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DEC 01 2003

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 OPPOSITION TO RLI  
PETITION FOR DECISION ON WRITTEN PLEADINGS**

SoundExchange, Inc. ("SoundExchange") hereby opposes the Petition of Royalty Logic, Inc. ("RLI") for Decision on Written Pleadings ("RLI Petition") because it is premature. Consideration of the RLI Petition, and other procedural issues related to the conduct of this proceeding, should be postponed until the Copyright Office ("Office") has ruled on SoundExchange's Motion for a Declaratory Ruling ("SoundExchange's Motion"), which requests that the Office offer guidance on the flawed premise of RLI's Petition – that Lester Chambers has a "fundamental right," pursuant to statute (RLI Petition at 1), to have RLI appointed as a Designated Agent – a premise with which SoundExchange strongly disagrees.

This is the fundamental legal issue that is addressed in SoundExchange's Motion. Apparently both parties view this legal issue as central to the proceeding. Under these circumstances, it is appropriate for the Office to resolve it in advance of convening the CARP. Until SoundExchange's Motion is fully briefed, and the Office has issued its decision, it will be difficult for the Office and the parties to determine the course of further

proceedings. SoundExchange therefore reserves its rights to respond to RLI's proposals once the Office has ruled on its Motion.

For the same reason, SoundExchange also opposes RLI's alternative suggestion for a meeting at present to discuss procedures to streamline this proceeding and reduce its expense. SoundExchange certainly favors avoiding all unnecessary expense in this proceeding, and believes that there is little purpose in a meeting before the Office has addressed the fundamental issue set forth in SoundExchange's Motion. At this time, such a meeting would in itself be an unnecessary expense.

While reserving the right to respond fully after a ruling on its Motion, SoundExchange nevertheless notes as a preliminary matter that RLI's Petition appears to contain an internal contradiction. RLI claims there is "no genuine issue of material fact" in this case. Petition at 1. To the extent RLI is conceding that the factual statements contained in the testimony of SoundExchange's witnesses are correct and uncontested, SoundExchange is of course willing to accept that concession and to proceed accordingly (while reserving its right to contest the statements of RLI's witnesses). Given this position taken by RLI, however, it appears contradictory for RLI to call at the same time for the submission of rebuttal testimony to address the direct cases filed by the parties. Such rebuttal testimony would contest the contents of the testimony from the witnesses of the other party, and would include a response to factual statements. It is unclear what purpose RLI ascribes to rebuttal cases if it believes there are indeed no genuine disputes of material fact.

**Conclusion**

For the foregoing reasons, SoundExchange requests that the Office deny RLI's Petition as premature. If appropriate, the issues raised in RLI's Petition could be considered once the Office rules on SoundExchange's Motion for a Declaratory Ruling.

Respectfully submitted,

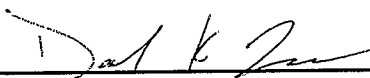
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December 1, 2003

**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 Opposition to RLI Petition for Decision on Written Pleadings was sent on December 1, 2003, by overnight delivery, to the following party:

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