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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. 2002-1 CARP DTRA 3 2000-2 CARP DTNSRA

REPLY OF ROYALTY LOGIC, INC.
IN SUPPORT OF PETITION FOR DECISION ON WRITTEN PLEADINGS

Royalty Logic, Inc. ("RLI"), in support of its petition to dispense with formal hearings and to have the CARP decide the instant controversy on the basis of written pleadings and oral argument, responds to the Opposition of SoundExchange.

1. RLI recognizes, as a practical matter, the Copyright Office will likely address concurrently the RLI Petition and the SoundExchange Motion for Declaratory Rulings. However, that is not to say that the two are interdependent, or that one must be decided before the other. The two motions are ships passing in the night.

The RLI petition observes that the basic material facts known at this point in the proceeding are simple and straightforward, and appear to raise no genuine dispute, including that:

-- The parties to this proceeding previously agreed to both the two-tier Receiving Agent/Designated Agents structure, and RLI's appointment as a Designated Agent, and the Librarian accepted that arrangement in *Webcasters I.*

-- RLI has executed agreements with copyright owners and performers who are entitled to collect royalties under the statutory licenses and who desire to use RLI as their Designated Agent.

-- SoundExchange has taken the position that, absent designation by the Librarian, RLI's affiliates are not entitled to receive royalties without prior administrative deductions by SoundExchange, and RLI is not entitled to receive information that would enable it to perform its responsibilities to its affiliates.

-- SoundExchange may incur certain expenses in order to accommodate those beneficiaries who wish to use RLI rather than SoundExchange as their designated agent.

Whether there will continue to be no genuine disputes of material fact in this proceeding can only be assessed after submission of the rebuttal case in this proceeding. That is why RLI recommended filing of written rebuttal cases on a set schedule and prior to any hearing, which will enable the Copyright Office to ascertain fully and fairly whether the entire matter can continue to be heard on the pleadings alone. RLI's witnesses and the SoundExchange witnesses do not agree as to the conclusions that should be drawn from the facts, or as to the relative importance and weight to be given certain facts when applying legal standards. However, those are matters to be determined by the Panel based on the record, even where the facts may not be in dispute.

SoundExchange's motion seeks to determine in advance certain legal rulings and, in effect, to resolve ab initio in its favor mixed questions of law and fact. As RLI observed, SoundExchange's motion requests an advance ruling as to the weight that will be given certain evidence and, inasmuch as weighing the facts is the province of the Panel and not the Copyright Office, that motion should be denied.

2. Contrary to SoundExchange's arguments, RLI's request for both a hearing on the pleadings and submission of written rebuttal cases is not internally inconsistent. As RLI noted, at this point, it appears there is no genuine issue of material fact. Indeed, as demonstrated by the paucity of documentary evidence and discovery in this case, there are very few facts to be reviewed at all. Notwithstanding, as a matter of due process, RLI believes that before reaching that ultimate conclusion, each party should be given the opportunity to respond to the arguments raised by the other. If at that time, it appears that there remain no genuine issues of material fact, this proceeding should proceed on the written papers with an opportunity for oral argument and briefing. If genuine issues exist, then the Panel and the parties should consider how to streamline their presentations to identify the issues as to which there is no dispute, and to resolve the disputed factual issues.

3. The issues in this case, disputed or undisputed, are exceedingly narrow. Under any circumstances, the Copyright Office should convene a meeting with the parties to discuss ways in which to conclude this proceeding efficiently and inexpensively.

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Conclusion

WHEREFORE, and for such other reasons as the Copyright Office may find just and proper, RLI requests that its petition be granted, and that the Office adopt the procedures proposed in its Petition.

Respectfully submitted,

Date: December 8, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply of Royalty Logic, Inc. in support of its Petition for Hearing on Written Pleadings has been served on December 8, 2003, by overnight delivery, to:

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Seth D. Greenstein