

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)

REPLY TO RESPONSE IN OPPOSITION TO AARC’S MOTION TO DISMISS CGN

The Alliance of Artists and Recording Companies, Inc. (“AARC”), on its behalf and that of its Participants,¹ hereby submits its reply to the response filed by “circle god network inc d/b/c/ david powell” (“CGN”).² On November 5, 2019, CGN responded to AARC’s motion to dismiss CGN 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 that satisfied the content requirements of the CRB regulations and provided any supporting evidence for CGN’s claim to entitlement to a portion of the 2007 DART SRF/CO Subfund. 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 in this proceeding.

² On the eCBR system, a party “David Powell” was listed as withdrawn and substituted with a party “circle god network inc d/b/a david powell.” All the filings by this party were signed by David Powell, pro se.

³ Even though CGN claimed “5% Dart Funds for each year (2007-2011)” in this proceeding, the CRB Judges have recognized that David Powell only filed a claim for the 2007 SRF/CO Subfund and for no other years or funds. Therefore, CGN/David Powell is not eligible to claim DART funds for any years other than the 2007 royalty year. Order Granting Motion of David Powell to Accept Late Petition to Participate, *In re* Distribution of Digital Audio Recording Royalty Funds n.3, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (June 19, 2019).

⁴ Id.

Pursuant to the Copyright Royalty Board's ("CRB") directive, AARC filed its written direct statement on October 3, 2019. 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"); 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"). CGN filed a document entitled "written direct case" on September 26, 2019. [I]ntroduction memorandum to the written direct case of circle god network inc.(members) d/b/a David powell, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Sept. 26, 2019) ("CGN Filing"). By CGN's own admission, its document included "no written testimony and or no witnesses. . . no designated past records and no testimony records." CGN Filing at 2. The CGN Filing included nothing but bald assertions that it is entitled to 5% of the royalties for years 2007-2011, although CGN only filed a claim for the 2007 DART SRF CO Subfund royalties. *Id.*; see *infra* note 3.

On October 28, 2019, in response to CGN's defective filing, AARC filed a motion to dismiss CGN for its failure to file a written direct statement that satisfied the content requirement of section 351.4(b), provided any evidence supporting CGN's claim and met the CRB's representation requirement. 37 C.F.R. § 351.4(b); Motion to Dismiss CGN's Claim to Any Portion of the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3

CRB DD (2007-2011 SRF) (Oct. 28, 2019). Thereafter, on November 5, 2019, CGN filed what appears to be a response to AARC’s motion but is, in fact, an incomprehensible document, along with a proposed order that is equally muddled. See Pro Se Motion Rebutts Contradicts AARC Reply 10-29-19 to Dismiss as Untimely Out of Time and to Deny AARC Motion to Dismiss as Untimely, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Nov. 5, 2019) (“CGN Response”); CGN INC. d/b/a David Powell Interested Party Settlement Proposal, Offer, and Request Proposed Order Mark X for Relief Sought, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Nov. 5, 2019) (“CGN Proposed Order”).

The CRB’s regulation requires that “[a] motion, responsive pleading, or reply must, at a minimum, state concisely the specific relief the party seeks from the Copyright Royalty Judges, and the legal, factual, and evidentiary basis for granting that relief (or denying the relief sought by the moving party).” 37 C.F.R. § 303.4 (2019). The CGN Response, however, is unintelligible, containing nothing more than inappropriately applied legal terms that are irrelevant to the instant proceeding. Therefore, AARC is unable to articulate a response to what it cannot understand. See Order Denying Powell Motion, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Mar. 25, 2019) (“[T]he

Judges are unable to discern from the Motion what relief, if any, Mr. Powell is seeking from the Judges. The Judges cannot grant a request they cannot understand.”).⁵

Most importantly, nothing in the CGN Response addressed CGN’s failure to file a “written direct statement” that met the CRB’s content requirements. 37 C.F.R. § 351.4(b). CGN provided no evidence of any sales of sound recordings owned by CGN and sold during the 2007 royalty year. In fact, the CGN Filing did not even reference the correct royalty year for which CGN filed a claim. See CGN Filing; see supra note 3 (“The Judges’ review of the DART claims lists for 2007-2011 indicates that Mr. Powell filed a claim for the 2007 sound recordings fund/copyright owners’ subfund and for no other year or fund.”).

Furthermore, as AARC noted in its motion to dismiss, David Powell, the individual who has filed on behalf of CGN, cannot represent CGN because he is not an attorney. 37 C.F.R. § 303.2 (2019) (“Individual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney.”). CGN provided no evidence in any of its filings to establish that David Powell is a licensed attorney. In fact, during this proceeding, David Powell has repeatedly conceded that he has been filing “pro se”.⁶ See e.g., CGN Response at 4. CGN’s filings should therefore be dismissed. See Determination and Order at 2, *In re* Distribution of 2013 Digital Audio Recording Royalty Funds, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013) (Mar. 24, 2016) (“As Mr. Curry is

⁵ CGN Proposed Order is equally nonsensical, seeking to dismiss “AARC participants and record labels from this entire proceedings [sic]” without any basis. See CGN Proposed Order.

⁶ “For himself; in his own behalf; in person.” PRO SE, Free Law Dictionary, <https://www.freelawdictionary.org/?s=pro+se> (last visited Nov. 8, 2019).

not an attorney [and thus ineligible to represent a corporate entity in a proceeding, see 37 C.F.R. § 350.2], the Judges dismissed the portion of his PTP relating to TAJAI.”).

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

Respectfully submitted,
On Behalf of AARC

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November 12, 2019

Proof of Delivery

I hereby certify that on Tuesday, November 12, 2019, I provided a true and correct copy of the AARC's Reply to Powell's Response in Opposition 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