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

In the Matter of	
DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS	Docket No. 2002-1 CARP DTRA 3 Docket No. 2001-2 CARP DTNSRA

SOUNDEXCHANGE REPLY IN SUPPORT OF MOTION FOR DECLARATORY RULING

SoundExchange, Inc. hereby replies in support of its Motion for Declaratory Ruling of November 21, 2003 ("Motion"). In its Response to the SoundExchange Motion ("Response"), Royalty Logic, Inc. ("RLI") demonstrates clearly that the parties have a fundamental legal dispute surrounding the interpretation of the Small Webcaster Settlement Act of 2002 ("SWSA"). It is critical that the Copyright Office resolve this legal dispute before the arbitrators hear the factual disputes and apply the law to those disputes. Resolution of this threshold issue will streamline the issues before the Copyright Arbitration Royalty Panel ("CARP"), thereby saving costs for all involved in the proceeding.

RLI's Response turns the law on its head. RLI attempts to show that SoundExchange is trying to "knock down a strawman" by obtaining unnecessary legal rulings. But RLI's Response actually demonstrates that the parties have a fundamental legal dispute that is appropriately decided now. Moreover, in that dispute, as we show in Part I below, RLI propounds an interpretation of the SWSA that is incorrect in every respect: (1) it would render the statutory standard governing the CARP determination under Section 114, and

indeed this entire proceeding, superfluous; (2) it would make this CARP proceeding unnecessary because it demands the ability for any willing seller to designate an alternative agent *as a matter of law,* thereby rendering the factual question of who should be named a Designated Agent a ministerial act by the Copyright Office; and (3) it would lead to the untenable conclusion that each willing seller may designate its own agent, thus requiring the possible designation of thousands of agents – a conclusion that Congress could never have contemplated in the process of setting up statutory licenses to achieve greater efficiency in the licensing of copyrighted sound recordings.

I. RLI'S RESPONSE DEMONSTRATES THE FUNDAMENTAL LEGAL ISSUE TO BE RESOLVED BY THE OFFICE.

A. The Office Should Rule that Lester Chambers Does Not Have the Absolute Legal Right to the Designation of RLI.

RLI highlights the fundamental issue before the Office by stating that "the fundamental legal principle" governing the proceeding is that "by statute each copyright owner and performer has the right to . . . have [ ] royalties administered by the agent of his or her choice." Response at 15. RLI goes on to assert that "Congress created an *absolute right* for copyright owners and performers to designate, through negotiations or the CARP process, a competing agent" and that it is the "basic right[] of copyright owners and performers to be represented by the agent of their choice." Response at n. 9 & n. 17 (emphasis added).

But this interpretation of the Copyright Act is contrary to law and negates application of the willing buyer/willing seller standard and its accompanying feasibility test. Because RLI's reading is inconsistent with the only governing standard found in the Copyright Law – the willing buyer/willing seller standard – there can be no "absolute right" for a copyright owner or performer to demand the official designation of his or her own agent as a matter of

law. Indeed, if each copyright owner or performer had the "basic right" RLI believes exists in the statute, then this CARP would be unnecessary, and the Office's role would be to the purely ministerial one would have to designate officially each "agent" sought by any copyright owner or performer entitled to statutory royalties regardless of whether the resulting number of agents created an inefficient and unworkable system. The exercise of this alleged "right" could lead to the absurd result of mandating the potential designation of literally thousands of agents without any review of their *bona fides* by the CARP or the Office pursuant to the statutory standard, leaving the Office to "rubber stamp" the designations of copyright owners and performers. This system would eviscerate the very efficiencies that led to the formation of the Designated Agent system.

The disputed legal issue of whether the Copyright Act provides an "absolute right" of designation or requires a CARP to apply the willing buyer/willing seller standard to designation requests has been squarely joined. Contrary to RLI's repeated assertions, this fundamental legal issue requires a determination by the Office to provide the CARP with the legal framework applicable to this proceeding.

B. RLI's Interpretation of the SWSA Is Contrary to the Plain Language of the Statute.

RLI's proposed interpretation of the SWSA violates one of the most basic principles of statutory construction by ignoring the plain language of Section 114(g)(3), which is not mandatory but merely sets forth possible alternative scenarios. *See National Public Radio, Inc. v. F.C.C.* 254 F.3d 226, 231 (D.C. Cir 2001) ("Because statutory language represents the clearest indication of Congressional intent, . . . we must presume that Congress meant precisely what it said.") (internal citations omitted); *Qi-Zhuo v. Meissner*, 70 F.3d 136, 140 (D.C. Cir. 1995) ("Where ... the plain language of the statute is clear, the court generally will

not inquire further into its meaning."). As the Librarian has noted, nowhere does the SWSA mandate that this or any future CARP appoint multiple Designated Agents, let alone specify that RLI must be an agent. "The fact that more than one entity could serve as Designated Agents does not mean that there necessarily ought to be more than one Designated Agent." Final Rule in Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services, Docket No. 2001-1 CARP DSTRA2 ("PES II Librarian's Decision"), 68 Fed. Reg. 39837, 39839 (July 3, 2003).

RLI's arguments against this position are based on flawed interpretations of the SWSA and other provisions of the Copyright Act. Fundamentally, RLI reads possibilities contained in the SWSA, such as the *possibility* of avoiding the deduction of certain costs by selecting another agent, Response at 10, or the *possibility* that performers may designate alternative agents, Response at 11, as mandatory, when as discussed above the language of the statute does not support that interpretation. RLI basically ignores the fact that Section 114(g)(3) contains the word "may" rather than "shall" in the provisions regarding possible alternative agents.[1]

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[1] RLI argues that it must be able to offer complete statutory royalty collection services in order to compete with SoundExchange, and that the rights of its affiliates under SWSA will be "eviscerated" if they must receive statutory royalties through SoundExchange. Response at 12. Notwithstanding RLI's arguments, the Office has already issued a contrary reading of the SWSA. In rejecting RLI's claim that it must be designated to collect and distribute the royalties paid by the three preexisting subscription services, the Office rejected the "absolute right" theory espoused by RLI. In fact, the only statutory royalties RLI can potentially be designated to receive and distribute are those at issue in the instant proceeding – the royalties paid by eligible nonsubscription transmission services and new subscription services for the 2003-04 license period.

RLI also makes the related point that collecting from dual entities is administratively burdensome. Response at 12. But under RLI's proposal, this is exactly what performers would have to do. RLI proposes that the performers who do not elect an agent would follow

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Despite RLI's assertions otherwise, the direct implication of its legal theory is that the SWSA mandates the authorization of separate designated agents for each copyright owner and performer who demands one. Thus, under RLI's interpretation of the SWSA, nothing precludes the designation of thousands of agents *as a matter of law.* If RLI's interpretation is correct, its argument that there is only one possible competitor in this proceeding, Response at n. 16, is unavailing, because any other agent selected by a copyright owner or performer would have to be designated upon request as a matter of law. This interpretation finds no support whatsoever in the SWSA, and when taken to its logical consequence illustrates the incompatibility of RLI's legal theory with the governing willing buyer/willing seller standard and the Librarian's prior ruling that the distribution system adopted in a CARP proceeding must be feasible. Webcaster I Librarian's Decision at 45266-67.

C. RLI's Interpretation of the SWSA Writes the Statutory Standard Out of the Copyright Act.

RLI's flawed interpretation of the Copyright Act must be rejected by the Office because it would render the statutory standard in the Copyright Act – the only standard that can be applied by the CARP– superfluous. That result would in turn render this entire proceeding superfluous, because under RLI's theory the designation of RLI and any other agent selected by a copyright owner or performer would be automatic. The Office would simply have the ministerial role of implementing the designations requested by copyright

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the copyright owner for purposes of distributing royalties. Under these circumstances, performers who are entitled to royalties from sound recordings whose copyright holders are in different collectives would have no choice, but would be forced to collect royalties from each of those collectives.

owners and performers, and there would be no need for a CARP proceeding to consider the designation of agents.

RLI agrees that the willing buyer/willing seller test is the statutory standard to be applied when the CARP sets terms, Response at 9, yet offers an interpretation of the SWSA that effectively writes this standard out of the Copyright Act. The Office should re-affirm that the willing buyer/willing seller standard, together with its attendant feasibility analysis, is the only standard to be applied by the CARP. At the same time, the Office should reject the distorted version of the willing buyer/willing seller standard set forth by RLI.

The Copyright Act, as well as the Webcaster I Librarian's Report and the Webcaster I CARP Report, provide unequivocal statements that the legal standard applicable to setting terms for the statutory license is the "willing buyer/willing seller" standard that appears in Section 114(f)(2)(B) of the Copyright Act: "the standard for setting . . terms is what the willing seller and the willing buyer would have negotiated in the marketplace." Webcaster I Librarian's Decision at 45266; Webcaster I CARP Report at 128-129. *See* 117 U.S.C. § 114(f)(2)(B) ("In establishing . . . terms for transmissions by eligible nonsubscription services and new subscription services, the copyright arbitration royalty panel shall establish . . . terms that most clearly represent the . . terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.").

Yet according to RLI, there is no need for the CARP to apply the willing buyer/willing seller standard, and indeed it cannot do so, because in the SWSA amendments Congress granted copyright owners and performers the "absolute right" to be represented by the agent of their choice. Response at n. 9 & n. 17. Thus, according to RLI, the identification of agents to be appointed for the collection and distribution of royalties is pre-

determined and any CARP attempt to apply the statutory standard would be futile as the result is required by law. As explained above, this reading of the SWSA is plainly wrong based on direct examination of the statutory text. In addition, RLI's interpretation renders the statutory standard meaningless, thus violating the fundamental tenet of statutory construction that a statute as a whole must be interpreted to give meaning to each of its subparts. *See United States v. Menasche*, 348 U.S. 528, 538-539 (1955) ("It is our duty to give effect, if possible, to every clause and word of a statute.") (internal quotations omitted).

RLI's interpretation also has the independent effect of removing all meaning from the "willing buyer" portion of the standard – an ironic result given the fact that RLI's initial designation in the Webcaster I CARP, to which RLI ascribes so much weight (Response at 2-3), was at the behest of the "willing buyers" who sponsored RLI's principal, Mr. Gertz, as a witness. RLI claims that "the 'willing buyer' is irrelevant" in a proceeding pertaining to the appointment of a designated agent. Response at 9. In the process of explaining this novel theory, which is directly contrary to the statutory standard and the Webcaster I decision on the establishment of terms quoted above, RLI mischaracterizes the Librarian's Decision in Webcaster I, 67 Fed. Reg. 45267 (July 8, 2002). The Decision indicated that the willing buyers had less stake in the decision as to which entity should represent nonmembers in the face of strong views held by representatives of the performer unions – not, as RLI asserts, that the willing buyer is irrelevant in assessing all "services to be provided by a Designated Agent." Response at 9. In fact, the Librarian says in the Webcaster I Librarian's Decision that the willing buyers, or licensees, have an interest in "the payment of royalty fees to the Receiving Agent." *Id.*

As SoundExchange points out in its initial Motion, the interpretation of the SWSA that best reconciles the language on possible multiple agents with the willing buyer/willing seller standard was set forth by the Librarian in his PES II Decision. Copyright owners who seek an alternative to SoundExchange may appoint another common agent, including RLI, and have that common agent negotiate direct licenses with licensees on their behalf, and collect and distribute royalties under those direct licenses, with the costs to be deducted as agreed between the parties to the arrangement. Sections 112 and 114 authorize copyright owners to designate "common agents to negotiate, agree to, pay, or receive royalty payments" and "it is plausible" that, by designating a common agent for these purposes, copyright owners could "limit the costs of such agents to those specified in section 114(g)(4)." PES II Librarian's Decision at 39840 n. 4, *citing* 17 U.S.C. § 114(e)(1). Consistent with this interpretation, RLI could act as a common agent for Lester Chambers and others without depriving any part of the Copyright Act of meaning. This reading of the statute effectuates the statutory purpose – to provide an opportunity for copyright owners to choose an agent other than the statutory license designated agent provided in the regulations, and to ensure that by choosing this other agent for voluntary licensing, those copyright owners could avoid the costs.

By contrast, RLI's proposed interpretation gives each copyright owner and performer the right to force the appointment of an additional designated agent of his or her choice *as a matter of law.* In effect, each copyright owner and performer would have the right to revise on an at will basis the applicable regulations appointing Designated Agents, taking away the oversight responsibilities of the CARPs and the Office. RLI cites no evidence, and there is none, even remotely suggesting that Congress intended to create such a far-reaching

individual legal entitlement at the expense of the statutory authority accorded to the CARPs and the Office.

RLI even concedes that there are factual issues related to efficiency that should be considered by the CARP, and agrees with SoundExchange that the facts related to whether efficiencies can be achieved must be "fully aired and fairly reviewed." Response at 14.[2] The assessment of efficiency and feasibility and other factual issues are exactly the types of issues that should be heard and ruled on by the CARP. The Office should confirm that issues of feasibility and efficiency must be considered by the CARP in conjunction with the willing buyer/willing seller analysis, while deferring any judgment on those issues until the parties and witnesses appear before the CARP, present their evidence, and are subject to cross-examination.

The Office, however, should still reaffirm the statements from the Webcaster I Librarian's Report that willing sellers and willing buyers are viewed in the collective, rather than on an individual basis, for purposes of determining the terms that would be negotiated in the marketplace. Indeed, the Office should reiterate the approach taken by the CARP in the Webcaster I case, which identified the "licensees" as the "willing buyers" and the "licensors" as the "willing sellers" in marketplace negotiations over terms. Webcaster I CARP Report at

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[2] RLI contends that efficiency should be measured from the perspective of the willing sellers and not the collection and distribution agents. Response at 15. At least with respect to SoundExchange as a non-profit collective, this distinction makes no difference. More efficient operation of SoundExchange will result in more royalties available for distribution to the willing sellers – the copyright owners and performers. RLI is correct that this distinction is an important one for a for-profit collection and distribution agent such as RLI, because increased efficiency in the operations of RLI will not necessarily benefit RLI's members; instead, it might simply benefit RLI's two shareholders.

134. The CARP in that situation was discussing the "willing sellers" as a *group*. *Id.* The CARP certainly did not suggest that each individual licensor would be treated as a separate "willing seller" for purposes of analyzing the statutory license marketplace and the possible appointment of additional Designated Agents, and the Librarian has expressly acknowledged the inefficiency of such an approach.

RLI's contrary suggestion, that each willing seller (under this theory the willing buyers would, contrary to the statutory language, be ignored) should be treated as an individual entity for purposes of setting terms, would be completely contrary to the purpose of the entire statutory licensing scheme. The fundamental purpose of statutory licensing is to set license rates and terms on an industry-wide basis in order to streamline the process of licensing certain types of copyrighted works – in this case copyrighted sound recordings. RLI's interpretation of the "willing seller" provision is inimical to this purpose. The Librarian recognized the practical requirements of the statutory licensing system when he explained the need for collection agents: "Read literally, section 114 appears to require that Services pay the statutory royalties to each Copyright Owner. As a practical matter, it would be impractical for a Service [or licensee] to identify, locate and pay each individual Copyright Owner whose works it is performed." Webcaster I Librarian's Decision at 45266. By the same token, it would be impractical for each licensee to identify and pay each agent designated by an individual copyright owner or performer under the scenario proposed by RLI.

In sum, the Office should ignore RLI's efforts to obscure the fundamental legal difference between the positions of the parties and should confirm that the SWSA requires neither the general appointment of a second official Designated Agent, nor the specific

appointment of RLI as a Designated Agent based upon the request of Lester Chambers or any other copyright owner or performer. SoundExchange also requests that the Office declare that the "willing buyer/willing seller" standard, which includes an administrative feasibility analysis of the proposals of the parties, is the sole standard governing the decisionmaking process of the CARP in this proceeding.

II. THE OTHER FACTUAL DISPUTES RAISED BY RLI SHOULD BE DECIDED BY THE CARP AFTER HEARING THE PARTIES' EVIDENCE.

RLI also tries to show that SoundExchange has presented an erroneous factual scenario that RLI purports to "debunk." Plainly, all of the factual issues between the parties must be developed before and determined by the CARP. But it merits pointing out in this Reply that RLI's purported "clarification" of the factual issues is no more than a thinly veiled assertion of facts and conclusions that are themselves not only without merit, but also are simply designed to assist RLI in its ongoing effort to receive designation from the Office or a CARP in order to be in a position to build the for-profit business that it has been attempting to initiate for a number of years. In particular, RLI attempts to generate a picture of its efforts as having been approved by the Librarian in the Webcaster I proceeding, serving to enhance competition, and resulting in or defining a "coalesced" marketplace for agents. As we show in Part II, RLI's picture of itself is without merit.[3]

[3] SoundExchange will not take the time to refute each of these incorrect factual allegations in this motion for a declaratory ruling on legal issues, but will limit its response to a few examples of factual issues raised by RLI that illustrate the need for a CARP to consider the factual basis for RLI's request to be a Designated Agent, after the Office has clarified the proper legal standard to be applied to that analysis.

A. RLI's Designation in the Webcaster I Proceeding.

For instance, RLI suggests that its designation in the Webcaster I proceeding is part of the "status quo," Response at 3, was agreed to willingly by SoundExchange (through several of its constituents), Response at 4, and represents a considered decision by the Librarian of Congress that willing sellers had agreed to use RLI. Response at 10. SoundExchange should have the opportunity to refute (or "debunk") these one-sided assertions before the CARP.[4] The facts about these events, however, come nowhere near supporting the assertion that designation of RLI represents part of the "status quo."

At the proper time, the CARP should be permitted to consider evidence from SoundExchange that it agreed to the designation of RLI in the Webcaster I proceeding only because the licensees in that proceeding, who sponsored Mr. Gertz as a rebuttal witness backing a low royalty rate and championed RLI as a Designated Agent, insisted upon RLI's designation as a condition of reaching a global settlement on the terms applicable to the proceeding. SoundExchange felt considerable pressure to reach agreement on terms because the CARP in that proceeding was strongly urging the parties to do so.

Moreover, the situation in the Webcaster I proceeding was completely different from the situation in this proceeding because, given RLI's total lack of members at the time of the

[4] RLI also makes the claim that the circumstances surrounding the agreement of the parties to a two-tier system with RLI as a second Designated Agent in Webcaster I raise no "genuine dispute" of fact justifying a CARP hearing. *See* Reply of Royalty Logic, Inc. in Support of Petition for Decision on Written Pleadings, filed December 8, 2003, at 1. On the contrary, as demonstrated above, the facts and context surrounding the designation of RLI in the Webcaster I CARP proceeding are the subject of significant dispute.

Webcaster I case, there was no realistic possibility that the two-agent system was going to go into effect in the statutory license period. By contrast, if the two-agent designation occurs in this proceeding, the system will likely have to be implemented at tremendous cost and inconvenience to SoundExchange and by extension to the overwhelming majority of copyright owners and performers. As RLI itself admits, at the time of the Webcaster I designation near the end of the 1998-2002 period it had no members at all, but at most what RLI characterizes as "an expectation of members." Response at 10. As anticipated, RLI obtained not one member throughout the 1998-2002 license period covered by that proceeding (and even now almost halfway through the next license period RLI appears to have very few members). RLI started out not with copyright owner and performer members, but only with the backing of the licensees – those same "willing buyers" whose interest in the designation RLI rejects today (Response at 9).

Indeed, the Librarian expressed "skepticism" about the dual-agent, two-tier system, Webcaster I Librarian's Decision at 45267 n. 46, but reluctantly accepted the terms that had been negotiated by all parties to the proceeding and accepted (with a few minor exceptions) by the CARP. The Webcaster I CARP and the Librarian, when faced with a choice between SoundExchange and RLI as the agent for non-members, rejected RLI and selected SoundExchange. SoundExchange will also demonstrate before the CARP that since the Webcaster I proceeding it has learned more about the costs of a dual-agent, two-tier system, and would not agree to such as system voluntarily (or even under considerable pressure like that present in Webcaster I) again.

B. RLI as a Competitor.

RLI appears to misunderstand (whether deliberately or not) SoundExchange's point that RLI fails to provide the full range of services provided by SoundExchange, which would be necessary in order to have true competition. SoundExchange's point was not related to administering both voluntary and statutory licenses, Response at n. 12, although that is one aspect of the activities of a collective. Instead, the point was that RLI appears to have no intention of incurring all of the costs associated with implementing and utilizing a statutory license once it is established by Congress, including negotiating and litigating to obtain CARP rates. It has taken copyright owners and performers a tremendous amount of work, energy and resources to establish Section 114 and 112 royalty rates, either through negotiation with multiple groups of licensees or through litigation. (As a case in point, the rates applicable to the 1998-2002 license period are still on appeal to the D.C. Circuit – an appeal in which RLI has played no role.)

RLI has thus far demonstrated no intent to pitch in and assume a role in the costly and time-consuming effort to establish statutory license rates that are most favorable to copyright owners and performers. In fact, in addition to testifying for the licensees in the Webcaster I CARP proceeding, RLI explicitly indicated that its participation in this proceeding did not extend to setting rates, but only involved the terms associated with appointment of the Designated Agent(s). RLI appears to plan instead simply to collect and distribute royalties, while avoiding the more costly rate-setting activities. Under these circumstances, there can be no true competition. To the extent Congress contemplated competition, it was more likely competition across the board than allowing RLI or any other agent to compete in limited areas where that agent is able to benefit from the complete investment made by other agents.

C. RLI's Characterization of the Marketplace.

RLI repeatedly asserts that a marketplace exists – one that is characterized by two groups of willing sellers that have coalesced around SoundExchange and RLI. Response at n. 14, 16. But it is the responsibility of the CARP to determine the characteristics of the marketplace within which it assesses the agreements reached by willing buyers and willing sellers. RLI, after years of effort, was able to persuade a single copyright owner to object to the designation of SoundExchange as a sole agent, and has apparently signed up a few more of the tens of thousands of willing sellers in the marketplace (although it has provided very little detail about these arrangements and the alleged use of the associated sound recordings by eligible nonsubscription and new subscription services).

During this proceeding, SoundExchange should have the opportunity to argue as a factual matter that this level of activity hardly entitles RLI to declare that now that it has achieved this minimal level of response, the marketplace has been established, with the implication that it is closed to further entrants. Instead, it appears that the logical consequence of accepting RLI's theory is that the marketplace could have many other entrants, as individual copyright owners and performers decide to designate their own agents *as a matter of law.* If, as RLI asserts, this "absolute right" exists, it will not be possible to say that the marketplace is closed with the advent of two entrants. Any and all future entrants will necessarily have to be welcomed into the marketplace as a matter of law, regardless of whether the inclusion of so many new entrants makes the system of collecting and distributing royalties infeasible.

D. RLI Access to Licensee Data.

RLI's repeated argument that it must be designated in order to obtain the documents it needs to represent its affiliates is both misleading, because providing access is not within the control of SoundExchange, and easily remedied during the arbitration, when the terms for access to payment information from eligible nonsubscription services and new subscription services will be set.[5] While current regulations preclude SoundExchange or any other authorized collective from disclosing statements of account or reports of use to common agents, those regulations can be revisited in this proceeding and the related notice and recordkeeping proceeding. Despite RLI's persistent efforts, most recently in the Reply of Royalty Logic, Inc. in Support of Petition for Decision on Written Pleadings at 2, there is no basis whatsoever for this data access issue to affect the designation of agents.

In sum, the Office should reject RLI's invitation to treat these and other fact-based determinations as "clear standards and principles" for which the correct interpretation has already been established. Response at 10. Instead, these issues, unlike the determination of the legal standard to be applied to them, are fact-based inquiries that should properly be considered by the CARP within the framework of the declaratory ruling requested by SoundExchange.

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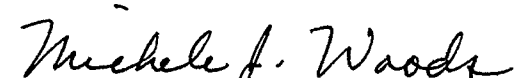
[5] Of course any such regulations would not force Music Choice to provide RLI with documents related to the pre-existing services statutory license, which is governed by a different set of regulations.

Conclusion

In order to clarify the legal framework applicable to this CARP proceeding, SoundExchange respectfully requests that the Office declare (1) that the SWSA does not provide the "absolute right" to the designation of any agent chosen by a copyright owner or performer; (2) that the interpretation of the SWSA must be consistent with continuing to apply the marketplace willing buyer/willing seller standard to the adoption of terms in CARP proceedings; and (3) that the willing buyer/willing seller standard includes an administrative feasibility component.

Respectfully submitted,

By: 

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December 10, 2003

CERTIFICATE OF SERVICE
Docket No. 2002-1 CARP DTRA3
Docket No. 2001-2 CARP DTNSRA

I hereby certify that a copy of the foregoing SoundExchange Reply in Support of Motion for Declaratory Ruling was sent on December 10, 2003, by overnight delivery, to the following party:

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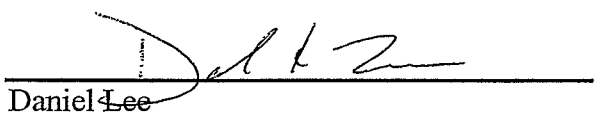

Daniel ~~Lee~~