

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

_____	)	
In the Matter of	)	
	)	
Digital Performance Right in Sound	)	Docket No. 2002-1 CARP DTRA 3
Recordings Rate Adjustment	)	2000-2 CARP DTNSRA
_____	)	

**PETITION OF ROYALTY LOGIC, INC.**  
**FOR DECISION ON WRITTEN PLEADINGS**

Royalty Logic, Inc. ("RLI"), pursuant to 37 C.F.R. § 251.41(b), hereby petitions to dispense with formal hearings, and to have the CARP decide the instant controversy on the basis of written pleadings and oral argument. In the alternative, RLI requests a status conference of the parties with the Copyright Office to discuss procedures to streamline and reduce the expense of this proceeding.

Rule 251.51(b) provides that a party may petition to have a controversy decided on the basis of written pleadings. The petition may be granted if the controversy does not involve a genuine issue of material fact or if all parties agree in writing that the grant of the petition is appropriate. RLI hopes that, in the interest of reducing costs to its principals, SoundExchange will agree to a hearing on written pleadings. Regardless, RLI believes the petition should be granted because, even prior to the submission of rebuttal testimony, it is clear that there is no genuine issue of material fact.

This is a simple, straightforward proceeding. Unlike the typical CARP arbitration, this arbitration involves one sole issue: the fundamental right, pursuant to statute, of sound recording copyright owners and performers to utilize the services of RLI, an independent (i.e., not in any

way associated with the major recording labels or their collective) designated agent with full rights on a level playing field with SoundExchange. At this stage, RLI has submitted the testimony of only two fact witnesses, and SoundExchange the testimony of four fact witnesses. This is not a document-based, fact-intensive case. Documents produced by RLI in this proceeding number approximately 50 pages, many coming from public Internet websites. Similarly, SoundExchange produced in response to RLI's document requests approximately 100 pages, many of which also came from public Internet websites.

RLI believes there is no genuine dispute as to any material fact currently in the record, and that a hearing on the pleadings alone is sensible and wholly appropriate with respect to the direct cases filed by the parties. Notwithstanding, RLI also recognizes that the parties should not be foreclosed from their right to submit rebuttal testimony in response to points made in the direct cases. RLI believes it is unlikely that any material factual disputes will occur in the rebuttal phase of the case. In the unlikely event that some genuine dispute of material fact arises, then live testimony concerning such disputed facts could be presented to the CARP.

In light of the deadline set for the submission of other motions and petitions in this proceeding, RLI therefore is now filing its petition for hearing on the pleadings, and requesting adoption by the Copyright Office of the following procedure:

1. No hearing should be held at this time on the direct cases of the parties.
2. A schedule should be established whereby the parties should submit their rebuttal testimony in this case.
3. Following submission of the written rebuttal cases, the parties should brief whether the entire case should be heard on the basis of the pleadings.

4. If the Copyright Office then determines that this petition should be granted even with respect to the rebuttal phase, the parties should be given the opportunity to file a legal brief with the arbitrators and proposed findings of fact and conclusions of law. At the arbitrators' discretion, the parties could present oral argument or respond to written questions from the arbitrators.

5. If the Copyright Office then determines that the petition should not be granted for the rebuttal phase, the parties can present live testimony concerning any genuine issues of material fact found to be in dispute, and the remainder of the case (filing of briefs, proposed findings of fact and conclusions of law and oral argument) could proceed.

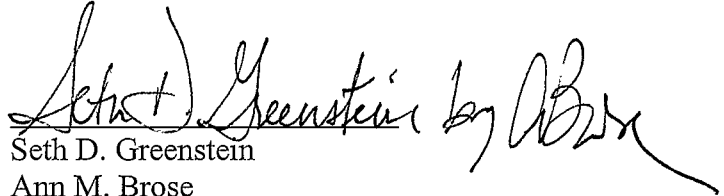
If this procedure is not adopted at this time by the Copyright Office, RLI nevertheless requests a scheduling conference of the parties with the Copyright Office to discuss potential methods of streamlining the proceeding so as to reduce burden and expense to the parties.

Conclusion

WHEREFORE, and for such other reasons as the Copyright Office may find just and proper, RLI requests that its petition be granted, and that the Office adopt the procedures proposed above in numbered paragraphs 1-5.

Respectfully submitted,

Date: November 21, 2003



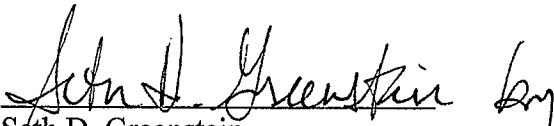

Seth D. Greenstein  
Ann M. Brose  
MCDERMOTT, WILL & EMERY  
600 Thirteenth Street, NW  
Washington, D.C. 20005-3096  
(202) 756-8000 (voice)  
(202) 756-8087 (facsimile)  
sgreenstein@mwe.com  
abrose@mwe.com

Counsel for Royalty Logic, Inc, as  
representative of Lester Chambers

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Petition of Royalty Logic, Inc. for Decision on Written Pleadings has been served on November 21, 2003, by overnight delivery, to:

Michele Woods  
Arnold and Porter  
555 Twelfth Street NW  
Washington, DC 20004-1206  
**Counsel for SoundExchange**

  
Seth D. Greenstein by  
Seth D. Greenstein 

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

RECEIVED

NOV 24 2003

GENERAL COUNSEL  
OF COPYRIGHT

\* rec'd 5 copies on  
11/24/03. Rec'd originals  
on 11/21/03

\_\_\_\_\_  
In the Matter of )

Digital Performance Right in Sound )  
Recordings Rate Adjustment )  
\_\_\_\_\_ )

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**PETITION OF ROYALTY LOGIC, INC.**  
**FOR DECISION ON WRITTEN PLEADINGS**

Royalty Logic, Inc. ("RLI"), pursuant to 37 C.F.R. § 251.41(b), hereby petitions to dispense with formal hearings, and to have the CARP decide the instant controversy on the basis of written pleadings and oral argument. In the alternative, RLI requests a status conference of the parties with the Copyright Office to discuss procedures to streamline and reduce the expense of this proceeding.

Rule 251.51(b) provides that a party may petition to have a controversy decided on the basis of written pleadings. The petition may be granted if the controversy does not involve a genuine issue of material fact or if all parties agree in writing that the grant of the petition is appropriate. RLI hopes that, in the interest of reducing costs to its principals, SoundExchange will agree to a hearing on written pleadings. Regardless, RLI believes the petition should be granted because, even prior to the submission of rebuttal testimony, it is clear that there is no genuine issue of material fact.

This is a simple, straightforward proceeding. Unlike the typical CARP arbitration, this arbitration involves one sole issue: the fundamental right, pursuant to statute, of sound recording copyright owners and performers to utilize the services of RLI, an independent (i.e., not in any

*A Partnership Including  
Professional Corporations*  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
202-756-8000  
Facsimile 202-756-8087  
www.mwe.com

Boston  
Chicago  
London  
Los Angeles  
Miami  
Munich  
New York  
Orange County  
Silicon Valley  
Washington, D.C.

**MCDERMOTT, WILL & EMERY**

**Ann M. Brose**  
Attorney at Law  
abrose@mwe.com  
202-756-8311

November 21, 2003

**BY HAND DELIVERY**

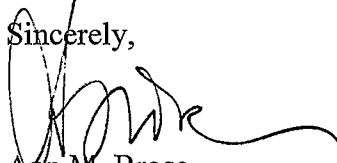
U.S. Copyright Office  
Office of the General Counsel  
1st Street and Independence Ave., S.E.  
Room LM-403  
Washington, D.C. 20559-6000

**Re: Docket No. 2002-1 CARP DTRA 3 & 2002-2 CARP-DTNSRA**  
**Client-Matter No. 63550-011**

Dear Gentlemen:

Enclosed for filing please find (1) the Response of Royalty Logic, Inc. to SoundExchange Motion to Compel Production from RLI; (2) the Petition of Royalty Logic, Inc. for Decision on Written Pleadings; and (3) the Motion of Royalty Logic, Inc. for Partial Reconsideration of November 19 Order. Also enclosed are copies of the title pages to be stamped by you and given to our messenger for our file.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,  
  
Ann M. Brose

cc: Michele Woods  
Arnold & Porter

**RECEIVED**

**NOV 21 2003**  
**GENERAL COUNSEL  
OF COPYRIGHT**

A Partnership Including  
Professional Corporations  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096  
202-756-8000  
Facsimile 202-756-8087  
www.mwe.com

Ann M. Brose  
Attorney at Law  
abrose@mwe.com  
202-756-8311

Boston  
Chicago  
London  
Los Angeles  
Miami  
Munich  
New York  
Orange County  
Silicon Valley  
Washington, D.C.

**MCDERMOTT, WILL & EMERY**

**RECEIVED**

NOV 24 2003

November 24, 2003

**GENERAL COUNSEL  
OF COPYRIGHT**

**BY HAND DELIVERY**

Susan Grimes  
U.S. Copyright Office  
Office of the General Counsel  
1st Street and Independence Ave., S.E.  
Room LM-403  
Washington, D.C. 20559-6000

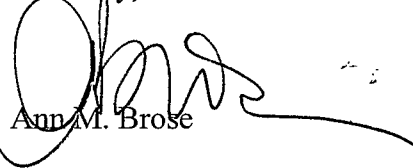
**Re: Docket No. 2002-1 CARP DTRA 3 & 2002-2 CARP-DTNSRA  
Client-Matter No. 63550-011**

Dear Ms. Grimes:

Further to your discussion with Seth Greenstein on Friday, November 21, enclosed please find five (5) copies each of the following documents: (1) the Response of Royalty Logic, Inc. to SoundExchange Motion to Compel Production from RLI; (2) the Petition of Royalty Logic, Inc. for Decision on Written Pleadings; and (3) the Motion of Royalty Logic, Inc. for Partial Reconsideration of November 19 Order.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
Ann M. Brose

MRB/ada  
Enclosures

cc: Seth Greenstein



RECEIVED

ORIGINAL

NOV 21 2003

GENERAL COUNSEL  
OF COPYRIGHT

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

\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
Digital Performance Right in Sound \_\_\_\_\_)  
Recordings Rate Adjustment \_\_\_\_\_)  
\_\_\_\_\_)

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**RESPONSE OF ROYALTY LOGIC, INC. TO SOUNDEXCHANGE  
MOTION TO COMPEL PRODUCTION FROM RLI**

Royalty Logic, Inc. ("RLI") hereby responds to SoundExchange, Inc.'s ("SoundExchange") motion to compel discovery production from RLI.

This is a simple, straightforward proceeding. Unlike the typical CARP, this arbitration involves one fundamental issue: the right, pursuant to statute, of sound recording copyright owners and performers to utilize the services of an independent (i.e., not in any way associated with the major recording labels or their collective) designated agent (RLI) that will not deduct five or more years of licensing and litigation costs, rather than SoundExchange. This is not a document-based, fact-intensive case. Indeed, SoundExchange itself produced in response to RLI's first document requests only about some 60 pages, many of which came from public Internet websites. Thus, when RLI responded to SoundExchange that its testimony was based upon personal knowledge, that truly is the case.

Nevertheless, since the filing of the motion, RLI has provided SoundExchange with documents pertaining to Lester Chambers's ownership of and performance on sound recordings, and also concerning the royalties administered by Music Reports Inc. ("MRI") with respect to certain copyright licenses. In those respects, SoundExchange's motion should be denied as

moot. RLI further has produced documents in response to SoundExchange's request for follow-up production of documents. However, RLI cannot respond with documents to each request as set forth in the motion to compel, because there are simply no documents to produce.

**1. Few Underlying Documents Were Relied upon in Testimony of Mr. Chambers and Mr. Gertz.**

SoundExchange is asking RLI to do the impossible and the unreasonable. RLI cannot produce documents that do not exist, and is under no obligation to create documents for the purpose of discovery merely to assist SoundExchange with its case. Mr. Chambers, as an independent artist and sound recording owner, does not have elaborate records of his ownership in every work in which he possesses some or all of the copyright, or in all recordings on which he has performed. Similarly, Mr. Gertz, an owner of MRI, a sophisticated data processing and royalty administration business, made certain educated estimates concerning two financial aspects of MRI's royalty administration activities based on little actual documentation. Moreover, RLI and MRI are closely affiliated entities, in both of which Mr. Gertz is a principal. The reality is that they have not reduced every legally enforceable agreement between the two organizations to writing.

Thus, it is no consequence that SoundExchange hypothesizes that certain documents must exist. RLI is only in a position to produce responsive documents where they actually exist.

**II. RLI has Produced Documents Demonstrating Mr. Chambers's Ownership of Copyright in Sound Recordings.**

As RLI noted in its responses to discovery, the averments made by Mr. Chambers were based upon personal knowledge and information. Lester Chambers is a world-renowned musician known not only for his songwriting abilities but also for his performances, alone and with others, for four decades. In addition to the many recordings he made with The Chambers

Brothers in the 1960's and 1970's, Mr. Chambers has independently issued sound recordings in recent years, outside of the major label system.

To RLI's knowledge, Mr. Chambers, like many copyright owners, has not, as of this date, sought to register his copyright in his sound recordings. He is not required by law to do so to preserve his rights either in his copyright or in this proceeding, or to obtain payment of royalties due him under sections 112 and 114.

It therefore is unrealistic for SoundExchange to expect an abundance of documented proof of Mr. Chamber's copyright ownership or of his performances on sound recordings. Notwithstanding, RLI has provided to SoundExchange responsive documents that support Mr. Chambers's assertion that he is the copyright owner of sound recordings, and a featured performer on other sound recordings. Not surprisingly, virtually all of these documents come from the same publicly available sources that SoundExchange used to provide that same information in discovery to RLI.

### **III. RLI Has Provided SoundExchange with Documents Showing MRI's Administration of Royalties.**

Also testifying upon personal knowledge, Mr. Gertz stated in his testimony that MRI – a small business in which he is a principal, administers roughly \$50 million in royalties on an annual basis. RLI has provided to SoundExchange a document showing the \$50 million figure, which represents the approximate amount administered by MRI for the most recent annual period on behalf of record companies, digital distribution services and broadcasters in the U.S. This particular document did not exist at the time Mr. Gertz made his statement, but was created so as to verify for SoundExchange what Mr. Gertz knew from other sources to be true.

#### **IV. No Written Agreement Exists Between RLI and MRI**

RLI has repeatedly stated in its responses that Mr. Gertz's testimony about any data processing agreements between RLI and MRI is based on his personal knowledge and information, and not on any document. SoundExchange appears to be laboring under the assumption that Mr. Gertz's reference to the long-term licensing relationship between RLI and MRI for database and data processing activities is set forth in a written agreement. Although RLI and MRI are separate corporate entities, they nonetheless share many of the same principals, employees and office space. As of this date, the agreement between RLI and MRI with respect to utilization of the MRI's database and data processing capabilities is oral rather than written, but is nevertheless an existing and enforceable agreement between those parties. Moreover, the absence of a writing is not particularly unusual considering that Mr. Gertz, as one of only two principals in both companies, essentially would be signing the agreement for both entities. Therefore, RLI's response merely reflected the fact that no underlying documents exist.

#### **V. SoundExchange has No Entitlement to Additional Documents regardless of the Outcome of its Motion to Strike RLI's Direct Case.**

For the reasons set forth in RLI's prior Opposition to the SoundExchange's Motion to Strike RLI's Direct Case, that Motion should be denied. Notwithstanding, the denial of that motion gives no cause to permit additional discovery.

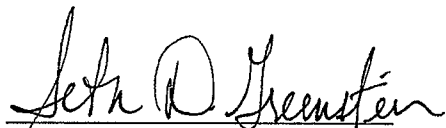
The basis of the SoundExchange motion to strike is ostensibly that the RLI document denominated "Direct Case" included what SoundExchange believes to be legal argument. There is no logical reason for SoundExchange to either request or be granted leave to take discovery concerning the statutory and legislative history references set forth in the RLI Direct Case. There can be no underlying documents – the law speaks for itself.

Conclusion

To the extent that the SoundExchange Motion to Compel had any basis in fact, it has been rendered moot by the production of responsive documents. As to the rest, RLI cannot produce documents that do not exist. Wherefore, the motion to compel of SoundExchange should be denied.

Respectfully submitted,

Date: November 21, 2003

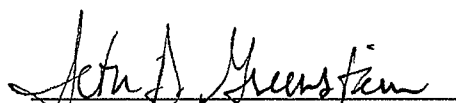
  
Seth D. Greenstein  
Ann M. Brose  
MCDERMOTT, WILL & EMERY  
600 Thirteenth Street, NW  
Washington, D.C. 20005-3096  
(202) 756-8000 (voice)  
(202) 756-8087 (facsimile)  
sgreenstein@mwe.com  
abrose@mwe.com

Counsel for Royalty Logic, Inc, as  
representative of Lester Chambers

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Response of Royalty Logic, Inc. to SoundExchange  
Motion to Compel Production has been served on November 21, 2003, by overnight delivery, to:

Michele Woods  
Arnold and Porter  
555 Twelfth Street NW  
Washington, DC 20004-1206  
**Counsel for SoundExchange**

  
Seth D. Greenstein

by 

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

RECEIVED

NOV 24 2003

GENERAL COUNSEL  
OF COPYRIGHT

\_\_\_\_\_  
In the Matter of )  
)  
)

Digital Performance Right in Sound )  
Recordings Rate Adjustment )  
\_\_\_\_\_ )

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**RESPONSE OF ROYALTY LOGIC, INC. TO SOUNDEXCHANGE**  
**MOTION TO COMPEL PRODUCTION FROM RLI**

Royalty Logic, Inc. ("RLI") hereby responds to SoundExchange, Inc.'s ("SoundExchange") motion to compel discovery production from RLI.

This is a simple, straightforward proceeding. Unlike the typical CARP, this arbitration involves one fundamental issue: the right, pursuant to statute, of sound recording copyright owners and performers to utilize the services of an independent (i.e., not in any way associated with the major recording labels or their collective) designated agent (RLI) that will not deduct five or more years of licensing and litigation costs, rather than SoundExchange. This is not a document-based, fact-intensive case. Indeed, SoundExchange itself produced in response to RLI's first document requests only about some 60 pages, many of which came from public Internet websites. Thus, when RLI responded to SoundExchange that its testimony was based upon personal knowledge, that truly is the case.

Nevertheless, since the filing of the motion, RLI has provided SoundExchange with documents pertaining to Lester Chambers's ownership of and performance on sound recordings, and also concerning the royalties administered by Music Reports Inc. ("MRI") with respect to certain copyright licenses. In those respects, SoundExchange's motion should be denied as

moot. RLI further has produced documents in response to SoundExchange's request for follow-up production of documents. However, RLI cannot respond with documents to each request as set forth in the motion to compel, because there are simply no documents to produce.

**1. Few Underlying Documents Were Relied upon in Testimony of Mr. Chambers and Mr. Gertz.**

SoundExchange is asking RLI to do the impossible and the unreasonable. RLI cannot produce documents that do not exist, and is under no obligation to create documents for the purpose of discovery merely to assist SoundExchange with its case. Mr. Chambers, as an independent artist and sound recording owner, does not have elaborate records of his ownership in every work in which he possesses some or all of the copyright, or in all recordings on which he has performed. Similarly, Mr. Gertz, an owner of MRI, a sophisticated data processing and royalty administration business, made certain educated estimates concerning two financial aspects of MRI's royalty administration activities based on little actual documentation. Moreover, RLI and MRI are closely affiliated entities, in both of which Mr. Gertz is a principal. The reality is that they have not reduced every legally enforceable agreement between the two organizations to writing.

Thus, it is no consequence that SoundExchange hypothesizes that certain documents must exist. RLI is only in a position to produce responsive documents where they actually exist.

**II. RLI has Produced Documents Demonstrating Mr. Chambers's Ownership of Copyright in Sound Recordings.**

As RLI noted in its responses to discovery, the averments made by Mr. Chambers were based upon personal knowledge and information. Lester Chambers is a world-renowned musician known not only for his songwriting abilities but also for his performances, alone and with others, for four decades. In addition to the many recordings he made with The Chambers



Brothers in the 1960's and 1970's, Mr. Chambers has independently issued sound recordings in recent years, outside of the major label system.

To RLI's knowledge, Mr. Chambers, like many copyright owners, has not, as of this date, sought to register his copyright in his sound recordings. He is not required by law to do so to preserve his rights either in his copyright or in this proceeding, or to obtain payment of royalties due him under sections 112 and 114.

It therefore is unrealistic for SoundExchange to expect an abundance of documented proof of Mr. Chamber's copyright ownership or of his performances on sound recordings. Notwithstanding, RLI has provided to SoundExchange responsive documents that support Mr. Chambers's assertion that he is the copyright owner of sound recordings, and a featured performer on other sound recordings. Not surprisingly, virtually all of these documents come from the same publicly available sources that SoundExchange used to provide that same information in discovery to RLI.

### **III. RLI Has Provided SoundExchange with Documents Showing MRI's Administration of Royalties.**

Also testifying upon personal knowledge, Mr. Gertz stated in his testimony that MRI – a small business in which he is a principal, administers roughly \$50 million in royalties on an annual basis. RLI has provided to SoundExchange a document showing the \$50 million figure, which represents the approximate amount administered by MRI for the most recent annual period on behalf of record companies, digital distribution services and broadcasters in the U.S. This particular document did not exist at the time Mr. Gertz made his statement, but was created so as to verify for SoundExchange what Mr. Gertz knew from other sources to be true.

#### **IV. No Written Agreement Exists Between RLI and MRI**

RLI has repeatedly stated in its responses that Mr. Gertz's testimony about any data processing agreements between RLI and MRI is based on his personal knowledge and information, and not on any document. SoundExchange appears to be laboring under the assumption that Mr. Gertz's reference to the long-term licensing relationship between RLI and MRI for database and data processing activities is set forth in a written agreement. Although RLI and MRI are separate corporate entities, they nonetheless share many of the same principals, employees and office space. As of this date, the agreement between RLI and MRI with respect to utilization of the MRI's database and data processing capabilities is oral rather than written, but is nevertheless an existing and enforceable agreement between those parties. Moreover, the absence of a writing is not particularly unusual considering that Mr. Gertz, as one of only two principals in both companies, essentially would be signing the agreement for both entities. Therefore, RLI's response merely reflected the fact that no underlying documents exist.

#### **V. SoundExchange has No Entitlement to Additional Documents regardless of the Outcome of its Motion to Strike RLI's Direct Case.**

For the reasons set forth in RLI's prior Opposition to the SoundExchange's Motion to Strike RLI's Direct Case, that Motion should be denied. Notwithstanding, the denial of that motion gives no cause to permit additional discovery.

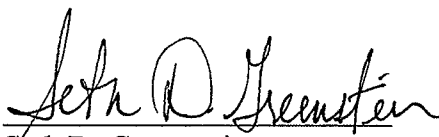
The basis of the SoundExchange motion to strike is ostensibly that the RLI document denominated "Direct Case" included what SoundExchange believes to be legal argument. There is no logical reason for SoundExchange to either request or be granted leave to take discovery concerning the statutory and legislative history references set forth in the RLI Direct Case. There can be no underlying documents – the law speaks for itself.

**Conclusion**

To the extent that the SoundExchange Motion to Compel had any basis in fact, it has been rendered moot by the production of responsive documents. As to the rest, RLI cannot produce documents that do not exist. Wherefore, the motion to compel of SoundExchange should be denied.

Respectfully submitted,

Date: November 21, 2003

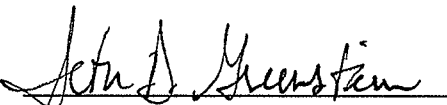
  
Seth D. Greenstein  
Ann M. Brose  
MCDERMOTT, WILL & EMERY  
600 Thirteenth Street, NW  
Washington, D.C. 20005-3096  
(202) 756-8000 (voice)  
(202) 756-8087 (facsimile)  
sgreenstein@mwe.com  
abrose@mwe.com

Counsel for Royalty Logic, Inc, as  
representative of Lester Chambers

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Response of Royalty Logic, Inc. to SoundExchange  
Motion to Compel Production has been served on November 21, 2003, by overnight delivery, to:

Michele Woods  
Arnold and Porter  
555 Twelfth Street NW  
Washington, DC 20004-1206  
**Counsel for SoundExchange**

  
Seth D. Greenstein

