

[a]ny party who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge.

68 FR at 4745. Objections to the proposed rates and terms were due by March 3, 2003. On March 3, the Office received an objection from Royalty Logic, Inc. ("RLI").

Resolution of the Objection to the NPRM

1. RLI's Objection

RLI's March 3, 2003, objection and Notice of Intent to Participate represents RLI's second attempt to enter this proceeding. On January 17, 2003, on the same day that the Copyright Office received notification of the settlement of rates and terms for preexisting services and 14 months after the Office called for Notices of Intent to Participate in this proceeding, RLI filed a motion to accept a late-filed Notice of Intent to Participate. In an Order issued March 14, 2003, the Office denied RLI's motion. The Office applied its two-part test for considering late-filed Notices of Intent to Participate—the disruption to the proceeding by accepting the Notice and whether good cause is shown for it being late—and determined that RLI failed both prongs of the test. Order in Docket No. 2001–1 CARP DSTR2 (March 14, 2003). We now consider whether there are sufficient grounds to accept RLI's March 3 objection and its new Notice of Intent to Participate.

As discussed above, the NPRM required parties filing an objection to state their interest in the proceeding and the reasons for their challenge. In its March 3 filing, RLI asserts that it is a for-profit corporation that administers music licensing royalties on behalf of hundreds of radio and television stations and that one of its key business objectives "is to provide these same types of agency services to recording labels and performing artists with respect to the administration and distribution of royalty payments to be made to them pursuant to the statutory licenses under sections 112(e) and 114 of the Copyright Act." RLI Objection at 2. In order to enter this business, RLI states that it is necessary for it to be recognized in the rules proposed in the NPRM as a Designated Agent to receive royalties from preexisting services, which it currently is not. RLI notes that it is a recognized Designated Agent for another statutory license in section 114 of the Copyright Act for nonsubscription

transmission services, see 37 CFR 260.3(a), but its "efforts to enroll clients have been substantially impeded by its inability to assure clients of RLI's ability to administer all license payments to which these clients would be entitled." *Id.* at 3. Consequently, RLI objects to the NPRM so that further proceedings may be held to include it as a Designated Agent in the Copyright Office rules for distribution of royalties collected from preexisting subscription services.

Having offered the reason for its objection, RLI asserts that it has an interest in this proceeding because it is an entity that distributes royalties, is already a Designated Agent for royalties collected from nonsubscription transmission services, and "has a stake" in this proceeding. *Id.* at 5. RLI also offers that having multiple Designated Agents identified in the regulations is beneficial and desirable for copyright owners and performers and will offer them an alternative to SoundExchange, the only Designated Agent in the NPRM. *Id.* at 7–9.

On March 26, 2003, RLI filed a supplement to its March 3, 2003, objection to the NPRM. RLI stated that—

[t]he reason for this Supplement is to inform the Copyright Office that RLI has signed affiliate agreements with copyright owners and performers who wish RLI to serve as their Designated Agent for all Section 112 and 114 statutory licenses, and therefore object to the proposed settlement insofar as it would fail to designate RLI for the collection and distribution of statutory license royalties for the pre-existing subscription services.

RLI Supplement at 1. RLI went on to state that it had "signed affiliation agreements, effective January 1, 2003, with numerous copyright owners and performers," although it declined to identify any of these owners and performers by name. *Id.* at 2. RLI concluded that if the NPRM were adopted, the copyright owners and performers that it now represents would be denied from collecting their preexisting subscription service royalties through RLI and would be forced to deal solely with SoundExchange, the only Designated Agent in the NPRM.

The Recording Industry Association of America, Inc., and, jointly, the American Federation of Musicians of the United States and Canada and the American Federation of Television and Radio Artists opposed RLI's March 26 supplement.

2. RLI's Interest in This Proceeding

The consequences of an objection to a proposal of rates published under

§ 251.63(b) of the CARP rules are considerable; the Librarian will not adopt the proposed rates and terms and will schedule a CARP proceeding to resolve the matter. However, because a challenge is lodged does not necessarily mean that a CARP must be convened. The Librarian must evaluate the sufficiency of the objection to determine whether the objecting party (1) has a significant interest in the establishment of the rates and terms and (2) has asserted objections to the proposed rates and terms that can be resolved in a CARP proceeding.

The first requirement, that an objecting party have a significant interest in the rates and terms to be established, is derived from the language of the Copyright Act. Section 803(a)(1) of the Act provides that rate proceedings for certain statutory licenses in the Act—particularly sections 112 and 114 which are at issue in this proceeding—begin with the submission of a petition to the Librarian of Congress. In other words, one or more parties may request the Librarian to invoke the CARP process to establish rates and terms by filing a petition or petitions. For each petition received, the statute requires that the "Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested." 17 U.S.C. 803(a)(1). Although there is no legislative history as to what constitutes a "significant interest," the requirement of such makes a great deal of sense. Rate proceedings before a CARP are lengthy, complex, and expensive. It would make no sense to allow an entity with a tentative or collateral interest in the rates to invoke a CARP proceeding; in order to initiate the proceeding, a party should at a minimum have a significant interest in the rates and terms to be established.

While section 803(a)(1) addresses petitions to initiate rate proceedings, there is no similar provision in the Copyright Act related to challenges of proposed rates and terms that are the result of settlement reached by participants in a CARP proceeding. The Copyright Office developed § 251.63(b) of the CARP rules to address circumstances where, due to a settlement, a CARP is no longer necessary. Although § 251.63(b) is a rule and not a statutory provision, it has the specific endorsement of the Congress.

If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless