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

FEB 27 2002
 GENERAL COUNSEL
 OF COPYRIGHT

In the Matter of

Mechanical and Digital Phonorecord
 Delivery Compulsory Licenses

Docket No. RM 2000-7A

REPLY COMMENTS OF TERRY H. SMITH REGARDING THE INTERPRETATION AND APPLICATION OF THE MECHANICAL AND DIGITAL PHONORECORD COMPULSORY LICENSE, 17 U.S.C. 115, TO CERTAIN DIGITAL MUSIC SERVICES

I appreciate the opportunity to respond to the public comments filed pursuant to the March 9, 2001, Notice of Inquiry (66 FR 64783). While I continue to serve in a consulting capacity to the company I founded, Copyright Management, Inc. and its successor, Copyright Management Services, Inc., the following comments are being submitted by me individually and are not intended to represent the views of said companies.

First, I would like to express my gratitude to the Copyright Office for allowing comments from the public regarding this matter and for giving consideration to such comments in the course of making a determination. I fear that in the absence of an opportunity to review comments from all interested public parties, a final determination in this matter may have been unduly influenced by the posturing of a few powerful organizations whose financial resources provide them an undeniably loud voice. While the entire copyright community has, in the past, relied upon and benefited from the efforts of these powerful voices, the digital marketplace has, with respect to determining an appropriate licensing authority, leveled the playing field.

Even though I disagree with many of the terms and assumptions contained in the NMPA RIAA Agreement, I applaud the NMPA's firm stand in its position regarding Streaming technology and ASCAP, BMI and SESAC's support of that position. If we are to achieve an effective licensing scheme for digitally distributed properties, we must first recognize that the technology driving the Internet will evolve at a much fast pace than the copyright community can debate the nuances of an appropriate license structure. We should all be concerned that the issue as to whether On Demand Streams should be treated simply as a performance use or a mechanical use or both. With all due respect to the Copyright Office and its efforts in the preparation of the Section 104 Report, those that still subscribe to the premise that "streamed" uses should be covered under a performing rights agreement, simply are not aware of the software solutions created daily by thousands of resourceful "free music" proponents. Works distributed by means of streaming technology are being "ripped" every day and converted to permanent copies on the hard drives of anyone in possession of free software available on hundreds of Websites. In fact, a large percentage of consumers searching for free music find it more time efficient to download On Demand Streams rather than those available through the Napster clone sites. There are several of these free "ripping" programs available, but the most popular versions we have tested are "Stream Ripper", "Beam Back" and "Total Recorder". As far as file quality, these programs record streams at 44.1kHz, 16 Bit, Stereo, creating CD quality copies on the hard drive of the

