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June 22, 2001

Via Hand Delivery

David Carson, Esq.
General Counsel
United States Copyright Office
James Madison Memorial Building
Room 403
101 Independence Avenue, S.E.
Washington, DC 20540

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**GENERAL COUNSEL
OF COPYRIGHT**

Re: Docket No. 96-5 CARP DSTR A

Dear Mr. Carson:

On May 21, 2001, we wrote to advise you of a requested revision to the proposed terms to govern the RIAA Collective that our client, the Recording Industry Association of America ("RIAA"), submitted along with its Petition to Establish Terms Governing The RIAA Collective And To Suspend CARP Proceedings (the "Petition") as Attachment A. The requested revision was to reflect a change in proposed section 260.3(f) so that it would read: "Membership in the collective shall be open on a nondiscriminatory basis to all copyright owners of the rights subject to statutory licensing under 17 U.S.C. §§ 112 and 114." The purpose of this amendment was to make clear that membership should be open only to those who own rights that are subject to statutory licensing and thus generate the royalties to be distributed by the collective.

As the Copyright Office is aware, the instant proceeding did not involve Section 112 statutory license. Accordingly, we believe it would be appropriate to remove the reference to Section 112 from proposed section 260.3(f) so that it now reads: "Membership in the collective shall be open on a nondiscriminatory basis to all copyright owners of the rights subject to statutory licensing under 17 U.S.C. 114."

We have spoken with counsel for the services involved in this proceeding, Muzak, L.P. and DMX, Inc. They have advised that they have no objection to the proposed section 260.3(f) as provided in the previous paragraph. We have also spoken with counsel for Music Choice, formerly Digital Cable Radio Associates, who advised that his client has withdrawn from this proceeding and, therefore, has no position on this amendment.

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To reflect this latest amendment, we would like to substitute the attached page, with the above-noted revision, for the original Attachment A-5. Should you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Robert Alan Garrett

Encl.

cc: Tanya Sandros, Esq. (via hand delivery)
William Roberts, Esq. (via hand delivery)
Gina Giuffreda, Esq. (via hand delivery)
Steven Marks, Esq.
Peter Laird, Esq.
Ronald Gertz, Esq.
Fernando Laguarda, Esq.

- (1) *any written complaint that the collective receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and*
- (2) *the final disposition by the collective of any complaint specified by subparagraph (2) above, within 60 days of such disposition.*

Nothing in these rules shall deprive any persons from pursuing any remedies they may have under law against the collective.

(f) Commencing June 1, 1998, and until such time as a new designation is made, the *collective established by the Recording Industry Association of America, Inc., known as "SoundExchange,"* shall [be the agent receiving] *receive the royalty payments and statements of account under this part 260. Membership in the collective shall be open on a nondiscriminatory basis to all copyright owners of the rights subject to statutory licensing under 17 U.S.C. 114. In determining whether to make a new designation, the Register of Copyrights may consider any written complaints concerning the collective; provided, however, that the collective shall receive timely notice of, and an opportunity to respond to, any such complaints.*

§ 260.4 **Confidential information and statements of account.**

...

§ 260.5 **Verification of statements of account.**

...

§ 260.6 **Verification of royalty payments.**

- (a) *General.* This section prescribes *procedures by which interested parties, as defined in paragraph (g) below, may verify the royalty payments made by the designated collective pursuant to Section 260.3(c) above* [general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).].
- (b) *Frequency of verification.* Interested parties may conduct a single audit of the *collective* [entity] making the royalty payment during any given calendar year.
- (c) *Notice of intent to audit.* Interested parties must [submit] *file with the Copyright Office* a notice of intent to audit the *collective* [entity] making the royalty payments. [with the Copyright Office which shall publish in the Federal Register