

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

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\_\_\_\_\_)  
In the Matter of )  
 )  
Digital Performance Right in Sound )  
Recordings Rate Adjustment )  
\_\_\_\_\_)

GENERAL COUNSEL  
OF COPYRIGHT

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**DIRECT CASE<sup>1</sup> OF ROYALTY LOGIC, INC., ACTING AS THE AUTHORIZED  
REPRESENTATIVE OF LESTER CHAMBERS, SEEKING THE DESIGNATION  
OF ROYALTY LOGIC, INC. AS A DESIGNATED AGENT**

Lester Chambers (“Chambers”) is hereby requesting the adoption of regulations that designate Royalty Logic, Inc. (“RLI”) as a “Designated Agent” for the purpose of collection and distribution of royalties from transmissions and ephemeral reproductions of sound recordings made in accordance with the statutory licenses set forth in 17 U.S.C. §§ 112 and 114.<sup>2</sup> Chambers further seeks the adoption of related regulations that would avoid any possibility of self dealing in the allocation of royalties by requiring that licensees make royalty payments to an independent escrow agent mutually controlled by the Designated Agents, and mandate that the Designated Agents be fully and equally entitled to access to statements of account and records of use from licensees and have

<sup>1</sup> Revised in accordance with the Copyright Office Order of November 19, 2003.

<sup>2</sup> RLI was appointed by the Librarian of Congress as one of two Designated Agents for the distribution of royalties paid under the Section 114 statutory license for the digital transmission of sound recordings by Eligible Nonsubscription Services. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule*, 67 Fed. Reg. 45239 (July 8, 2002) (the “Webcaster Decision”); 37 C.F.R. §261.4(b).

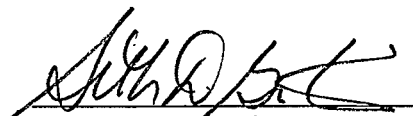
mutual approval over the allocation of royalties by the independent escrow agent among the Designated Agents representing copyright owners and performers.

In support of the foregoing designation and proposed regulations, RLI submits the following:

1. Testimony of Lester Chambers, copyright owner and performer
2. Testimony of Ronald Gertz, President Royalty Logic, Inc.
3. Pursuant to Rule 251.43(c), RLI also designates for its direct case the written rebuttal testimony and oral testimony of Ronald Gertz from Digital Performance of Sound Recordings and Ephemeral Recordings, Docket No. 2000-9 CARP DTRA 1&2, October 15, 2001. Please note that the transcript of Mr. Gertz's oral testimony includes material that was designated as Restricted in that proceeding, which pages are provided in a separate sealed envelope.

Respectfully submitted,

Date: October 8, 2003



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Counsel for Royalty Logic, Inc, as  
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**Appendix A**  
**Proposed Regulations**

PART 262 – RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

262.1 General.

262.2 Definitions.

262.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.

262.4 Terms for making payment of royalty fees and statements of account.

262.5 Confidential information.

262.6 Verification of statements of account.

262.7 Verification of royalty payments.

262.8 Unclaimed funds.

§ 262.1– No change proposed.

**§ 262.2 Definitions.**

ADD: *Designated Agent* is the agent designated by the Librarian of Congress for the receipt of royalty payments made pursuant to this part from the Receiving Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in §???.

ADD: *Escrow Agent* is the agent designated by mutual agreement of the Designated Agents for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to the Designated Agents.

§ 262.3 – No change proposed.

**§ 262.4 Terms for making payment of royalty fees and statements of account.**

(a) **Payment to Escrow agent.** A Licensee shall make the royalty payments due under § 262.3 to the Escrow Agent. The Escrow Agent shall hold such royalty payments in a segregated, interest-bearing account pending apportionment among the Designated Agents. The Escrow Agent shall promptly thereafter apportion the royalty payments among the Designated Agents using the information provided by Licensees pursuant to the regulations governing records of use of performances for the period for which the royalty payment(s) were made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Designated Agents. Promptly thereafter, the Escrow Agent shall distribute the royalties, and any accrued interest, so apportioned simultaneously to the Designated Agents, pursuant to the agreed apportionment methodology. Within 30 days of adoption

of a methodology for apportioning royalties among Designated Agents, the Escrow Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) **Designation of agents.**

(1) Until such time as a new designation is made, [\_\_\_\_\_], is designated as the Escrow Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from Royalty Logic, Inc. With respect to any royalty payment received by the Escrow Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the allocation by the Escrow Agent of that royalty payment among the Designated Agents.

(3) The Escrow Agent shall make payments of the allocable share of any royalty payment received from any Licensee under this section to the Designated Agent(s) as expeditiously as is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. 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. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Designated Agent(s) for each calendar year no later than 180 days following the end of each calendar year.

(c) **Monthly payments.** A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the Federal Register shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) **Minimum payments.** A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which

these rates and terms are adopted by the Librarian of Congress and published in the Federal Register; and

(2) payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) **Late payments.** A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) **Statements of account.** For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the Federal Register and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Escrow Agent a statement of account containing the information set forth below on a form prepared, and made available to Licensees, by the Escrow Agent, after full consultation with all Designated Agents. If a payment is owed for such month, the statement of account shall accompany the payment. Concurrently with the delivery of the payment and statement of account to the Escrow Agent, a Licensee shall deliver to each Designated Agent a copy of the Statement of Account for each payment. A statement of account shall include only the following information:

(1) such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(A) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(B) A partner or delegee, if the Licensee is a partnership; or

(C) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

**(g) Distribution of payments.**

(1) The Designated Agent(s) shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that a Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The Designated Agents shall distribute royalty payments on a basis that values all performances by a Licensees equally based upon the information provided by Licensees pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize a particular Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 114(g)(2). In the event that a Performer does not designate an agent for collection of royalties, the Performers share of royalties shall be allocated to the Designated Agent of the Copyright Owner which shall distribute royalties to the Performer consistent with this section.

(2) The Designated Agent shall inform the Register of Copyrights of:

(A) its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter "nonmembers"), and any amendments thereto, within 60 days of adoption and no later than 30 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(B) any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(C) the final disposition by the Designated Agent of any complaint specified by § 262.4(g)(2)(B), within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) **Permitted deductions.** A Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to Copyright Owners and Performers that have elected to receive royalties from such Designated Agent, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3), and a reasonable charge for administration; Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit a Designated Agent to make any other deductions.

(i) **Retention of records.** Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

§ 262.5 No change proposed.

§ 262.6 No change proposed.

§ 262.7 No change proposed.

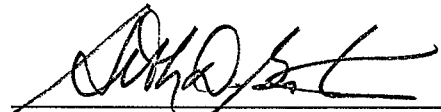
§ 262.8 **Unclaimed funds.** If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under this § 262.4(b) within three years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a designated agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any state.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the revised Direct Case of Royalty Logic, Inc. has been served on December 1, 2003, by overnight delivery, to:

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**Counsel for SoundExchange**

  
Seth D. Greenstein