

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)

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**RESPONSE IN OPPOSITION TO EUGENE CURRY MOTION TO RE-SUBMIT  
WRITTEN DIRECT STATEMENT PREVIOUSLY DENIED FOR SUBJECT TITLE**

Pursuant to Section 303.6(f), the Alliance of Artists and Recording Companies (“AARC”), on its behalf and that of its Participants,<sup>1</sup> hereby files its motion to reject Eugene Curry’s (“Curry”)<sup>2</sup> motion dated October 30, 2019. 37 C.F.R. § 303.6(f) (2019); Motion to Re-Submit Written Direct Statement Previously Denied for Subject Title, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Oct. 30, 2019) (“Curry Motion to Re-Submit”). AARC respectfully requests the dismissal of the Curry Motion to Re-Submit based on Curry’s repeated and deliberate disregard of the Copyright Royalty Board’s (“CRB”) order and regulations, especially his failure to file a written direct statement. See Notice of Participants, Commencement of Voluntary

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<sup>1</sup> 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.

<sup>2</sup> 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.

Negotiations Period, and Case Scheduling Order at 2, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Feb. 27, 2019) (“Scheduling Order”); see also 37 C.F.R. § 351.4 (2019). Accordingly, Curry should be dismissed from the consolidated 2007-2011<sup>3</sup> Digital Audio Recording Technologies (“DART”) Sound Recordings Fund Copyright Owners Subfund (“SRF/CO Subfund”) royalties distribution proceeding. See id.

### **BACKGROUND OF THIS PROCEEDING**

On February 27, 2019, the CRB set October 3, 2019, as the due date for the parties to file written direct statements. Scheduling Order at 5. 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. 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

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<sup>3</sup> 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.

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. Instead, on October 30, 2019, almost 30 days after the due date, and a few hours after AARC motioned to dismiss him for failure to file a written direct statement, Curry filed a motion to “re-submit” his written direct statement. See Curry Motion to Re-Submit. Curry’s motion to “re-submit” was clearly filed in response to AARC’s motion to dismiss. Then on November 1, 2019, Curry filed a “Response in Opposition to AARC Motion to dismiss Eugene Curry.” Response in Opposition to Motion to Dismiss Eugene Curry from the Distribution Proceeding of 2007-2011 DART Sound Recording Fund Copyright Owners Sub-Fund, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Nov. 1, 2019) (“Curry Response”). In his motion to resubmit, Curry alleged that he tried to submit his written direct statement on October 4, 2019, not October 3, 2019 when it was due. Curry Motion to Re-Submit at 1. In the Curry Response, Curry also claimed that the CRB help department misled him by advising him that a written direct case was “unnecessary” for this proceeding at this time. He alleges that the help department confused two different DART SRF proceedings – the 2007-

2011 consolidated and the 2014 proceedings. See Curry Response at 1 (“CRB help department I believe after speaking to them said written direct statement wasn’t necessary because it hadn’t gotten to that phase yet where we both misunderstood confusing the two PTP’s for the written direct statement.”).

### ARGUMENTS

The Curry Motion to Re-Submit should be rejected because Curry deliberately disregarded a CRB ordered deadline to file a written direct statement. Even if we were to accept his own explanation, as articulated in his motion, Curry tried to file his written direct statement on October 4, not on October 3 when it was due, and only after he received AARC’s written direct statement. Curry Motion to Re-Submit (“So after realizing when [AARC] filed on October 3, 2019 I tried to submit mine on the 4th.”).

Curry claimed that, on October 4, he attempted to file his written direct statement on three occasions but failed because “the title and subject [of his filing] didn’t match[,]” and he “contacted the CRB help department for clarification on how to correct [the written direct case].” Curry Motion to Re-Submit. Even if Curry encountered technical problems when he attempted to file, he should have complied with the CRB’s “Technical difficulties” regulation. Specifically, section 303.5(m)(2) requires that “[a] filer encountering technical problems with an eCRB filing must **immediately** notify the Copyright Royalty Board either by email or by telephone, followed promptly by written confirmation.” 37 C.F.R. § 303.5(m)(2) (emphasis added). Moreover, a filer that cannot file through the eCRB because of technical problems “**shall** use electronic mail to

make the filing with the CRB and deliver the filing to the other parties to the proceeding.” Id. (emphasis added). Curry, however, opted to ignore this regulation as he ignored the requirement to file his written direct statement. It is unclear from the record, whether Curry did in fact contact the CRB regarding technical problems in the upload process. However, it is clear that Curry did not electronically file his written direct statement with the CRB, nor did he serve it on AARC.

It is also worth noting that Curry seemed to have no problem uploading to the eCRB numerous other filings in this and the 2014 DART SRF proceedings. Nearly a month after the due date for filing the written direct statement, Curry managed to file a defective motion for discovery, a motion to re-submit, and a response to AARC’s motion to dismiss for failure to file his written direct statement. See Motion for Discovery Request of Documents from AARC, Universal and Sony, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Oct. 26, 2019); Curry Motion to Re-Submit (Oct. 30, 2019); Curry Response (Nov. 1, 2019). Also, according to the eCRB, Curry managed to upload, to the eCRB, a Petition to Participate in the 2014 DART SRF distribution proceeding on October 4, 2019. It appears that the only document Curry could not upload was his written direct statement.

Furthermore, in his motion, Curry requested leave to file a late written direct statement, but in his response to AARC’s motion dismiss for failure to file a written direct statement, Curry seemed to assert that he is not required to file a written direct statement. Specifically, Curry alleged in his response that his claims to the royalties “have never changed”:

“[I]t is and always has been I am the Copyright Owner of the Musical Digital EMBODIMENT RIGHTS TO The Music performance’s as producer and Performer of the second of the two rights in the Sound recording. And of the 2% remaining \$1000.00.”

Curry Response at 2. Curry seems to be under the erroneous impression that his bald assertions as to his entitlement suffice, and he is not required to file a written direct statement. Clearly, Curry is mistaken since the CRB regulations require that every participant in a hearing file a written direct statement, which shall include all the requisite content. 37 C.F.R. § 351.4(b). Curry’s written direct statement had to be filed by the October 3, 2019 due date and contain all the content specified in section 351.4(b), including evidence of his entitlement to any portion of the 2008 and 2010 DART SRF/CO Subfunds. Scheduling Order at 2, 5; 37 C.F.R. § 351.4(b). The CRB requires evidence, not just baseless allegations, as to entitlement. See Scheduling Order at 2; 37 C.F.R. § 351.4(b); see also Order Granting AARC’s Motion to Dismiss Edward Whitney Mazique’s Claims to the Remaining 2% of the 2005 and 2006 Sound Recordings Funds, *In re* Distribution of the 2005 and 2006 Digital Audio Recordings Royalty Funds, Docket No. 2009-4 CRB DD 2005-2006 (Aug. 26, 2010) (denying partial distribution because “other than his own bald assertions, Mr. Mazique” provided no support for his claim that he was entitled to any of the 2005 and 2006 Sound Recordings Fund royalties); Order Granting AARC’s Requests for Partial Distribution of Royalties from the 2013 DART Sound Recordings Fund (Copyright Owners and Featured Recording Artists Subfunds), *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. 14-CRB-0006

DART SR (CO/FA) (2013) (Dec. 19, 2014) (granting partial distribution to AARC

because each of the two parties opposing it failed to provide a “specific estimate of the percentage of those royalties to which he believes he might be entitled”).

Additionally, as AARC noted in its motion, Curry has a long history of participating in the DART Musical Works Fund and Sound Recordings Fund distribution proceedings, and therefore, should be familiar with the CRB’s distribution proceeding requirements. Motion to Reject Eugene Curry’s Defective Filing at 12, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Feb. 1, 2019). He has filed in DART proceedings since the inception of the AHRA in 1992. See id. at 13-15 (discussing Curry’s past participation in the 2008 and 2013 Copyright Owners Subfunds as well as the 1992-1994 and 1995-1998 Musical Works Funds distribution proceedings showing a pattern of failing to adhere to CRB regulations and orders). Moreover, it has been clearly established that participants in DART distribution proceedings should be familiar with the statute and regulations. See DART Factsheet on Filing Claims for Royalty Distribution, Copyright Office, <http://www.copyright.gov/carp/dartfact.html> (last visited on Jul. 4, 2014) [<https://web.archive.org/web/20140704090450/http://www.copyright.gov/carp/dartfact.html>] (provided as Attachment 1). The Copyright Arbitration Royalty Panel (“CARP”) Fact Sheet directed DART participants to review the regulations governing DART

proceedings before even filing their initial claims to ensure that they comply with regulatory and statutory mandates.<sup>4</sup> Id.

In conclusion, throughout this proceeding (and in other DART proceedings in which he has been involved), Curry has exhibited a pattern of disregarding the statute, regulations and CRB directives; opting instead to play by his own rules. In the instant proceeding, Curry has again failed to file a written direct statement, which represents the very heart of any DART distribution case.

**WHEREFORE**, in view of the foregoing, AARC respectfully requests that the CRB reject the Curry Motion to Re-Submit, dismiss Curry from the consolidated 2007-2011 DART SRF/CO Subfunds proceeding and distribute 100% of the remaining 2008 and 2010 DART SRF/CO Subfund royalties to AARC.

Respectfully submitted,  
On Behalf of AARC

/s/Linda R. Bocchi, Esq.

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<sup>4</sup> The CRB, as the successor to the CARP, will act in accordance with prior determinations and **interpretations** of the CARP. 17 U.S.C. § 803(a)(1) (2016) (emphasis added).



# Proof of Delivery

I hereby certify that on Wednesday, November 13, 2019, I provided a true and correct copy of the AARC's Response in Opposition to Curry's Motion to Re-Submit Written Direct Statement to the following:

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

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

Signed: /s/ Linda R Bocchi