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October 10, 2003

Via Facsimile [REDACTED]

Mr. [REDACTED]

Re: MT-32 Emulator

Dear [REDACTED]:

I am United States copyright counsel for Roland Corporation. [REDACTED] forwarded to me your e-mail of September 22, 2003 and has asked me to respond directly to you.

Roland Corporation owns a valid and existing copyright in the sound recordings contained in the MT-32. Copyright protection attaches automatically upon the creation of "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. section 102(a). As you point out in your e-mail, the starting point for the sounds produced by the MT-32 are digital samples. These samples constitute "sound recordings" within the meaning of the United States Copyright Act, 17 U.S.C. section 101: "works that result from the fixation of a series of musical, spoken or other sounds . . . regardless of the nature of the material objects, such as disks, tapes or other phonorecords, in which they are embodied." Sound recordings are expressly recognized as a category of copyright authorship. 17 U.S.C. section 102(a)(7).

By way of background, when the United States Congress first recognized sound recordings as copyrightable works effective in 1972 (Pub. L. 92-104, 85 Stat. 291 (1971)), it expressly recognized that the separate creative contributions of the producer (apart from any performer) are themselves capable of supporting the originality requirement of the Copyright Act. Indeed, in rejecting a constitutional challenge to the Sound Recording Act, the court in *Schaab v. Kleindienst*, 345 F. Supp. 589, 590 (D.D.C. 1972) found that the express purpose of the Sound Recording Act was to protect a producer's creative work against "unauthorized duplication and piracy":

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"Sound recording firms provide the equipment and organize the diverse talents of arrangers, performers and technicians. These activities satisfy the requirements of authorship found in the copyright clause."

The second requirement of copyright protection, fixation in a tangible medium of expression, is satisfied when the work is embodied in a copy or phonorecord. 17 U.S.C. section 101. Roland's sound recordings are contained in a digital storage (ROM) chip, which meets the definition of a phonorecord under 17 U.S.C. section 101.

Roland is thus justifiably protective of the considerably artistry, skill and judgment on the part of Roland producers involved in the development of its sound recordings. Roland has always protected its large investment in its research and the development of its technology. In most cases, the consumers of Roland's extraordinarily innovative products are appreciative of Roland's investment and skill, and do not seek to infringe on Roland's intellectual property rights. When, from time to time, individuals have violated Roland's intellectual property rights, it has only taken an e-mail, or letter or phone call to remedy the problem. As a result, Roland is not a litigious company, and has had to actually commence infringement litigation on only a few occasions.

Roland has proceeded to litigation on two occasions against individuals and entities that have infringed on its sound recordings. In *Roland Corporation v. Atmel Corporation*, United States District Court case no. 96-6455-DT (Mcx), Roland successfully sued a French company, DREAM, and its American parent, Atmel, for DREAM's infringement of the sound recordings contained in Roland's Sound Canvas product. DREAM had copied the sound recordings contained in the Sound Canvas and were re-distributing these sound recordings on sound cards and in sound sets used in karaoke machines. The District Court rejected each of the arguments raised by DREAM that Roland did not own a valid copyright in its sound recordings, and entered an injunction against DREAM and Atmel, prohibiting any further copying or distribution of Roland's sound recordings. DREAM and Atmel appealed the injunction to the Ninth Circuit Court of Appeals, which affirmed the validity of Roland's copyright in its sound recordings and affirmed the entry of the injunction.

In 2003, Roland filed suit in the United States District Court to obtain an injunction against another European entity that was engaged in the illegal, grey market importation of Roland products containing Roland's sound recordings.

It is Roland's sincere hope that it will not be necessary to return to court to enjoin the distribution by you of the sound recordings contained in the MT-32. In your conversation with

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[REDACTED] the general counsel of Roland Corporation, you raised several issues. Let me now respond to these. First, you are incorrect as a matter of United States copyright law that registration of the sound recordings contained in the MT-32 is required to own a valid copyright. In fact, copyright registration is permissive, not mandatory; no registration is necessary. 17 U.S.C. section 408(a). Copyright protection attached automatically upon fixation of the sound recordings. 17 U.S.C. section 102(a). To be sure, registration with the copyright office is required in order to file a lawsuit for copyright infringement. 17 U.S.C. 411. All this means is that in the event Roland is required to file suit in order to protect its sound recordings from illegal copying or distribution, Roland will first file for registration with the United States Copyright Office.

You are thus incorrect in believing that in the absence of copyright registration, the sound recordings contained in the MT-32 are "in the public domain." In fact, works subject to copyright enter the public domain only upon expiration of the term of the copyright protection. 17 U.S.C. section 302.

Nor does your intention to distribute Roland's sound recordings constitute "fair use." The Copyright Act does indeed permit the use of copyrighted works for purposes such as "criticism, comment, news reporting, teaching, scholarship or research," 17 U.S.C. section 107, and the factors considered by the courts in deciding fair use cases are as set forth in your e-mail. However, your claimed "non-commercial use" of the sound recordings is but one factor; it is not determinative. Moreover, under the cases, your use is "commercial" even though you wish to give the sound recordings away for free. Direct economic benefit is not required to demonstrate a commercial use. Rather, repeated and exploitative copying of copyrighted works, even if the copies are not offered for sale, may constitute a commercial use. *Worldwide Church*, 227 F.3d at 1118. Nor do the other fair use factors favor your position: The purpose and character of your use is to simply make Roland's copyrighted sound recordings available to others for free. Your use is not at all "transformative" but is a mere reproduction. *Napster*, 114 F. Supp. 2d at 912. Regarding the second factor, the nature of the use, the fact that Roland's work consists of sound recordings, and is thus creative in nature, "cuts against a finding of fair use." *Napster*, 114 F.Supp.2d at 913. With respect to the third factor, the portion used, "while wholesale copying does not preclude fair use per se, copying an entire work militates against a finding of fair use." *Worldwide Church*, 227 F.3d at 1118. The fourth factor, effect of use on the market, "will vary, not only with the amount of harm, but also with the relative strength of the showing on the other factors." *Campbell*, 501 U.S. at 591 n. 21. In this case, Roland's showing on the first three factors is extremely strong, and it remains that Roland has the ability to utilize the subject sound recordings in a variety of projects in the future.

It follows from all the foregoing that Roland must respectfully decline your request for a

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It follows from all the foregoing that Roland must respectfully decline your request for a license to copy or distribute the sound recordings contained in the MT-32, in whole or in part. In the spirit of avoiding any conflict with you, I have tried to provide you with a detailed explanation of Roland's position with respect to your request to distribute the sound recordings contained in the MT-32.

During my preparation of this letter, I have located the following pages at zetafleet.com which appear to concern your emulator, and which are of concern to Roland:

Initially we found that you have participated in an online discussion, using the name "canadacow", about your project: <http://vogons.zetafleet.com/forumdisplay.php?s=&forumid=29>  
We note that you have provided details of your progress on the project, including a reports of your discussion of the copyright issues with Roland. These discussions led to the following pages:

1. An overview of a project to make copies of the sound recordings in the MT-32:  
<http://zetafleet.com/dev/rmt/index.php>
2. A detailed report of exactly how someone copied Roland's sound recordings directly from ROM chips from an MT-32. The discussion includes the description of a device built to extract the original digital sample data of Roland's sound recordings:  
<http://zetafleet.com/dev/rmt/docs.php>
3. After the sound recordings were extracted from the ROM chips, Roland's file format was "reverse engineered" to extract exact copies of Roland's sound recordings into a standard PCM file format. The following page includes instructions on how to do this:  
<http://zetafleet.com/dev/rmt/files.php>

However, it is apparently unnecessary to do this, because it appears that the raw data copied from Roland's ROM chip is available on that same page. The page also provides software tools to convert that raw data into standard PCM sound files.

I note that the zetafleet.com pages have a copyright notice in the name of Colin Snover and Vlad Romascanu. I will be separately contacting these individuals.

Finally, I note that you have released your product, without copies of the Roland sound recordings, on your web page: <http://www.artworxinn.com/alex/> However, it seems apparent from your participation in the zetafleet.com discussions, that it is your intention that users of your

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emulator obtain the sound recordings necessary for your emulator by using the data files and conversion tools on the zetafleet.com website.

Based upon the foregoing, Roland hereby demands that you immediately cease and desist from any distribution of Roland's sound recordings on your website or on the zetafleet.com website. The unauthorized copying (17 U.S.C. section 106(1)) and/or unauthorized distribution (17 U.S.C. section 106(3)) constitutes copyright infringement. In addition, the act of making tools available to others to use in extracting Roland's sound recordings constitutes contributory copyright infringement. Should these pages not be removed within 5 days, Roland will be left with no choice but to commence litigation against all responsible parties. If Roland is required to file suit, it will be entitled to injunctive relief and damages. Roland sincerely hopes this will be unnecessary, and that the foregoing pages will be immediately and permanently removed.

This letter does not contain a full or complete statement of all facts concerning this matter. Nothing contained in this e-mail shall constitute a waiver or relinquishment of any of Roland's rights, remedies and claims for relief, at law and in equity, all of which are hereby expressly reserved.

Thank you for your anticipated cooperation. Should you have any questions, please do not hesitate to contact me.

Sincerely,  
[REDACTED SIGNATURE]

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