

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

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In the Matter of)

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Digital Performance Right in Sound)
Recordings Rate Adjustment)
_____)

Docket No. 2001-1 CARP DSTRA 2

**SUPPLEMENTAL COMMENTS OF ROYALTY LOGIC, INC.
OBJECTING TO PROPOSED TERMS**

Pursuant to the Notice of Proposed Rulemaking in the above-captioned proceeding, published at 68 Fed. Reg. 4744 (January 30, 2003), Royalty Logic, Inc. ("RLI") hereby supplements its Comments Objecting to Proposed Terms, filed March 3, 2003, with respect to the proposed settlement of the above-captioned proceeding between the three pre-existing subscription services and the Copyright Owners and Performers. The reason for this Supplement is to inform the Copyright Office that RLI has signed affiliate agreements with copyright owners and performers who wish RLI to serve as their Designated Agent for all Section 112 and 114 statutory licenses, and therefore object to the proposed settlement insofar as it would fail to designate RLI for the collection and distribution of statutory license royalties for the pre-existing subscription services.

In its Comments, RLI noted that potential RLI clients preferred to use RLI as Designated Agent in part because SoundExchange, under the Small Webcaster Settlement Act of 2002 ("SWSA"), became empowered to deduct excessive administrative and litigation costs from their royalties, whereas the SWSA permitted no such deductions by SoundExchange from royalties paid through RLI as Designated Agent. Notwithstanding, these potential clients expressed their reticence to sign with RLI for collection and distribution of their statutory license performance

royalties unless RLI could act as their agent for all such statutory licenses. Among the reasons for this reticence are the expense, inefficiency and inconvenience of dealing with multiple Designated Agents rather than solely with RLI; and their concern that unless all payments were being made through RLI, they would encounter substantial roadblocks in their efforts to obtain the remainder of their royalty payments from SoundExchange.

Despite these difficulties, RLI is pleased to inform the Copyright Office that RLI has signed affiliation agreements, effective January 1, 2003, with numerous copyright owners and performers. These copyright owners and performers have represented to RLI that their works and performances have been performed by the pre-existing subscription services (as well as the satellite digital audio radio services and eligible nonsubscription and subscription webcast services). RLI affiliates include:

- Copyright owners of recorded performances by Billboard-charted performers, including RIAA Gold and Platinum award artists, such as Coolio, Bobby Womack, David Was, Ricky Bell, Junior Reed, Black Uhuru, Taj Mahal, Motorhead, Dee Dee Ramone, Maxi Priest, Kurupt, Biohazard, Mudhoney, Pete Drogé, and Screaming Trees.
- Performers and copyright owners who are not signed with major labels, but who have focused their marketing efforts on the use of alternative distribution and promotion outlets subject to statutory and voluntary licensing.
- Performers signed to major label distribution agreements, but who, pursuant to the Librarian's Final Order of July 8, 2002, elect to exercise their right independent of the copyright owner, to designate RLI as their alternative agent for collection and distribution of their statutory performance royalties.

These affiliation agreements give RLI a broad right of representation across all Section 112 and 114 statutory licenses. RLI believes that one reason why these copyright owners and performers have agreed to sign now with RLI is their recognition of RLI's efforts to date to become designated as their agent for all pending CARP proceedings with respect to all of the statutory Section 112 and 114 licenses.

As noted above, sound recordings owned by RLI affiliates have been performed on statutorily-licensed webcasting, pre-existing subscription and SDARS transmission services. Therefore, royalties are due to RLI affiliates as to which, for at least the period beginning January 1, 2003, these affiliates have appointed RLI their Designated Agent. RLI intends to work with the Receiving Agent to ensure that RLI's affiliates receive their royalties through RLI as promptly as possible.

Thus, the Copyright Owners and Performers who are party to the proposed settlement do not represent the will of all copyright owners and performers entitled to receive royalties pursuant to the proposed rates in this proceeding. By affiliating with RLI and electing to receive their royalties from an agent other than SoundExchange, RLI's client performers and copyright owners are expressing their opposition, through RLI, to the proposed settlement, and are seeking to affirmatively exercise their right under the SWSA, 17 U.S.C. §114(g)(3), across all statutory licenses, to prevent a diminution of their royalties as a result of recoupment by RIAA and SoundExchange. These statutory rights of RLI-affiliated copyright owners and performers will be eviscerated by the settlement proposed by the Copyright Owners and Performers and the three pre-existing subscription services. Moreover, if the Copyright Office permits in this proceeding the Copyright Owners and Performers, through private agreement,¹ to negate the statutory rights of copyright owners and performers who do not wish to affiliate with SoundExchange for the distribution of their performance royalties, then nothing will stop RIAA and SoundExchange from insisting on the elimination of RLI as Designated Agent in every future settlement of a CARP proceeding. As a result, copyright owners and performers would be compelled against

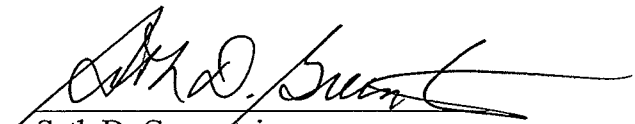
¹ RLI notes, moreover, that the three pre-existing subscription services have no meaningful economic interest in whether SoundExchange is the exclusive or nonexclusive Designated Agent, inasmuch as such designation affects neither the amount of their payments nor the administrative burden of making the payments to the Receiving Agent.

their will to subsidize activities of SoundExchange and RIAA that they never had an opportunity to approve or influence and with which they may substantively disagree, and which subsidies could consume substantial portions of their performance royalties.

Congress expressed its intent through Section 114(g)(3) that copyright owners and performers should not be required to shoulder SoundExchange's litigation costs and expenses against their will. But copyright owners and performers can opt out of those confiscatory burdens only if the regulations designate an alternative agent to SoundExchange. RLI respectfully submits that approval of the proposed settlement would thwart the intent of Congress and the rights and interests of copyright owners and performers. For the reasons set forth in its Comments and these Supplemental Comments, on behalf of its affiliates and itself, RLI urges the Copyright Office to reject the proposed settlement insofar as it designates SoundExchange as the sole designated agent, and specifically to reject the proposed regulations for 37 CFR § 260.3(d)-(f) set forth in the proposed settlement.

Respectfully submitted,

Date: March 26, 2003



Seth D. Greenstein
MCDERMOTT, WILL & EMERY
600 Thirteenth Street, N.W.
Washington, D.C. 20005
Phone: (202) 756-8088
Fax: (202) 756-8855
Email: sgreenstein@mwe.com

Attorney for Royalty Logic, Inc.

Therefore, the assent of those paying the royalties should be given little weight, whereas the opposition of RLI and its affiliated clients represent compelling interests against the proposed settlement.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Supplemental Comments of Royalty Logic Inc. Objecting to Proposed Terms, together with all attachments and a Notice of Intent to Participate was sent on March 26, 2003, by facsimile and first-class mail, postage prepaid, to the following counsel of record:

Clifford Harrington
Barry Gottfried
Cynthia Greer
SHAW PITTMAN
2300 N Street, N.W.
Washington, D.C. 20006
(f) 202-663-8007
Counsel for XM Satellite Radio

Ann E. Chaitovitz
National Director of Sound Recordings
**American Federation of Television and
Radio Artists**
1801 K Street, N.W.
Suite 203L
Washington, D.C. 20006
(f) 202-223-1237

Michele J. Woods
Arnold & Porter
555 12th Street, NW
Washington, DC 20004
(f) 202-942-5999
Counsel for RIAA

Bruce Joseph
Robert Butler
Karyn Ablin
WILEY, REIN & FIELDING
1776 K Street NW
Washington, D.C. 20006
(f) 202-719-7049

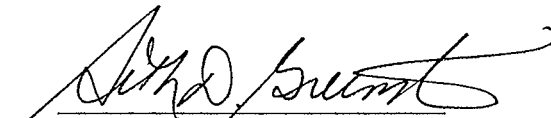
Counsel for Sirius Satellite Radio
Steven Marks
Susan Munsat
Gary Greenstein
**Recording Industry Association of
America, Inc.**
1330 Connecticut Ave., NW
Suite 300
Washington, DC 20036
(f) 202-775-7253

Patricia Polach
Bredhoff & Kaiser, P.L.L.C.
805 15th Street, NW
Suite 1000
Washington, DC 20005
(f) 202-848-1888
*Counsel for American Federation of
Musicians*

Fernando Laguarda
MINTZ, LEVIN, COHN, FERRIS
701 Pennsylvania Ave., NW
Suite 900
Washington, D.C. 20004
(f) 202-434-7400
Counsel for Music Choice

Michael Zendan II
Vice President and General Counsel
Muzak, LLC
3318 Lakemont Blvd.
Fort Mill, SC 29708
(f) 803-396-3264

R. Bruce Rich
Fiona Schaefer
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, N.Y. 10153
(f) 212-310-8007
Counsel for DMX Music, Inc.



Seth D. Greenstein