Royalty LOGIC
INCORPORATED

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April 11, 2003

David O. Carson, Esq.
General Counsel
US Copyright Office
P.O. Box 70977
SW Station
Washington DC 20024

Re: Matter of Digital Performance Rights in Sound Recordings and Ephemeral Recordings
Docket No. 2001-1 CARP DSTRA 2

Dear Mr. Carson:

Enclosed for filing are an original and five (5) copies of the reply comments of Royalty Logic, Inc. in response to the opposition of the American Federation of Musicians and the American Federation of Television and Radio Artists to the supplemental comments of Royalty Logic, Inc. objecting to proposed terms. Copies are also being served on the parties whose names appear on the service list for this matter.

Please feel free to contact me at (818) 955-8900 should you have any questions.

Sincerely,

Ronald H. Gertz, Esq.
President

RG/cl

cc: Counsel on service list

Enc.

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. 2001-1 CARP DSTRA 2

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

Royalty Logic, Inc. ("RLI") is submitting this reply in response to the opposition of the American Federation of Musicians of the United States and Canada ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") opposing the supplemental comments of RLI objecting to proposed terms. The AFM and AFTRA have filed a self serving document raising irrelevant and meaningless issues whose sole purpose appears to be in aid of a plan to prevent competition by RLI with SoundExchange or any successor entities that may be created by the board of directors of SoundExchange upon its demise. Currently, RLI is the only other agent designated by a duly constituted CARP to compete with Sound Exchange in the licensing, collection and distribution of royalties flowing from the statutory licensing of certain performances and ephemeral reproductions pursuant to Sections 114 and 112. RLI's intention is to create a competitive business entity that offers a broad range of collection and distribution services to performers and copyright owners and to do so it must be fully designated across all statutory licenses.

AFM and AFTRA's assertion that RLI is motivated by a "desire to win designated agent status...so that it can build its for profit business" is irrelevant and meaningless.

RLI's sole purpose in seeking to extend its designation across all statutory licenses is to establish an organization whose objective is to maximize royalty collections for performers and

copyright owners while at the same time minimizing the costs of operation. RLI believes that these goals can best be accomplished for the benefit of performers and copyright owners in a competitive market place regardless of the technical legal form of organization.

RLI notes that Broadcast Music, Inc.("BMI") is also a for profit corporation, and a for profit company that is owned by broadcasters – not the case with RLI. Nevertheless, BMI distributes all of the monies that it receives, minus administrative costs, and has become, the largest music performing rights society in the U.S. (in terms of market share of actual performances on surveyed media). Notwithstanding its for profit structure, BMI somehow manages to represent willing composers and music publishers and effectively compete with ASCAP and SESAC for the benefit of its affiliates.

The implication made by AFM and AFTRA - that somehow the organizational status of RLI will negatively impact performers and copyright owners - is nothing less than absurd. RLI seeks to promote competition among distributing agents. Competition is the only way to provide performers and copyright owners with meaningful choices and further ensure that monopolies for the administration of rights are neither created nor fostered. Simply, in a competitive environment, performers and copyright owners will be able to engage the representation of their choosing. Statements made by AFM and AFTRA certainly indicate that they are extremely fearful of such a competitive environment and seek to deny the emergence of any competition in the marketplace. Further, AFM and AFTRA fail to explain why RLI's organizational status or competition in general will disadvantage performers and copyright owners. Indeed, self preservation is clearly their motive.

RLI contends that competition is relevant and crucial in this marketplace to ensure that viable choices are available to all royalty recipients and that the collectives have an incentive to maximize distributions and contain overhead costs. Should RLI's organizational status or even the color of its furniture dissuade certain royalty recipients from choosing RLI to represent them, then RLI may seek to make changes to make itself more competitive in the marketplace.

RLI is under no obligation to identify specific copyright owners that it represents until it commences operations.

RLI currently represents specific performers and copyright owners. However, actual identification and representation of copyright owners is not a prerequisite to designation. As the following testimony in the previous eligible non-subscription services CARP reveals, Mr. Garret, counsel for the RIAA, made it perfectly clear that RLI, at the time of its designation by the CARP, had not yet entered into signed affiliation agreements. Thus, the CARP designated RLI as an agent in competition with SoundExchange with the full knowledge that RLI was in its formative stages and had not yet signed affiliates that it could identify.

Mr. Garret: Now do you represent any record companies?

Mr. Gertz: *Not yet.*

Mr. Garret: That's why you're here, you'd like to represent some?

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Mr. Garret: And I take it that there are no record companies that have designated...Royalty Logic as an agent to collect and distribute Section 114 royalties?

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AFM and AFTRA objections, in reality, appear intended to obscure the fact that they seek to eliminate competition from RLI so that they can, upon the demise of SoundExchange, form their own designated agent without CARP approval as to the bona fides of the successor agent.

It is plain from the terms of Section 262.4 of the rates and terms recently proposed for eligible non subscription service transmissions and new subscription services that the major label copyright owners, AFM and AFTRA have among themselves attempted to eliminate the RLI designation, are already planning for the demise of SoundExchange and intend, in that event, that two successor agents be formed without the annoyance of marketplace competition from RLI.

> *262.4(b)(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal number of representatives of Performers and Copyright Owners, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in (A) and (B) below.*
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> *(A) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as the last day preceding the condition precedent in § 262.4(b)(2) above, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Performers and Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.*
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> *(B) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in 262.4(b)(2), such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Performers*

and Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

Astoundingly, while seeking to eliminate RLI as a competitor, the proposed terms in Sections 262.4(b)(3)(A-F) go on to adopt, upon the demise of SoundExchange, many of the very same administrative terms - necessary in a two collective marketplace - that Royalty Logic is seeking in this proceeding but which they refuse to accept if RLI remains as a competitor. Such terms were either negotiated or inserted by the CARP and the Librarian of Congress in the previous eligible non-subscription services proceeding.

It is also interesting to note that the establishment by AFM and AFTRA of a successor collective on the demise of SoundExchange would create a perverse statutory conflict. Under Section 114, the royalties payable to non-featured performers are not paid directly to the AFM and AFTRA. Following the procedure established in the Audio Home Recording Act, Congress specifically decided that royalties payable to non featured performers and musicians be paid not to the unions themselves but instead to an independent administrator jointly chosen by copyright owners and the unions. Presumably, this was a safeguard to make sure that royalties payable to non-featured performers and musicians were not diminished by administrative costs of the unions directly. Should AFM and AFTRA establish a successor collective, the successor collective would receive royalties accruing to featured artists that the unions themselves do not represent (constituting the bulk – 45% - of royalties due performers) while the unions would be prevented from receiving the royalties accruing to the non featured performers and musicians that they do represent (only 5%). Therefore, the protections that congress intended for non-featured performers would be denied to featured performers. This situation is precisely why competition in the collection and distribution of royalties is to be promoted.

Conclusion

Section 114, as amended, provides for a performance right for the digital transmission of sound recordings. It contemplates both statutory licenses and the ability of copyright owners and

transmission services to enter into direct voluntary licenses that take precedence in lieu of the statutory license terms.

RLI believes that a significant number of performers and copyright owners will seek alternative representation for the administration of their rights under Sections 112 and 114. Indeed, section 114(e) of the statute imposes no limit on the right of copyright owners to make this choice. RLI is willing to let the marketplace decide which services are necessary and is willing to compete on a level playing field with any other entities or successor entities that choose to offer services in this area.

RLI further believes that it would be a very strange outcome indeed if the "competitive market" rate setting standard applicable to many statutory licenses did not also encompass, for the benefit of performers and copyright owners (i.e. the intended beneficiaries of marketplace royalty rates), "competitive market" alternatives for licensing, collection and distribution services.

The comments submitted by AFM and AFTRA are intended solely to prevent such competition and to use this process to preserve their own standing, apparently due to their lack of confidence and/or ability to successfully compete in an open market. Therefore the copyright office should immediately convene a CARP, for the limited purposes requested, which would have the likely effect of returning the interested parties to the bargaining table for a quick resolution of the issues.

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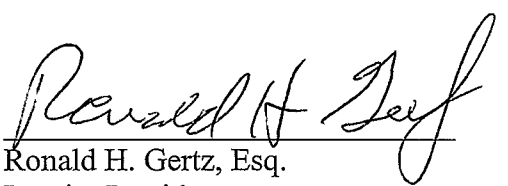

Date: April 11, 2003

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of Royalty Logic Inc. in response to the opposition of the American Federation of Television and Radio Artists and the American Federation Of Musicians to The Supplemental Comments of Royalty Logic, Inc. Objecting to Proposed Terms, was sent on April 11, 2003, by facsimile and first-class mail, postage prepaid, to the following parties:

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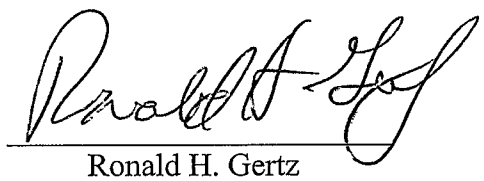

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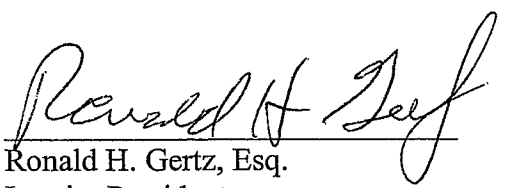

Ronald H. Gertz, Esq.
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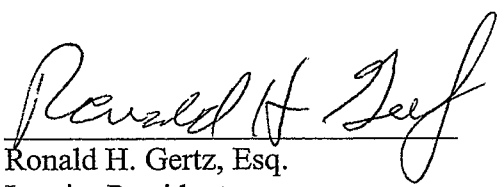

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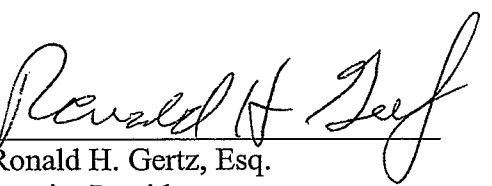

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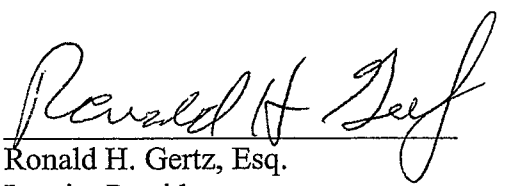

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Notwithstanding the above, since the time of RLI's designation as an agent in the previous eligible subscription services CARP, Royalty Logic has entered into affiliation agreements with performers and copyright owners. However, the regulations regarding eligible non subscription services (and indeed the provisions of the Small Webcaster Settlement Act in avoidance of RIAA/SoundExchange cost recoupment) clearly provide that RLI is not required to inform SoundExchange (in its capacity as the Receiving Agent) of the identity of its affiliates until thirty (30) days prior to receipt of license fees which RLI's members choose to have collected and distributed by RLI.

AFM and AFTRA objections, in reality, appear intended to obscure the fact that they seek to eliminate competition from RLI so that they can, upon the demise of SoundExchange, form their own designated agent without CARP approval as to the bona fides of the successor agent.

It is plain from the terms of Section 262.4 of the rates and terms recently proposed for eligible non subscription service transmissions and new subscription services that the major label copyright owners, AFM and AFTRA have among themselves attempted to eliminate the RLI designation, are already planning for the demise of SoundExchange and intend, in that event, that two successor agents be formed without the annoyance of marketplace competition from RLI.

> *262.4(b)(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal number of representatives of Performers and Copyright Owners, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in (A) and (B) below.*
>
> *(A) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as the last day preceding the condition precedent in § 262.4(b)(2) above, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Performers and Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.*
>
> *(B) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in 262.4(b)(2), such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Performers*

and Copyright Owners entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

Astoundingly, while seeking to eliminate RLI as a competitor, the proposed terms in Sections 262.4(b)(3)(A-F) go on to adopt, upon the demise of SoundExchange, many of the very same administrative terms - necessary in a two collective marketplace - that Royalty Logic is seeking in this proceeding but which they refuse to accept if RLI remains as a competitor. Such terms were either negotiated or inserted by the CARP and the Librarian of Congress in the previous eligible non-subscription services proceeding.

It is also interesting to note that the establishment by AFM and AFTRA of a successor collective on the demise of SoundExchange would create a perverse statutory conflict. Under Section 114, the royalties payable to non-featured performers are not paid directly to the AFM and AFTRA. Following the procedure established in the Audio Home Recording Act, Congress specifically decided that royalties payable to non featured performers and musicians be paid not to the unions themselves but instead to an independent administrator jointly chosen by copyright owners and the unions. Presumably, this was a safeguard to make sure that royalties payable to non-featured performers and musicians were not diminished by administrative costs of the unions directly. Should AFM and AFTRA establish a successor collective, the successor collective would receive royalties accruing to featured artists that the unions themselves do not represent (constituting the bulk – 45% - of royalties due performers) while the unions would be prevented from receiving the royalties accruing to the non featured performers and musicians that they do represent (only 5%). Therefore, the protections that congress intended for non-featured performers would be denied to featured performers. This situation is precisely why competition in the collection and distribution of royalties is to be promoted.

Conclusion

Section 114, as amended, provides for a performance right for the digital transmission of sound recordings. It contemplates both statutory licenses and the ability of copyright owners and

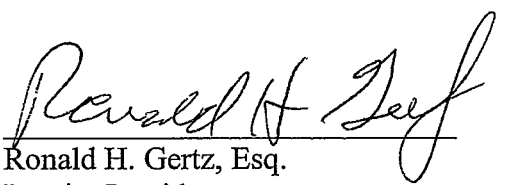
transmission services to enter into direct voluntary licenses that take precedence in lieu of the statutory license terms.

RLI believes that a significant number of performers and copyright owners will seek alternative representation for the administration of their rights under Sections 112 and 114. Indeed, section 114(e) of the statute imposes no limit on the right of copyright owners to make this choice. RLI is willing to let the marketplace decide which services are necessary and is willing to compete on a level playing field with any other entities or successor entities that choose to offer services in this area.

RLI further believes that it would be a very strange outcome indeed if the "competitive market" rate setting standard applicable to many statutory licenses did not also encompass, for the benefit of performers and copyright owners (i.e. the intended beneficiaries of marketplace royalty rates), "competitive market" alternatives for licensing, collection and distribution services.

The comments submitted by AFM and AFTRA are intended solely to prevent such competition and to use this process to preserve their own standing, apparently due to their lack of confidence and/or ability to successfully compete in an open market. Therefore the copyright office should immediately convene a CARP, for the limited purposes requested, which would have the likely effect of returning the interested parties to the bargaining table for a quick resolution of the issues.

Respectfully submitted,



Date: April 11, 2003

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