**Before the**
**LIBRARY OF CONGRESS**
**UNITED STATES COPYRIGHT OFFICE**
**Washington, DC**

| | | |
|---|---|---|
| In the Matter of<br>Digital Performance Right in Sound<br>Recordings Rate Adjustment Proceeding | ) | Docket No. 2001-1 CARP DSTRA 2 |

**OPPOSITION**
**OF THE AMERICAN FEDERATION OF MUSICIANS AND**
**THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS**
**TO SUPPLEMENTAL COMMENTS OF ROYALTY LOGIC, INC.**
**OBJECTING TO PROPOSED TERMS**

The American Federation of Musicians of the United States and Canada ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") oppose the Supplemental Comments of Royalty Logic, Inc. Objecting to Proposed Terms. RLI's supplemental comments are late, they fail to document a significant interest in the proceeding, and they are motivated by RLI's desire to win designated agent status from the Copyright Office so that it can build its for-profit business. As to each of these three characteristics, RLI's supplemental comments are true to RLI's pattern of behavior – a pattern which should lead the Copyright Office to disregard RLI's belated and self-serving comments.

On January 17, 2003, Music Choice, DMX Music, Inc., Muzak LLC, the Recording Industry Association of America, Inc. ("RIAA"), the AFM and AFTRA submitted a joint petition that advised the Copyright Office that they – all the parties to the pre-existing subscription services portion of this proceeding – had reached a settlement and that asked the Copyright Office to publish the negotiated rates and terms

ORIGINAL

for public comment in lieu of convening a CARP to determine rates and terms for pre-existing subscription services for the period from January 1, 2002 through December 31, 2007. The Copyright Office published the proposed rates and terms on January 30, 2003. See 68 Fed. Reg. 4744. It set March 3, 2003 as the deadline for comments on the proposed rates and terms.

RLI failed to file a timely notice of intent to participate in this proceeding, failed to seek any timely participation in the ongoing negotiations over the rates and terms, and failed to identify any copyright owners or performers whom it represented for the purpose of distributing revenues deriving from this – or any other – digital performance rights license. However, on January 17, 2003 – the same day that the parties filed their settlement with the Copyright Office – RLI filed a Motion to Permit Late Filing of Notice of Intent to Participate. And, on March 3, 2003, RLI filed Comments objecting to the proposed terms that had been negotiated by the parties and published by the Copyright Office. The gist of RLI's Motion and subsequent Comments was that it should be given designated agent status under the terms of the pre-existing services license for 2002-2007 so that it could build its business as a competitor to SoundExchange.

To that end, in its March 3 Comments at pages 3 and 9, RLI urged that granting RLI designated agent status under the license terms would "support the efficient operation and expansion of RLI as a competitor to SoundExchange," and averred that

> RLI is ready to be that competitor. However, RLI's operations, expansion and financial stability will be seriously impeded if its agency capabilities are limited to distributions of royalties only from past arbitrations. As noted above, RLI's *potential* clients have stated their strong desire that RLI administer all statutory performance licenses. Providing administrative services under all such licenses will bring greater financial stability to RLI, maximize efficiencies and lower

> administrative costs, *all to the benefit of RLI* and its clients. [Emphases added.]

On January 29, 2003, the RIAA, AFM and AFTRA filed a Joint Opposition to RLI's Motion to Permit Late Filing. That Joint Opposition exposed the fundamental flaws in RLI's attempts to use the auspices of the Copyright Office and the CARP proceedings to found its for-profit business.

First, the Joint Opposition demonstrated that RLI had failed to show good cause – indeed, had failed to show *any* cause – for its belated effort to seek entry into this license proceeding. The Joint Opposition highlighted the fact that RLI's failure to file a timely notice belied its repeated claim to be efficient, capable, and able to teach the parties, the Copyright Office and the arbitrators about good practices in license administration.[1]

Moreover, the Joint Opposition also made plain that, in any event, RLI was not an interested party to the pre-existing subscription services license proceeding because, as of January 17, 2003, when it filed its Motion, it had not shown that it represented any copyright owners or performers. See Joint Opposition at pages 12-13. RLI did not cure that fatal defect in its March 3, 2003 Comments Objecting to Proposed Terms. Quite the contrary – RLI argued in its Comments that it should be granted designated agent status under the license terms simply so that it could *recruit* potential clients and grow a business as a SoundExchange competitor.

Although RLI's March 26 Supplemental Comments purport to provide the Copyright Office with new information – and to suggest that indeed RLI represents

---

[1] On March 14, 2003, the Copyright Office denied RLI's Motion to Permit Late Filing of Notice of Intent to Participate as it applied to the portion of this proceeding directed at the satellite digital audio radio services, XM and Sirius, finding that RLI had "utterly failed to make a showing of good cause." The Office indicated that it would rule on

copyright owners and performers – in fact the Supplemental Comments are simply one more repetition of RLI's now-familiar behavior.

First of all, the Supplemental Comments are three weeks late. RLI offers no excuse, and none is imaginable.

Moreover, although the Supplemental Comments suggest that RLI has signed copyright owner and performer "affiliates," *not one such copyright owner or performer is actually identified.* To be sure, RLI provides a disingenuous list of names on page 2. But RLI fails to state the name of one copyright owner that has become an RLI affiliate. And although RLI names several artists, it does not in fact claim that those artists are RLI affiliates – only that *unidentified* "copyright owners of recorded performances" by them are. RLI once again has failed to show that it represents the interest of any copyright owner or performer.[2] Having repeatedly failed to show that it represents the interest of any specific, identified copyright owner or performer, RLI is entitled to no further opportunities to do so.

In fact, as shown above, the only interest that RLI has identified with precision is its own interest in developing its business. However, that is not an appropriate basis to set aside or alter the rates and terms agreed upon by the interested parties, and it certainly is not an appropriate basis for requiring a costly and disruptive CARP.

April 4, 2003

---

RLI's standing to participate in a CARP proceeding with regard to the pre-existing subscription services in a separate order.

[2] Although RLI repeatedly fails to identify any copyright owner or performer that it represents, it does succeed in repeatedly showing that it represents the interests of the users of our recordings. Ron Gertz testified on behalf of licensees in the recent webcaster CARP, and RLI's March 3 Comments make clear that RLI's major clients are the broadcasters, webcasters and other users of recorded music.

Respectfully submitted,

AMERICAN FEDERATION OF MUSICIANS

Patricia Polach
Bredhoff & Kaiser, P.L.L.C.
805 15th Street, N.W.
Washington, D.C. 20036
(202) 842-2600
(202) 842-1888 (fax)

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Ann E. Chaitovitz
National Director of Sound Recordings
1801 K Street, NW, Suite 203L
Washington, D.C. 20036
(202) 223-1235
(202) 223-1237 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of The American Federation of Musicians and The American Federation of Television and Radio Artists to Supplemental Comments of Royalty Logic, Inc. Objection to Proposed Terms was served upon the following parties by U.S. mail on April 4, 2003:

Michael F. Zendan II
Vice President and General Counsel
Muzak LLC
3318 Lakemont Boulevard
Fort Mill, SC 29708
(p) 803.396.3267
(f) 803.396.3264

Clifford M. Harrington
Barry H. Gottfried
Cynthia D. Greer
David Oxenford
SHAW PITTMAN
2300 N Street, N.W.
Washington, DC 20006
(f) 202.663.8007
*Counsel for XM Satellite Radio, Inc.; Counsel for IOMedia Partners, Inc. et al.*

Seth D. Greenstein
MCDERMOTT, WILL & EMERY
600 Thirteenth Street, N.W.
Washington, DC 20005
(p) 202.765.8088
(f) 202.756.8855
*Counsel for Royalty Logic, Inc.; Counsel for Yahoo, Inc.; Counsel for Digital Media Association*

Bruce G. Joseph
Robert Butler
Karyn K. Ablin
Dineen P. Wasylik
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(p) 202.719.7258
(f) 202.719.7049
*Counsel for Sirius Satellite Radio, Inc.; Counsel for the National Religious Broadcasters Music License Committee; Salem Communications Corp; and Clear Channel Communications, Inc.*

Steven M. Marks
Gary R. Greenstein
Susan Cherkof Munsat
Cary H. Sherman
Recording Industry Association of America, Inc.
1330 Connecticut Avenue, N.W.
Suite 300
Washington, DC 20036
(f) 202.775.7253
*Counsel for Recording Industry Association of America, Inc. and SoundExchange*

R. Bruce Rich
Fiona Schaffer
Adam I. Cohen
Kenneth L. Steinthal
WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(p) 212.310.8170
(f) 212.310.8007
*Counsel for DMX Music, Inc.; Counsel for BET Interactive LLC; America Online Inc.; MTV Networks, MusicMatch, Inc.; Live365 Inc.; and Listen.com*

David R. Berz
Sandra M. Aistars
WEIL, GOTSHAL AND MANGES LLP
1501 K Street, N.W.
Suite 100
Washington, DC 20005
(p) 202.682.7000
(f) 202.857.0939
*Counsel for DMX/AEI Music*

Fernando Laguarda
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004
(p) 202.434.7347
(f) 202.434.7400
*Counsel for Music Choice*

Michele Woods
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
(p) 202.942.5719
(f) 202.942.5999
*Counsel for RIAA*

Patricia Polach