

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of	}	
	}	
Distribution of 2007, 2008 and 2009	}	Docket Nos. 2010-5 CRB DD 2009
Digital Audio Recording Royalty Funds	}	2009-3 CRB DD 2008
	}	2008-3 CRB DD 2007

ORDER GRANTING IN PART AARC'S SUPPLEMENTAL REQUESTS FOR PARTIAL DISTRIBUTION OF 2007, 2008 and 2009 DART SOUND RECORDINGS FUND ROYALTIES

On February 17, 2012, the Alliance of Artists and Recording Companies ("AARC") and certain claimants with which it has reached agreements (collectively the "Settling Parties"), filed supplemental requests for distribution of the 2007, 2008 and 2009 Sound Recordings Funds, Copyright Owners Subfunds. In addition, the Settling Parties seek additional distributions from the 2007 and 2009 Sound Recordings Funds, Featured Artists Subfunds.¹ The Settling Parties submitted their requests pursuant to section 801(b)(3)(A) of the Copyright Act, which authorizes the Copyright Royalty Judges to make a distribution of royalties under section 1007 of the Copyright Act to the extent that the Judges find that the distribution of such fees is not subject to controversy.

The Settling Parties state that they have received partial distributions of 98% of each of the Subfunds for which they seek an additional distribution. The Settling Parties further represent that additional funds, which the Settling Parties refer to as "back payments," have been deposited into each of the respective Subfunds since the Settling Parties received their partial distributions. The Settling Parties request a 100% distribution of those back payments, because, they contend (without further elaboration), the back payments are not in controversy.² The Settling Parties' motions were unopposed.

While the Judges have granted partial distributions from each of the Subfunds from which the Settling Parties request further distributions pursuant to section 801(b)(3)(A) of the Copyright Act, they did so only after finding no controversy with respect to 98% of the royalties in those Subfunds. The Settling Parties make no representation that any further settlements have been reached between the Settling Parties and the non settling parties since the Judges issued the partial distribution orders. Therefore, the Judges must assume that there is still a controversy with respect to some of the royalties in each of the Subfunds for which the Settling Parties seek a further distribution. We are sensitive to the Settling Parties' desire to have the bulk of the so-called back payments distributed, but, in the absence of the notice and

¹ AARC's supplemental request for the 2008 DART Sound Recordings Fund was limited to the Copyright Owners Subfund because the Judges previously authorized a 100% distribution of the Featured Artists Subfund for 2008 and no further motion was required to authorize further distributions from that Subfund. See *Distribution Order, Docket No. 2009-3 CRB DD 2008*, June 24, 2009 (authorizing 100% distribution of royalties in Featured Artist Subfund of the 2008 Sound Recordings Fund) and *Supplemental Distribution Order*, Dec. 18, 2006 (final distribution orders control royalties subsequently received).

² While contending that they are entitled to 100% of the back payments because they believe those funds are not in controversy, the Settling Parties have expressed a willingness to agree to return any excess amounts necessary to comply with a final determination of a distribution proceeding should the Judges deem one necessary. In other words, the Settling Parties would be willing to comply with one of the requirements of section 801(b)(3)(C) of the Copyright Act, which authorizes partial distributions where a controversy exists, under certain conditions, and after publication in the *Federal Register*. Section 801(b)(3)(C) does not grant the Judges discretion to limit the conditions that must be satisfied before a partial distribution may be made under that section.

comment period required by section 801(b)(3)(C) of the Copyright Act and the additional requirements to ensure that the Settling Parties pay back any overpayments, we are unwilling to grant a 100% distribution of the back payments. Given that the Settling Parties' motions were unopposed, however, and based on the Judges' prior findings that 2% of the outstanding funds was sufficient to satisfy any remaining controversies, we hereby grant the Settling Parties' requests, but only with respect to 98% of the back payments (*i.e.*, those royalties deposited into each of the Subfunds from which the Settling Parties request an additional distribution since the date of the Judges' prior respective partial distribution orders with respect to such Subfunds).

IT IS ORDERED THAT 98% of all royalties deposited into the: Copyright Owners and Featured Artists Subfund of the 2009 Sound Recordings Fund **after November 2, 2010**; Copyright Owners Subfund of the 2008 Sound Recordings Fund **after August 19, 2009**; and Copyright Owners and Featured Artists Subfund of the 2007 Sound Recordings Fund **after October 14, 2008**, shall be distributed to AARC as a common agent for all Settling Parties for further distribution to the Settling Parties on or after April 19, 2012, provided that the Licensing Division of the Copyright Office receives all pertinent information to effect the transfer of funds no later than seven business days before the date of distribution.

SO ORDERED.



James Scott Sledge
Chief U.S. Copyright Royalty Judge

DATED: March 8, 2012