

Before the
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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of

DIGITAL PERFORMANCE RIGHT IN
SOUND RECORDINGS AND
EPHEMERAL RECORDINGS

Docket No. 2002-1 CARP DTRA 3
Docket No. 2001-2 CARP DTNSRA

**SOUNDEXCHANGE REPLY IN SUPPORT OF
MOTION TO COMPEL DISCOVERY PRODUCTION FROM RLI**

SoundExchange, Inc. hereby replies in support of its Motion to Compel Discovery Production from Royalty Logic, Inc. ("RLI") of November 10, 2003 ("Motion to Compel").

In response to the Motion, RLI states for the first time that it has not produced the documents SoundExchange requested because the documents do not exist. Response of Royalty Logic, Inc. to SoundExchange Motion to Compel Production from RLI ("RLI Response") at 2 and 4. Rather than acknowledge these facts directly in response to SoundExchange's initial and follow-up discovery requests, RLI's previous responses instead said that the relevant statements in its direct case, which could reasonably have been expected to be supported by documents, were based upon personal knowledge of the witnesses. Based on RLI's amendment to its responses stating that no responsive documents exist, SoundExchange agrees that the issues raised in its motion are no longer discovery

issues.¹ SoundExchange nevertheless reserves its right to question RLI's witnesses about RLI's discovery responses and the failure to produce underlying documents, and to move to strike RLI's direct case if it is found that responsive documents were not produced.

SoundExchange notes that many of the issues raised in its Motion to Compel will now arise as evidentiary issues to be explored at the direct case hearing in this matter. For instance, no documents demonstrating that Lester Chambers owns his copyrights have been produced, yet that is the basis on which the Copyright Office permitted this entire proceeding to go forward.² (A single page was produced suggesting that Lester Chambers Music Productions has a copyright interest in one album of sound recordings, but no additional information was provided on the relationship of Lester Chambers to this company, or to indicate that any tracks from this album have been performed by any of the eligible non-subscription services or new subscription services operating under the statutory license.) The failure to produce documents underlying this fundamental representation made by RLI

¹ In its Petition for Decision on the Written Pleadings, RLI indicates a desire to reduce the costs of this proceeding, yet RLI's dilatory practices in discovery have forced SoundExchange to engage in extensive efforts to obtain even minimal document production. RLI's failure to provide complete initial discovery responses indicating that responsive documents do not exist, which would have obviated the need for SoundExchange to file a Motion to Compel, has increased the cost of the proceeding for all parties. In addition, RLI's late initial production of documents on November 19, 2003, when the initial production of documents was due on October 28, 2003, forced SoundExchange to file follow-up requests and the Motion to Compel. Even when RLI indicated in its responses to those follow-up requests that it would produce at least one document, it failed to do so by the deadline of November 14, 2003, but waited until after counsel for SoundExchange had inquired to state that the documents would be forthcoming, and failed to produce the documents until November 19, 2003.

² This situation provides another illustration of a more general issue with CARP proceedings related to the need in some situations to establish with certainty that a party has some threshold level of interest before convening a CARP proceeding.

illustrates the need to pursue this and other issues during the direct case hearing testimony of RLI's witnesses.

Respectfully submitted,

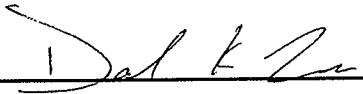
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December 1, 2003

CERTIFICATE OF SERVICE
Docket No. 2002-1 CARP DTRA3
Docket No. 2001-2 CARP DTNSRA

I hereby certify that a copy of the foregoing SoundExchange Reply in Support of Motion to Compel Discovery Production from RLI was sent on December 1, 2003, by overnight delivery, to the following party:

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Daniel Lee