

**COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

Distribution of Digital Audio Recording  
Royalty Funds

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

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**ORDER GRANTING AARC MOTION TO DISMISS EUGENE CURRY**

On October 30, 2019, the Alliance of Artists and Recording Companies, Inc. (AARC) filed with the Copyright Royalty Judges (Judges) a Motion to Dismiss Eugene Curry from the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund Distribution Proceeding ([Motion](#)). Mr. Eugene Curry, a *pro se* participant in this proceeding, filed his response in opposition on November 1, 2019 ([Opposition](#)), and AARC filed its reply on November 8, 2019 ([Reply](#)).

AARC seeks Mr. Curry’s dismissal from this proceeding on grounds that he failed to file a Written Direct Statement (WDS), and has thus failed to substantiate any claim to royalties. For the reasons discussed below, the Judges **GRANT** the Motion and **DISMISS** Mr. Curry from this proceeding.

**Arguments**

AARC argues that the Judges’ procedural regulations *require* all parties to file a WDS, noting that “[w]ithout a written direct statement, the CRB has no way to evaluate and ascertain a party’s entitlement to any portion of a DART Subfund.” Motion at 4 (citing 37 C.F.R. § 351.4). AARC points out that the Judges have dismissed participants (including Mr. Curry) from past proceedings due to their failure to file a WDS. *Id.* at 2 (citing *Determination and Order*, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013) (Mar. 24, 2016)).

In addition, AARC argues that Mr. Curry is entitled to no portion of the DART Sound Recording Fund royalties for 2008 and 2010<sup>1</sup> because he has failed to establish sales of any of his sound recordings during the relevant time period. Moreover, AARC notes that it has submitted evidence in its direct case, not controverted by any party, that there were no reported sales in 2008 and 2010 of any sound recordings for which Mr. Curry owns the exclusive reproduction right. *See id.* at 6.

Mr. Curry enumerates six arguments in his Opposition:

1. AARC filed its WDS on October 3, 2019, even though it allegedly could have done so on February 29, 2019. *See* Opposition at 1.

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<sup>1</sup> As the Judges noted previously, Mr. Curry did not file claims for royalties in the Sound Recordings Fund in 2007, 2009, or 2011. *See Order Granting Eugene Curry Leave to File Late Petition to Participate*, at 2 n.5. He is not entitled, therefore, to any portion of those years’ Sound Recordings Funds.

2. AARC has filed numerous pleadings seeking to dismiss Mr. Curry from the proceeding and to oppose Mr. Curry's efforts to have his participation reinstated. During that period Mr. Curry was caring for a loved one. *See id.*
3. AARC did not seek to include Mr. Curry in settlement discussions during the voluntary negotiation period. *See id.*
4. Mr. Curry was allegedly misled by the "CRB help department" into believing that he did not need to file a WDS on October 3, 2019. *Id.*
5. Mr. Curry "filed for Discovery certain 'PROOF OF EVIDENCE, from AARC, and their clients[,] of documentation that was not provided in their sworn testimony and exhibits.'" *Id.* at 1-2.
6. Mr. Curry "is and always has been ... the Copyright Owner of the Musical Digital EMBODIMENT OF RIGHTS TO The Music performance's [*sic*] as producer and Performer of the second of the two rights in the Sound recording. And of the 2% remaining \$1000.00." *Id.* at 2. In addition, Mr. Curry notes that the Judges "have discretion to decide if a [*sic*] individual party would be harmed unfairly by a party seeking to dismiss another." *Id.* Mr. Curry then appears to cite a number of regulatory and statutory provisions: "37CFR}351.6 351.5(b) 308.106(b)(c) US Code{ 1001.(7)(b)(c)(d)ii (8)351.5(b)351." (*sic*) *Id.*

In its Reply, AARC controverted each of Mr. Curry's points:

1. AARC met the Judges' October 3, 2019 due date for filing its WDS. *See Reply* at 2.
2. AARC filed motions and responsive pleadings as permitted by the Judges' procedural rules. *See id.* at 3.
3. AARC was under no obligation to negotiate or reach a settlement with Mr. Curry. *See id.*
4. "[I]t is not the CRB's responsibility to advise Curry as to the procedural requirement of a DART distribution proceeding." *Id.* at 4.
5. Mr. Curry's discovery request does not excuse his failure to file a WDS and was, in any event, defective. *See id.* at 6.
6. Mr. Curry's "bald assertions" do not constitute sufficient evidence for the CRB to award him royalties, and do not excuse his failure to file a WDS. *See id.* at 7. In addition, Mr. Curry's regulatory and statutory citations do not support his argument that the Judges may find that he was harmed unfairly by AARC seeking to have him dismissed. *See id.*

## Discussion

WDSs in this proceeding were due on October 3, 2019. *See Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order*, at 5 (Feb. 27, 2019) (*Scheduling Order*). Mr. Curry did not file a WDS by that date. He requested leave to file a late WDS, *see Motion to Re-Submit Written Direct Statement Previously Denied for Subject Title* (Oct. 30, 2019), and the Judges denied the request. *See Order Denying Curry Motion to*

*Resubmit Written Direct Statement* (Nov. 15, 2019).<sup>2</sup> The question before the Judges is no longer whether Mr. Curry’s failure to meet the October 3 deadline should be excused. The Judges have already answered that question. *See id.* The question is whether Mr. Curry may continue to participate in this proceeding having failed to present a direct case.

It is well-settled that filing a WDS is “an essential requirement for further participation” in a proceeding. *Order Granting in Part Allocation Phase Parties’ Motion to Dismiss Multigroup Claimants and Denying Multigroup Claimants’ Motion for Sanctions against Allocation Phase Parties*, at 3 (Aug. 11, 2019) (*August 11 Order*); *see* 37 C.F. R. 351.4(a); *see also* *Order Granting SoundExchange Motion to Dismiss Muzak LLC*, Docket No. 2006-1 CRB DSTR (Jan. 10, 2007); *Order Granting SoundExchange’s Motion to Dismiss Persons and Entities That Did Not File a Written Direct Statement*, Docket No. 2005-1 CRB DTRA (Jan. 20, 2006); *Order*, Docket No. 2000-9 CARP DTRA 1&2 (Apr. 23, 2001).

By statute, parties seeking DART royalties from the Sound Recordings Fund must demonstrate that they are “interested copyright parties” as defined in 17 U.S.C. § 1001(7), and that their sound recordings have been “(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and (B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions” during the royalty year at issue. 17 U.S.C. § 1006(a)(1). To make such a demonstration a participant must provide *evidence* of distribution or dissemination. Failing to file a WDS that presents evidence of sales or transmissions precludes a party’s further participation in a DART distribution proceeding.

The Judges agree with and adopt AARC’s evaluation of the six arguments offered in the Opposition. *See* Reply at 2-7. More fundamentally, the Judges find the arguments irrelevant. Neither AARC’s conduct nor any statements by CRB staff or contractors have any bearing on any party’s obligation to file a WDS as set forth in the Judges’ *Scheduling Order*. A party’s efforts to seek discovery is likewise not relevant to the requirement to file a WDS. None of the statutory or regulatory citations in the Opposition are on point or support the (again irrelevant) assertion that the Judges “have discretion to decide if a individual party would be harmed unfairly by a party seeking to dismiss another.” Opposition at 2. Additionally, none of Mr. Curry’s filings contain the necessary evidence of distribution or dissemination, such as sales or transmissions, that would constitute the substance of an appropriate WDS. Thus, the defects in Mr. Curry’s filings are not merely formal or procedural in nature (which might be understandable in a *pro se* filing), but rather demonstrate the absence of a substantive direct case supporting his assertions and his lack of a significant interest sufficient to remain a participant in this proceeding.

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<sup>2</sup> By separate [order](#) issued today the Judges have denied Mr. Curry’s November 21, 2019 [Motion for Reconsideration](#) of their November 15<sup>th</sup> order.

For the foregoing reasons the Judges **GRANT** the Motion and **DISMISS** Mr. Curry from this proceeding.

**SO ORDERED.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

DATED: January 15, 2020.