

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD
(2007-2011 SRF)

**MOTION TO DISMISS EUGENE CURRY FROM THE 2007-2011 DART SOUND
RECORDINGS FUND COPYRIGHT OWNERS SUBFUND DISTRIBUTION
PROCEEDING**

The Alliance of Artists and Recording Companies, Inc. (“AARC”), on its behalf and that of its Participants,¹ hereby moves to dismiss Eugene Curry (“Curry”)² from the 2007-2011³ Digital Audio Recording Technologies (“DART”) Sound Recordings Fund Copyright Owners Subfund (“SRF/CO Subfund”) royalties distribution proceeding for failure to file a written direct statement, as required by 37 C.F.R. § 351.4, and, so, for failure to provide any supporting evidence of the copyright ownership of any sound recordings with 2008 and 2010 sales. See 37 C.F.R. § 351.4 (2019).⁴

¹ AARC represents tens of thousands of featured recording artists and sound recording copyright owners (“AARC Participants”), with combined repertoires of millions of sound recordings and billions of sales. AARC, a non-profit organization formed to administer DART royalties, is the leading common agent representing the interests of featured recording artists and sound recording copyright owners in DART royalty proceedings. AARC currently represents over 440,000 featured recording artists and over 16,000 labels. AARC has filed valid claims to the 2007-2010 SRF/CO Subfunds at issue and represents all the 2007-2011 DART SRF/CO parties except for two non-settling parties.

² Curry has identified himself in 2008 and 2010 DART SRF/CO filings, as well as in this consolidated proceeding, in a variety of ways, including “Eugene Lambchops Curry,” “Eugene ‘Lambchops’ Curry,” and “Lambchops.” In the eCRB he is listed as “Curry, Eugene.” Based on Curry’s participation in past proceedings, we know that he uses the distribution label name, “Tajai Music.” To simplify matters, hereinafter, we will use “Curry” to refer to all variations of this party’s names.

³ According to the CRB records, Curry only filed claims to the 2008 and 2010 DART funds. A party who has not filed claims seeking to receive royalty payments for specific royalty years cannot participate in the subsequent proceedings of dispute resolution in case a controversy exists. See 17 U.S.C. § 1007 (2016). Therefore, Curry is not eligible to claim DART funds for any years other than the 2008 and 2010 royalty years.

⁴ Curry filed a motion for discovery request on October 26, 2019. See Motion for Discovery Request of Documents

I. BACKGROUND OF THIS PROCEEDING

On December 26, 2018, the Copyright Royalty Board (“CRB”) announced the consolidation of five proceedings to distribute the remaining royalties in the 2007-2011 DART Sound Recordings Funds (“SRF”). See Notice announcing commencement of proceeding with request for Petitions to Participate, *In re* Distribution of the 2007, 2008, 2009, 2010, and 2011 Digital Audio Recording Technology Royalty Funds for the Sound Recordings Funds, 83 Fed. Reg. 66,312 (Dec. 26, 2018) (“2007-2011 Notice”). The 2007-2011 Notice also set January 15, 2019, as the due date for interested copyright parties to file Petitions to Participate (“PTP”) with any applicable filing fees. Id.

AARC complied with the 2007-2011 Notice by filing its PTP along with the one hundred and fifty dollars (\$150) filing fee on January 25, 2019. Petition to Participate, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (Jan. 25, 2019).

Curry’s initial PTP was rejected by the CRB on February 27, 2019. Order Granting AARC Motion to Reject Eugene Curry’s Defective Filing and Dismissing Eugene Curry, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No.

from AARC, Universal and Sony, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Oct. 26, 2019). However, this request is defective for the following reasons:

- (1) As set forth below, Curry failed to file a written direct statement, and therefore, should be immediately dismissed from the proceeding and not allowed to move forward to the discovery phase. See Order Granting AARC’s Motion to Dismiss Edward Whitney Mazique’s Claims to the Remaining 2% of the 2005 and 2006 Sound Recording Funds, In the Matter of Distribution of the 2005 and 2006 Digital Audio Recording Royalty Funds, Docket No. 2009-4 CRB DD 2005-2006 (Aug. 26, 2010); see also 37 C.F.R. § 351.4;
- (2) A discovery request shall be filed between parties which have filed valid written direct statements, but not between a party and the CRB. See 37 C.F.R. § 351.6 (2019). Instead of serving this discovery request on AARC, Curry filed it with the CRB as a motion, which therefore did not meet the statutory requirement.

CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Feb. 27, 2019). However, his late PTP was later accepted by the CRB. Order Denying AARC's Motion to Reject Eugene Curry's Late Petition to Participate, *In re* Distribution Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (May 30, 2019).

The CRB set October 3, 2019, as the due date for the parties to file written direct statements. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Feb. 27, 2019) (“Scheduling Order”). In response to the CRB’s Scheduling Order and as required by section 303.5, AARC properly and timely filed its written direct statement through eCRB on October 3, 2019, with a copy of all testimonies, exhibits and appendices in support of its claim to the one hundred percent (100%) share of the remaining 2008 and 2010 DART SRF/CO Subfunds. See Scheduling Order at 5; 37 C.F.R. § 303.5 (2019); see also Direct Case of Alliance of Artists and Recording Companies, Inc., *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Oct. 3, 2019) (“AARC Direct Case”).

The eCRB filed AARC Direct Case automatically satisfied the delivery requirement set forth in 37 C.F.R. § 303.6, because Curry also used the eCRB system to file his documents. 37 C.F.R. § 303.6(h)(1) (2019) (“Electronic filing of any document through eCRB operates to effect delivery of the document to [participants] who have obtained eCRB passwords, and the automatic notice of filing sent by eCRB to the filer constitutes proof of delivery.”); see also Scheduling Order n.3 (“Unless the Judges order otherwise, all participants shall file

electronically using eCRB and shall receive relevant documents electronically through eCRB.”).

Curry did not file a written direct statement as required by the CRB’s regulations and the Scheduling Order. 37 C.F.R. § 351.4; Scheduling Order at 2, 5. The deadline for filing a written direct statement was nearly a month ago. Therefore, Curry has neglected to satisfy an essential requirement for participating in the current proceeding. 37 C.F.R. § 351.4.

II. REASONS FOR THE DISMISSAL OF CURRY FROM THE 2007-2011 DART SRF COPYRIGHT OWNERS SUBFUNDS DISTRIBUTION PROCEEDING

A. Curry Should Be Dismissed for His Failure to File a Written Direct Statement with the CRB.

Curry failed to file a written direct case, which is in direct violation of section 351.4 and the CRB’s Scheduling Order. See Scheduling Order at 2, 5; see also 37 C.F.R. § 351.4. Curry’s flagrant disregard of a key element of a DART distribution proceeding warrants immediate dismissal from the proceeding.

The CRB regulations clearly specify that “[a]ll parties who have filed a petition to participate in the hearing **must** file a written direct statement.” 37 C.F.R. § 351.4 (emphasis added). Without a written direct statement, the CRB has no way to evaluate and ascertain a party’s entitlement to any portion of a DART Subfund. Moreover, the CRB clearly directed, in its Scheduling Order, that “any participant having or asserting an issue in controversy **shall** file its Written Direct Statement” by October 3, 2019. Scheduling Order at 2, 5 (emphasis added).

It has been well-established that failure to file a written direct statement will result in dismissal from the proceeding. In fact, not only has the CRB addressed the issue of failure to file written direct statement in the past, but it has also done so with regard to Curry, himself;

dismissing him for failure to file a written direct statement. In the 2013 DART SRF/CO Subfund distribution proceeding, the CRB found that Curry filed no written direct statement, and accordingly denied his claim to the 2013 DART SRF. See Determination and Order at 2, 3, *In re* Distribution of 2013 Digital Audio Recording Royalty Funds, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013) (Mar. 24, 2016) (“2013 DART SRF Order”). Therefore, Curry was well aware of the consequences of ignoring his obligation to file a written direct statement.

In a different DART proceeding, the CRB dismissed a party who did, in fact, file a written direct statement, but did so after the due date. The CRB rejected the late written direct statement as “untimely deficient” and dismissed the party from the proceeding. See Order Granting AARC’s Motion to Dismiss Edward Whitney Mazique’s Claims to the Remaining 2% of the 2005 and 2006 Sound Recording Funds at 2, *In the Matter of Distribution of the 2005 and 2006 Digital Audio Recording Royalty Funds*, Docket No. 2009-4 CRB DD 2005-2006 (Aug. 26, 2010) (“2005-2006 DART SRF Order”) (“Mr. Mazique did not file his statement until [after the set deadline], and did not request leave to submit a late filing. . . In short, we find that Mr. Mazique’s written direct statement is untimely [] deficient.”).

Curry has a history of deliberately disregarding the CRB’s orders and regulations. His blatant disregard for his obligation to file a written direct statement in this proceeding warrants immediate dismissal.

B. By Failing to File a Written Direct Statement Which Includes Any Testimony or Exhibits, Curry Has Failed to Provide Factual Evidence Supporting His Alleged Entitlement to the 2008 and 2010 DART SRF/CO Subfunds.

Curry is entitled to zero (0) DART SRF royalties for the 2008 and 2010 royalty years. See

AARC Direct Case at 11. By failing to file a written direct statement, Curry has relinquished his opportunity to establish distribution (sales) of any of his sound recordings during the 2008 and 2010 royalty periods. The only evidence of distribution during the relevant royalty years submitted in this proceeding is that of AARC, which shows that there were no sales reported by the Nielsen SoundScan Sales Data (“SoundScan Data”)⁵ of any sound recordings, for which Curry owns the exclusive right to reproduce the sound recording during the 2008 and 2010 royalty years. See id. at 9-10; see also AARC Direct Case Stern Testimony ¶¶ 51-88, 95-100; AARC Direct Case Oliver Testimony ¶¶ 3-8; AARC Direct Case Finkelstein Testimony ¶¶ 3-5. Curry has made no effort to establish a factual basis for his claims to the 2008 and 2010 DART SRF/CO Subfunds and so he should be dismissed. See 2013 DART SRF Order at 2, 3; see also 2005-2006 DART SRF Order at 2 (“Mr. Mazique provided no testimony or exhibits to support his claims that he is entitled to any royalty funds. . . In short, we find that Mr. Mazique’s written direct statement is [] facially deficient.”).

III. CONCLUSION

For all the foregoing reasons, AARC respectfully requests the dismissal of Curry from the 2007-2011 DART SRF/CO Subfunds distribution proceeding. AARC has satisfied all the

⁵ “Nielsen is the authority in tracking what music people are buying both in-store and digitally. Nielsen compiles data from more than 39,000 retail outlets globally, to help record labels, publishers, artists, artist management and performance rights organizations understand what albums, singles and music videos people are buying, and where they’re buying them.” This sound recording unit sales data, the “SoundScan Data,” is collected as follows: “[o]n a weekly basis, Nielsen collects point-of-sale (POS) data in 19 countries across the U.S., Canada, Europe and Oceania. In the U.S. and Canada, physical and digital titles from venues, mass merchants, retail chains, independent record stores and digital download providers can be viewed by UPC, ISRC, artist, market, retailer type or genre.” AARC Direct Case, Music Sales Measurement, Nielson, <https://www.nielsen.com/us/en/solutions/measurement/music-sales-measurement.html> (last visited on Sept. 24, 2019), Ex. A.

statutory, regulatory, and CRB ordered requirements. Curry, on the other hand, has repeatedly neglected to satisfy the DART procedural requirements. Most importantly, Curry has again failed to file a written direct statement, which represents the heart of any DART distribution case. Curry has neglected to provide the CRB with any evidence of his entitlement to a portion of the 2008 and/or 2010 DART SRF/CO Subfund royalties. Curry's actions represent a blatant disregard for and abuse of the CRB's processes.

WHEREFORE, in view of the foregoing, AARC respectfully requests the dismissal of Curry from the distribution proceeding of 2007-2011 DART SRF/CO Subfund royalties and the distribution of 100% of the remaining royalties to AARC.

Respectfully submitted,
On Behalf of AARC

/s/Linda R. Bocchi, Esq.

Linda R. Bocchi, Esq.

DC BAR # 338012

VA BAR # 77599

Executive Director

Alliance of Artists and Recording Companies

700 N. Fairfax Street, Suite 601

Alexandria, VA 22314

(703) 535-8101 (phone)

(703) 535-8105 (facsimile)

lbocchi@aacroyalties.com

October 30, 2019

Proof of Delivery

I hereby certify that on Wednesday, October 30, 2019, I provided a true and correct copy of the Motion to Dismiss Eugene Curry From the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund Distribution Proceeding to the following:

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

Curry, Eugene, represented by Eugene Curry Mr., served via Electronic Service at lambchopsmusic@voicenet.com

Signed: /s/ Linda R Bocchi