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 BY THE RECORDING INDUSTRY ASSOCIATION OF AMERICA TO 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 Recording Industry Association of America ("RIAA") to the supplemental comments of RLI objecting to proposed terms. RLI's intention in this proceeding to extend its designation to become fully designated to collect and distribute license fees across all Section 114 and 112 statutory licenses. The RIAA's filing raises a laundry list of issues whose sole purpose is to prevent competition with RIAA/SoundExchange so that RIAA/SoundExchange will be able to force all copyright owners and performers to pay certain RLI/SoundExchange costs despite their statutory right, pursuant to 17 U.S.C. §114(g)(3), to prevent such cost recoupment by affiliating with RLI, the "alternative" designated agent in existence at the time Congress enacted the legislation.

RLI IS AN "INTERESTED" PARTY ENTITLED TO FILE A NOTICE OF INTENTION TO PARTICIPATE ON ITS OWN BEHALF.

As discussed more fully in RLI's original objection to the proposed settlement, RLI is a designated agent authorized by a duly constituted CARP to compete with RIAA/SoundExchange. RLI is an "entity or organization involved in the collection and distribution of royalties" that represents the rights and interests of its copyright owner and

performer affiliates and, consistent with previous Copyright Office definitions, is an "interested" party. Order, *In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Dkt. No. 99-6 CARP DTRA (June 21, 2000).

RLI is objecting to terms of the RIAA settlement, which would have the significant effect of eliminating RLI as a designated agent. Therefore, contrary to RIAA's assertion, RLI is an interested party with much more than a *de minimus* interest in this proceeding and has properly filed its Notice Of Intention to Participate along with its objections to the proposed settlement.

RLI IS NOT REQUIRED TO FILE A JOINT NOTICE.

The RIAA's reliance on the request for Notices Of Intent to Participate, published by the Copyright Office on November 20, 2001, for the proposition that a joint notice is required, is misplaced. That document merely states that "Claimants may, in lieu of individual Notices Of Intention to participate, submit joint notices." In other words, joint notices are permissive, they are not required. And, where a designated agent, on its own behalf, objects to terms that affect the continued existence of such designated agent, a notice on its own behalf is appropriate.

RIAA's further references to joint notices regard joint claimants in a royalty distribution proceeding and are also misplaced. This is a proceeding to determine overall industry wide statutory license rates and terms. It is not a proceeding to determine the actual dollar amount of royalties due specific individual claimants – pursuant to which a joint notice for joint claimants would be reasonable.

RLI's Notice Of Intent to participate complies with the Copyright Office's notice of November 20, 2001.

RLI HAS NO OBLIGATION TO IDENTIFY ITS COPYRIGHT OWNER AND PERFORMER AFFILIATES PRIOR TO COMMENCEMENT OF OPERATIONS.

Since the time of RLI's designation pursuant to the eligible non-subscription services CARP proceeding, RLI has been actively entering into affiliation agreements with numerous copyright owners and performers. The purpose of such affiliation is to represent copyright owners and performers in the collection and distribution of statutory license royalties and the licensing, collection and distribution of royalties resulting from the voluntary licensing of transmissions.

RIAA asserts that RLI is somehow precluded from representing itself and its affiliates interests in this proceeding since RLI has not disclosed the identity of its affiliates to RIAA/SoundExchange. The identity of RLI's affiliates is completely irrelevant to RLI's right to participate in this proceeding.

RLI will disclose the identity of its affiliates, as required, when it commences operation under the applicable statutory licenses. Pursuant to Regulation 261.4(c), the identity of RLI's affiliates is not required to be provided to SoundExchange (in its capacity as the receiving agent) until "*...thirty days prior to the receipt by the receiving agent of that royalty payment.*" Further, Section 114(g)(3)[1] of the Copyright Act contains only a simple requirement of notice prior to distribution in order to avoid RIAA/Soundexchange cost recoupment.

RLI also has no obligation to identify its copyright owner and performer affiliates at this time either for the purpose of filing a joint notice or establishing RLI's significant interest. As the following testimony in the previous eligible non-subscription services CARP reveals, 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.

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[1] "A nonprofit agent designated to distribute receipts...may deduct...prior to the distribution of such receipts to any person...other than copyright owners and performers who have elected to receive royalties from another designated agent and have *notified such nonprofit agent in writing of such election*, the reasonable costs of such agent." (emphasis added)

Mr. Garret: At the current time then there's no record company that has designated you as an agent, correct?

Mr. Gertz: *Not officially, no.*

Mr. Garret: And I limited my question earlier to Section 114, but it's also true with respect to Section 112, correct?

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Since, actually having copyright owner affiliates was not a prerequisite to becoming a designated agent, a list of affiliates cannot be a prerequisite to extending designated agent status to other statutory license collections.

A CARP IS THE PROPER FORUM FOR RESOLVING THE DISPUTED TERMS. ACCORDINGLY, THE COPYRIGHT OFFICE SHOULD PROCEED TO A CARP AS SOON AS POSSIBLE.

According to the NPRM, the Librarian of Congress may adopt the rates and terms in the proposed settlement without convening a CARP "*unless there is an objection from a person with a significant interest* in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adopt rates and terms for pre-existing subscription services..."68 Fed. Reg.4744, 4755 (emphasis added).

The congressional intent behind the procedures pursuant to which the Copyright Office publishes in the federal register a proposed "voluntary" settlement regarding statutory license fees and terms, and then provides a thirty (30) day period for public comment and the filing of objections, is to identify those terms which are in fact not "voluntary" and which terms negatively impact "interested" parties. This process, which identifies disputed terms among interested parties and narrows issues for trial, is the necessary pre-cursor to a CARP the purpose of which is to establish statutory license fees and terms that accommodate the interests of all the parties effected by such rates and terms.

Regardless of the settlement as to rates applicable to the pre-existing services, there is no voluntary agreement among the designated agents representing copyright owners and performers regarding who will collect and distribute license fees, how fees will be allocated, how non-members of the collectives will be treated, etc. Therefore, the CARP is the proper and necessary forum for resolution of these issues and the Copyright Office should proceed to a CARP on such disputed terms.

THE CARP EXISTS TO RESOLVE DISPUTED STATUTORY LICENSE TERMS WHEN THE STATUTORY LICENSE FEE IS NOT IN DISPUTE.

The RIAA asserts that where there appears to be agreement as to the statutory rate, the CARP does not have the authority to determine other statutory license terms that remain in dispute. In other words, the RIAA is saying that no forum exists to determine statutory license terms. However, Section 114(f)(1)(B) of the Copyright Act provides that in the absence of voluntary agreements "the Librarian of Congress shall...convene a copyright arbitration royalty panel to determine...a schedule of *rates and terms* which...shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph." The reference to "rates and terms" indicates Congress's intent that the CARP have full authority to adjudicate both statutory license rates and statutory license terms. Where there is no agreement regarding certain statutory license terms, of concern only among copyright owners, and which terms are to be binding on all copyright owners, the disputed terms are clearly within the authority of the CARP to resolve - even without a rate request.

Contrary to RIAA's assertion, RLI is prepared to file a direct case on the disputed terms regarding the parties entitled to engage in the collection and distribution royalties and the accompanying administrative terms. If, in addition, the Copyright Office determines that a rate request is necessary, RLI will request one.

A CARP ON DISPUTED TERMS SHOULD NOT CAUSE THE ENTIRE SETTLEMENT TO UNRAVEL. HOWEVER, THE CARP EXISTS FOR THE PURPOSE OF RESOLVING SUCH DISPUTES IF IT DOES UNRAVEL.

The RIAA asserts that proceeding to a CARP on the disputed terms (e.g., the extention of RLI's designated agent status in competition with RIAA/SoundExchange) may cause the proposed settlement to unravel and "force the settling parties into an extremely expensive, time consuming and unwanted arbitration proceeding that could do serious damage to one or more of the settling parties economic interest". If that happens, then so be it. The CARP exists to determine statutory license fees and terms when settlements unravel.

The negotiation of the proposed settlement was between the transmission services that would utilize the statutory license on one side of the bargaining table and the RIAA, a group of copyright owners (but not all copyright owners), on the other. From the perspective of the transmission services, there is no reason for the settlement to unravel over collection and distribution issues among copyright owners and performers that do not affect the rates they negotiated or how they do their business.

The disputed terms concern only the copyright owners and performers (many of whom have interests, goals, business and cost recoupment strategies that diverge from the RIAA and their member record labels). If the settlement unravels over such collection and distribution issues it will only be because of RIAA/SoundExchange's desire squelch competition in the collection and distribution of license fees and to reverse the effects of Section 114(g)(3) of the Copyright Act, as amended by the recently enacted Small Webcaster Settlement Act, so that it may have a free hand to deduct all of its costs from royalties due all copyright owners and performers.[2]

The RIAA also asserts that allowing a designated agent to challenge a proposed voluntary settlement "would be in direct contravention of the congressional policy

[2] Section 114(g)(3) permits RIAA/SoundExchange to deduct from royalties due copyright owners and performers a host of costs which the Librarian of Congress had previously disallowed in the eligible non-subscription services CARP. However, as enacted, Congress provided a means for copyright owners and performers to avoid recoupment of such costs by affiliating with a competitive "alternative" designated agent.

favoring voluntary settlements". However, a congressional policy in favor of voluntary settlements should not be used as a hammer to force interested parties representing copyright owners and performers into settlements, critical aspects of which are in fact not voluntary. Rather, the congressional policy embodied in the public notice/comment procedures are applicable here with great relevance and serve the equally important judicial policy goal of narrowing issues for arbitration. Furthermore, since the issues are narrow, the CARP should be neither lengthy nor costly.

THE RIAA HAS RAISED A SPECULATIVE PARADE OF DISTANT HORRIBLES THAT ARE EITHER IRRELEVANT, UNFOUNDED OR MISLEADING.

The RIAA asserts that extending RLI's status as a designated agent "would make the distribution system much more costly and less efficient for all involved and would defeat the very purpose intended to be served by the statutory license-to minimize transaction costs in order to maximize distributions to copyright owners and performers". RLI believes that the proven way to minimize transaction costs and maximize distributions to copyright owners and performers is to have a competitive market place in which designated agents compete for the representation of copyright owners and performers on price (i.e., administrative fees and costs), terms and available services.

The RIAA asserts that "the burdens and costs of allocating royalties to multiple small collectives could be such that SoundExchange could no longer afford to act as the receiving agent". However, the cost sharing provisions in the regulations involving webcasters could easily apply to the statutory license for the pre existing services. Section 261.4(g) provides that "The receiving agent and the designated agent shall agree on a reasonable basis on the *sharing on a pro-rata basis of any incremental costs* directly associated with the allocation method." (emphasis added). Therefore, there is a precedent, to which RLI did and would continue to agree that provides for the costs of the receiving agent, which should be minimal in any case, to be shared on a pro rata basis among the designated agents.

If SoundExchange cannot afford to act as the receiving agent, as RIAA speculates, it will simply be because the concept of a receiving agent is flawed. To the extent that licensees are entitled to a single depository for license fees, the concept might better be reconceived as an "independent escrow agent" with funds placed in a segregated interest bearing account pending allocation to the designated agents on reasonable mutual agreement[3]. That would put the designated agents on a level playing field and incentivize a quick resolution of the allocation and control of attendant costs.[4]

The RIAA asserts that the costs of allocating royalties to multiple collectives would be "amplified if statutory licensees are not required to provide SoundExchange with data on each sound recording performed that is adequate to permit SoundExchange to quickly and efficiently allocate royalties to the proper collective". The premis for this assertion is false. RIAA/SoundExchange is well aware of the fact that the Copyright Office's regulation regarding Notice and Recordkeeping require licensees to provide such data.

Finally, RIAA asserts that "copyright owners and performers might be better off if statutory licensees were required to pay each of them directly". The likely result of such a situation would lead to a much better system than that currently in place. The current system is a patchwork of inconsistent regulations regarding to whom the royalty is paid, how the royalty is distributed, which agents are designated to function, how the agents can be audited by copyright owners and performers, etc. These are issues which have not been well handled in the CARP and regulatory processes and might best be handled in an open, competitive marketplace.[5]

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[3] Consistant with the regulations regarding webcasting, a Copyright Office dispute resolution mechanism is appropriate.

[4] RLI notes that such a device has been employed by ASCAP, BMI and SESAC. Those organizations created the Jukebox Licensing Office to centralize the collection of license fees from the jukebox industry and the allocation of the fees among the organizations.

[5] Were services required to pay copyright owners directly, in all likelihood, the copyright owners and performers would quickly organize voluntarily into multiple collective licensing organizations that would better represent their interests free of restrictions such as those sought by RIAA/SoundExchange over how their royalties are collected, reduced and distributed. Such a market would likely develop along the lines of the collection of

Conclusion

The comments submitted by RIAA are intended solely to prevent competition and to use this process to preserve a monopoly position in an effort to ensure its ability to recoup its litigation costs and overhead expenses from all license fees provided for in Sections 112 and 114. The enactment of the Small Webcasters Settlement Act, which limits RIAA/SoundExchange's ability to recoup costs from affiliates of a competitive designated agent is clearly designed to promote such competition.

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.

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 24, 2003

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performance income for musical compositions pursuant to which there are three organizations in the United States that represent music publishers and performers for the collection of these royalties. They are entirely autonomous entities that organize with rules designed among their members or management for the benefit of their affiliates (subject only to consent decree strictures where warranted).

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 Recording Industry Association of America to the Supplemental Comments of Royalty Logic, Inc. Objecting to Proposed Terms, was sent on April 24, 2003, by facsimile and first-class mail, postage prepaid, to the following parties:

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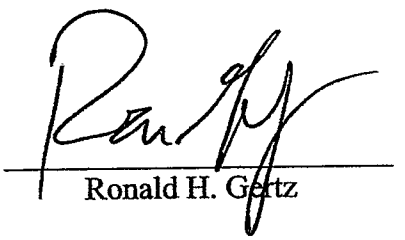

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Conclusion

The comments submitted by RIAA are intended solely to prevent competition and to use this process to preserve a monopoly position in an effort to ensure its ability to recoup its litigation costs and overhead expenses from all license fees provided for in Sections 112 and 114. The enactment of the Small Webcasters Settlement Act, which limits RIAA/SoundExchange's ability to recoup costs from affiliates of a competitive designated agent is clearly designed to promote such competition.

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.

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 24, 2003

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performance income for musical compositions pursuant to which there are three organizations in the United States that represent music publishers and performers for the collection of these royalties. They are entirely autonomous entities that organize with rules designed among their members or management for the benefit of their affiliates (subject only to consent decree strictures where warranted).

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 Recording Industry Association of America to the Supplemental Comments of Royalty Logic, Inc. Objecting to Proposed Terms, was sent on April 24, 2003, by facsimile and first-class mail, postage prepaid, to the following parties:

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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 BY THE RECORDING INDUSTRY ASSOCIATION OF AMERICA TO 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 Recording Industry Association of America ("RIAA") to the supplemental comments of RLI objecting to proposed terms. RLI's intention in this proceeding to extend its designation to become fully designated to collect and distribute license fees across all Section 114 and 112 statutory licenses. The RIAA's filing raises a laundry list of issues whose sole purpose is to prevent competition with RIAA/SoundExchange so that RIAA/SoundExchange will be able to force all copyright owners and performers to pay certain RLI/SoundExchange costs despite their statutory right, pursuant to 17 U.S.C. §114(g)(3), to prevent such cost recoupment by affiliating with RLI, the "alternative" designated agent in existence at the time Congress enacted the legislation.

RLI IS AN "INTERESTED" PARTY ENTITLED TO FILE A NOTICE OF INTENTION TO PARTICIPATE ON ITS OWN BEHALF.

As discussed more fully in RLI's original objection to the proposed settlement, RLI is a designated agent authorized by a duly constituted CARP to compete with RIAA/SoundExchange. RLI is an "entity or organization involved in the collection and distribution of royalties" that represents the rights and interests of its copyright owner and

performer affiliates and, consistent with previous Copyright Office definitions, is an "interested" party. Order, *In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Dkt. No. 99-6 CARP DTRA (June 21, 2000).

RLI is objecting to terms of the RIAA settlement, which would have the significant effect of eliminating RLI as a designated agent. Therefore, contrary to RIAA's assertion, RLI is an interested party with much more than a *de minimus* interest in this proceeding and has properly filed its Notice Of Intention to Participate along with its objections to the proposed settlement.

RLI IS NOT REQUIRED TO FILE A JOINT NOTICE.

The RIAA's reliance on the request for Notices Of Intent to Participate, published by the Copyright Office on November 20, 2001, for the proposition that a joint notice is required, is misplaced. That document merely states that "Claimants may, in lieu of individual Notices Of Intention to participate, submit joint notices." In other words, joint notices are permissive, they are not required. And, where a designated agent, on its own behalf, objects to terms that affect the continued existence of such designated agent, a notice on its own behalf is appropriate.

RIAA's further references to joint notices regard joint claimants in a royalty distribution proceeding and are also misplaced. This is a proceeding to determine overall industry wide statutory license rates and terms. It is not a proceeding to determine the actual dollar amount of royalties due specific individual claimants – pursuant to which a joint notice for joint claimants would be reasonable.

RLI's Notice Of Intent to participate complies with the Copyright Office's notice of November 20, 2001.

RLI HAS NO OBLIGATION TO IDENTIFY ITS COPYRIGHT OWNER AND PERFORMER AFFILIATES PRIOR TO COMMENCEMENT OF OPERATIONS.

Since the time of RLI's designation pursuant to the eligible non-subscription services CARP proceeding, RLI has been actively entering into affiliation agreements with numerous copyright owners and performers. The purpose of such affiliation is to represent copyright owners and performers in the collection and distribution of statutory license royalties and the licensing, collection and distribution of royalties resulting from the voluntary licensing of transmissions.

RIAA asserts that RLI is somehow precluded from representing itself and its affiliates interests in this proceeding since RLI has not disclosed the identity of its affiliates to RIAA/SoundExchange. The identity of RLI's affiliates is completely irrelevant to RLI's right to participate in this proceeding.

RLI will disclose the identity of its affiliates, as required, when it commences operation under the applicable statutory licenses. Pursuant to Regulation 261.4(c), the identity of RLI's affiliates is not required to be provided to SoundExchange (in its capacity as the receiving agent) until "*...thirty days prior to the receipt by the receiving agent of that royalty payment.*" Further, Section 114(g)(3)[1] of the Copyright Act contains only a simple requirement of notice prior to distribution in order to avoid RIAA/Soundexchange cost recoupment.

RLI also has no obligation to identify its copyright owner and performer affiliates at this time either for the purpose of filing a joint notice or establishing RLI's significant interest. As the following testimony in the previous eligible non-subscription services CARP reveals, 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.

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[1] "A nonprofit agent designated to distribute receipts...may deduct...prior to the distribution of such receipts to any person...other than copyright owners and performers who have elected to receive royalties from another designated agent and have *notified such nonprofit agent in writing of such election*, the reasonable costs of such agent." (emphasis added)

Mr. Garret: At the current time then there's no record company that has designated you as an agent, correct?

Mr. Gertz: *Not officially, no.*

Mr. Garret: And I limited my question earlier to Section 114, but it's also true with respect to Section 112, correct?

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Since, actually having copyright owner affiliates was not a prerequisite to becoming a designated agent, a list of affiliates cannot be a prerequisite to extending designated agent status to other statutory license collections.

A CARP IS THE PROPER FORUM FOR RESOLVING THE DISPUTED TERMS. ACCORDINGLY, THE COPYRIGHT OFFICE SHOULD PROCEED TO A CARP AS SOON AS POSSIBLE.

According to the NPRM, the Librarian of Congress may adopt the rates and terms in the proposed settlement without convening a CARP "*unless there is an objection from a person with a significant interest* in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adopt rates and terms for pre-existing subscription services..."68 Fed. Reg.4744, 4755 (emphasis added).

The congressional intent behind the procedures pursuant to which the Copyright Office publishes in the federal register a proposed "voluntary" settlement regarding statutory license fees and terms, and then provides a thirty (30) day period for public comment and the filing of objections, is to identify those terms which are in fact not "voluntary" and which terms negatively impact "interested" parties. This process, which identifies disputed terms among interested parties and narrows issues for trial, is the necessary pre-cursor to a CARP the purpose of which is to establish statutory license fees and terms that accommodate the interests of all the parties effected by such rates and terms.

Regardless of the settlement as to rates applicable to the pre-existing services, there is no voluntary agreement among the designated agents representing copyright owners and performers regarding who will collect and distribute license fees, how fees will be allocated, how non-members of the collectives will be treated, etc. Therefore, the CARP is the proper and necessary forum for resolution of these issues and the Copyright Office should proceed to a CARP on such disputed terms.

THE CARP EXISTS TO RESOLVE DISPUTED STATUTORY LICENSE TERMS WHEN THE STATUTORY LICENSE FEE IS NOT IN DISPUTE.

The RIAA asserts that where there appears to be agreement as to the statutory rate, the CARP does not have the authority to determine other statutory license terms that remain in dispute. In other words, the RIAA is saying that no forum exists to determine statutory license terms. However, Section 114(f)(1)(B) of the Copyright Act provides that in the absence of voluntary agreements "the Librarian of Congress shall...convene a copyright arbitration royalty panel to determine...a schedule of *rates and terms* which...shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph." The reference to "rates and terms" indicates Congress's intent that the CARP have full authority to adjudicate both statutory license rates and statutory license terms. Where there is no agreement regarding certain statutory license terms, of concern only among copyright owners, and which terms are to be binding on all copyright owners, the disputed terms are clearly within the authority of the CARP to resolve - even without a rate request.

Contrary to RIAA's assertion, RLI is prepared to file a direct case on the disputed terms regarding the parties entitled to engage in the collection and distribution royalties and the accompanying administrative terms. If, in addition, the Copyright Office determines that a rate request is necessary, RLI will request one.

A CARP ON DISPUTED TERMS SHOULD NOT CAUSE THE ENTIRE SETTLEMENT TO UNRAVEL. HOWEVER, THE CARP EXISTS FOR THE PURPOSE OF RESOLVING SUCH DISPUTES IF IT DOES UNRAVEL.

The RIAA asserts that proceeding to a CARP on the disputed terms (e.g., the extention of RLI's designated agent status in competition with RIAA/SoundExchange) may cause the proposed settlement to unravel and "force the settling parties into an extremely expensive, time consuming and unwanted arbitration proceeding that could do serious damage to one or more of the settling parties economic interest". If that happens, then so be it. The CARP exists to determine statutory license fees and terms when settlements unravel.

The negotiation of the proposed settlement was between the transmission services that would utilize the statutory license on one side of the bargaining table and the RIAA, a group of copyright owners (but not all copyright owners), on the other. From the perspective of the transmission services, there is no reason for the settlement to unravel over collection and distribution issues among copyright owners and performers that do not affect the rates they negotiated or how they do their business.

The disputed terms concern only the copyright owners and performers (many of whom have interests, goals, business and cost recoupment strategies that diverge from the RIAA and their member record labels). If the settlement unravels over such collection and distribution issues it will only be because of RIAA/SoundExchange's desire squelch competition in the collection and distribution of license fees and to reverse the effects of Section 114(g)(3) of the Copyright Act, as amended by the recently enacted Small Webcaster Settlement Act, so that it may have a free hand to deduct all of its costs from royalties due all copyright owners and performers.[2]

The RIAA also asserts that allowing a designated agent to challenge a proposed voluntary settlement "would be in direct contravention of the congressional policy

[2] Section 114(g)(3) permits RIAA/SoundExchange to deduct from royalties due copyright owners and performers a host of costs which the Librarian of Congress had previously disallowed in the eligible non-subscription services CARP. However, as enacted, Congress provided a means for copyright owners and performers to avoid recoupment of such costs by affiliating with a competitive "alternative" designated agent.

favoring voluntary settlements". However, a congressional policy in favor of voluntary settlements should not be used as a hammer to force interested parties representing copyright owners and performers into settlements, critical aspects of which are in fact not voluntary. Rather, the congressional policy embodied in the public notice/comment procedures are applicable here with great relevance and serve the equally important judicial policy goal of narrowing issues for arbitration. Furthermore, since the issues are narrow, the CARP should be neither lengthy nor costly.

THE RIAA HAS RAISED A SPECULATIVE PARADE OF DISTANT HORRIBLES THAT ARE EITHER IRRELEVANT, UNFOUNDED OR MISLEADING.

The RIAA asserts that extending RLI's status as a designated agent "would make the distribution system much more costly and less efficient for all involved and would defeat the very purpose intended to be served by the statutory license-to minimize transaction costs in order to maximize distributions to copyright owners and performers". RLI believes that the proven way to minimize transaction costs and maximize distributions to copyright owners and performers is to have a competitive market place in which designated agents compete for the representation of copyright owners and performers on price (i.e., administrative fees and costs), terms and available services.

The RIAA asserts that "the burdens and costs of allocating royalties to multiple small collectives could be such that SoundExchange could no longer afford to act as the receiving agent". However, the cost sharing provisions in the regulations involving webcasters could easily apply to the statutory license for the pre existing services. Section 261.4(g) provides that "The receiving agent and the designated agent shall agree on a reasonable basis on the *sharing on a pro-rata basis of any incremental costs* directly associated with the allocation method." (emphasis added). Therefore, there is a precedent, to which RLI did and would continue to agree that provides for the costs of the receiving agent, which should be minimal in any case, to be shared on a pro rata basis among the designated agents.

If SoundExchange cannot afford to act as the receiving agent, as RIAA speculates, it will simply be because the concept of a receiving agent is flawed. To the extent that licensees are entitled to a single depository for license fees, the concept might better be reconceived as an "independent escrow agent" with funds placed in a segregated interest bearing account pending allocation to the designated agents on reasonable mutual agreement[3]. That would put the designated agents on a level playing field and incentivize a quick resolution of the allocation and control of attendant costs.[4]

The RIAA asserts that the costs of allocating royalties to multiple collectives would be "amplified if statutory licensees are not required to provide SoundExchange with data on each sound recording performed that is adequate to permit SoundExchange to quickly and efficiently allocate royalties to the proper collective". The premis for this assertion is false. RIAA/SoundExchange is well aware of the fact that the Copyright Office's regulation regarding Notice and Recordkeeping require licensees to provide such data.

Finally, RIAA asserts that "copyright owners and performers might be better off if statutory licensees were required to pay each of them directly". The likely result of such a situation would lead to a much better system than that currently in place. The current system is a patchwork of inconsistent regulations regarding to whom the royalty is paid, how the royalty is distributed, which agents are designated to function, how the agents can be audited by copyright owners and performers, etc. These are issues which have not been well handled in the CARP and regulatory processes and might best be handled in an open, competitive marketplace.[5]

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[3] Consistant with the regulations regarding webcasting, a Copyright Office dispute resolution mechanism is appropriate.

[4] RLI notes that such a device has been employed by ASCAP, BMI and SESAC. Those organizations created the Jukebox Licensing Office to centralize the collection of license fees from the jukebox industry and the allocation of the fees among the organizations.

[5] Were services required to pay copyright owners directly, in all likelihood, the copyright owners and performers would quickly organize voluntarily into multiple collective licensing organizations that would better represent their interests free of restrictions such as those sought by RIAA/SoundExchange over how their royalties are collected, reduced and distributed. Such a market would likely develop along the lines of the collection of

Conclusion

The comments submitted by RIAA are intended solely to prevent competition and to use this process to preserve a monopoly position in an effort to ensure its ability to recoup its litigation costs and overhead expenses from all license fees provided for in Sections 112 and 114. The enactment of the Small Webcasters Settlement Act, which limits RIAA/SoundExchange's ability to recoup costs from affiliates of a competitive designated agent is clearly designed to promote such competition.

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.

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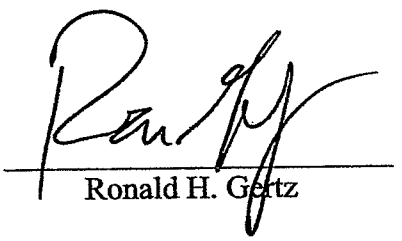

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Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
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In the Matter of	)	
Digital Performance Right in Sound Recordings Rate Adjustment	)	Docket No. 2001-1 CARP DSTRA 2

REPLY COMMENTS OF ROYALTY LOGIC, INC. IN RESPONSE TO THE OPPOSITION BY THE RECORDING INDUSTRY ASSOCIATION OF AMERICA TO SUPPLEMENTAL COMMENTS OF ROYALTY LOGIC, INC. OBJECTING TO PROPOSED TERMS

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The RIAA also asserts that allowing a designated agent to challenge a proposed voluntary settlement "would be in direct contravention of the congressional policy

[2] Section 114(g)(3) permits RIAA/SoundExchange to deduct from royalties due copyright owners and performers a host of costs which the Librarian of Congress had previously disallowed in the eligible non-subscription services CARP. However, as enacted, Congress provided a means for copyright owners and performers to avoid recoupment of such costs by affiliating with a competitive "alternative" designated agent.

favoring voluntary settlements". However, a congressional policy in favor of voluntary settlements should not be used as a hammer to force interested parties representing copyright owners and performers into settlements, critical aspects of which are in fact not voluntary. Rather, the congressional policy embodied in the public notice/comment procedures are applicable here with great relevance and serve the equally important judicial policy goal of narrowing issues for arbitration. Furthermore, since the issues are narrow, the CARP should be neither lengthy nor costly.

THE RIAA HAS RAISED A SPECULATIVE PARADE OF DISTANT HORRIBLES THAT ARE EITHER IRRELEVANT, UNFOUNDED OR MISLEADING.

The RIAA asserts that extending RLI's status as a designated agent "would make the distribution system much more costly and less efficient for all involved and would defeat the very purpose intended to be served by the statutory license-to minimize transaction costs in order to maximize distributions to copyright owners and performers". RLI believes that the proven way to minimize transaction costs and maximize distributions to copyright owners and performers is to have a competitive market place in which designated agents compete for the representation of copyright owners and performers on price (i.e., administrative fees and costs), terms and available services.

The RIAA asserts that "the burdens and costs of allocating royalties to multiple small collectives could be such that SoundExchange could no longer afford to act as the receiving agent". However, the cost sharing provisions in the regulations involving webcasters could easily apply to the statutory license for the pre existing services. Section 261.4(g) provides that "The receiving agent and the designated agent shall agree on a reasonable basis on the *sharing on a pro-rata basis of any incremental costs* directly associated with the allocation method." (emphasis added). Therefore, there is a precedent, to which RLI did and would continue to agree that provides for the costs of the receiving agent, which should be minimal in any case, to be shared on a pro rata basis among the designated agents.

If SoundExchange cannot afford to act as the receiving agent, as RIAA speculates, it will simply be because the concept of a receiving agent is flawed. To the extent that licensees are entitled to a single depository for license fees, the concept might better be reconceived as an "independent escrow agent" with funds placed in a segregated interest bearing account pending allocation to the designated agents on reasonable mutual agreement[3]. That would put the designated agents on a level playing field and incentivize a quick resolution of the allocation and control of attendant costs.[4]

The RIAA asserts that the costs of allocating royalties to multiple collectives would be "amplified if statutory licensees are not required to provide SoundExchange with data on each sound recording performed that is adequate to permit SoundExchange to quickly and efficiently allocate royalties to the proper collective". The premis for this assertion is false. RIAA/SoundExchange is well aware of the fact that the Copyright Office's regulation regarding Notice and Recordkeeping require licensees to provide such data.

Finally, RIAA asserts that "copyright owners and performers might be better off if statutory licensees were required to pay each of them directly". The likely result of such a situation would lead to a much better system than that currently in place. The current system is a patchwork of inconsistent regulations regarding to whom the royalty is paid, how the royalty is distributed, which agents are designated to function, how the agents can be audited by copyright owners and performers, etc. These are issues which have not been well handled in the CARP and regulatory processes and might best be handled in an open, competitive marketplace.[5]

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[3] Consistant with the regulations regarding webcasting, a Copyright Office dispute resolution mechanism is appropriate.

[4] RLI notes that such a device has been employed by ASCAP, BMI and SESAC. Those organizations created the Jukebox Licensing Office to centralize the collection of license fees from the jukebox industry and the allocation of the fees among the organizations.

[5] Were services required to pay copyright owners directly, in all likelihood, the copyright owners and performers would quickly organize voluntarily into multiple collective licensing organizations that would better represent their interests free of restrictions such as those sought by RIAA/SoundExchange over how their royalties are collected, reduced and distributed. Such a market would likely develop along the lines of the collection of

Conclusion

The comments submitted by RIAA are intended solely to prevent competition and to use this process to preserve a monopoly position in an effort to ensure its ability to recoup its litigation costs and overhead expenses from all license fees provided for in Sections 112 and 114. The enactment of the Small Webcasters Settlement Act, which limits RIAA/SoundExchange's ability to recoup costs from affiliates of a competitive designated agent is clearly designed to promote such competition.

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.

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 24, 2003

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performance income for musical compositions pursuant to which there are three organizations in the United States that represent music publishers and performers for the collection of these royalties. They are entirely autonomous entities that organize with rules designed among their members or management for the benefit of their affiliates (subject only to consent decree strictures where warranted).

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 Recording Industry Association of America to the Supplemental Comments of Royalty Logic, Inc. Objecting to Proposed Terms, was sent on April 24, 2003, by facsimile and first-class mail, postage prepaid, to the following parties:

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