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Comments on the Effect of the RIAA/NMPA/HFA Agreement on the Issues
Identified in the March 9, 2001, Notice of Inquiry (66 FR 64783)

GENERAL COUNSEL
OF COPYRIGHT

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The following comments are offered by Terry H. Smith, and are not necessarily represent the views of Copyright.net, Inc. or Copyright Management Services, Inc.

In preface to my comments in this matter, I would like to state that the company I founded in 1982, Copyright Management, Inc. and its successor under new ownership, Copyright Management Services, Inc., [CMI] have always been proponents of new technology that invariably opens new markets for the exploitation of copyrighted works. Even though CMI has, from its inception, been privately owned and modestly funded, the company persistently supported its commitment to the development of computer technology through which the complex administrative data inherent in the business of copyright might be more accurately and efficiently managed. The growth of CMI's music publisher client base over the years has been primarily attributable to the copyright administration, licensing and royalty accounting systems developed by the company. It is from that perspective that I view the current challenges created by yet another new seemingly unmanageable market, the Internet.

Creative minds engaged in the development of new technology will continue to afford our industry new opportunities and markets for our products, and those of us that have chosen to search for workable licensing and royalty models will analyze and debate the issues until a workable solution is reached. We have been afforded many such opportunities over the past decades and, I would think, should have learned from these experiences. But the Agreement that is the subject of my comments is strong evidence that we have not.

The Internet and the capability of its component technologies to revolutionize delivery of entertainment media to a previously unheard of consumer population has been common knowledge to the executive committees of every record company, publishing company, agency and performing rights organization for the last several years. These are the authorities our industry always calls upon to provide us with the necessary legal, administrative and technological tools necessary to participate in and benefit from such new markets. But this time, we waited too long. The market moved forward without us and in the process seriously impaired the economic viability of our properties in it.

As the Internet has revolutionized delivery capabilities, we must pursue equally revolutionary, interactive solutions addressing the desires of the consumer without compromising our properties or the rights of the property owners to a fair consideration for their use. But as a result of our failure to respond in that manner, we find ourselves grasping for quick solutions in an effort to mitigate our damages. Responding to the issues at hand in such a manner is unacceptable and can only serve to raise the level of distrust among the various interests within our industry. In that environment, more

