

**Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.**

In re

**Distribution of the 2009, 2010, and 2011
Digital Audio Recording Technology Funds
for the Musical Works Funds**

**Docket No. 2013-6 CRB DD 2009-2011
(MWF)**

**JOINT PETITION TO PARTICIPATE OF BROADCAST MUSIC, INC., THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, SESAC, INC.,
AND THE HARRY FOX AGENCY LLC AS SETTLING CLAIMANTS**

Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”), SESAC, Inc. (“SESAC”) (collectively, the “Performing Rights Organizations” or “PROs”), and The Harry Fox Agency LLC¹ (“HFA” and, together with the PROs, the “Settling Claimants”)² hereby file their Joint Petition to Participate in the proceeding to determine the final distribution of the 2009, 2010, and 2011 Digital Audio Recording Technology (“DART”) Musical Works Fund royalties, in accordance with the Notice of the Copyright Royalty Judges (“Judges”) of August 29, 2017, 82 Fed. Reg. 41663 (September 1, 2017) (“Notice”).

¹ The Harry Fox Agency LLC, a Delaware limited liability company, was formerly The Harry Fox Agency, Inc.

² The PROs, together, represent hundreds of thousands of composer, lyricist, songwriter, and publisher members and affiliates with combined repertoires of millions of copyrighted musical works. On behalf of their members and affiliates, BMI, ASCAP and SESAC license the public performance rights granted to their respective members and affiliates as copyright owners under Section 106(4) of the Copyright Act (17 U.S.C. § 106(4)). The PROs are also affiliated with over ninety foreign performing rights societies around the world and license the repertoires of those societies in the United States. HFA acts as a licensing agent for thousands of music publishers, who in turn represent the interests of hundreds of thousands of songwriters. HFA also represents multiple foreign societies that represent foreign songwriters and music publishers through agreements with such foreign mechanical rights organizations. Lists of the individual songwriters and music publishers and affiliated foreign performing rights and mechanical rights organizations represented by each of the Settling Claimants in this proceeding were submitted with their respective claims and are incorporated herein by reference.

The Settling Claimants have a significant interest in this distribution proceeding because they collectively represent copyright owners of musical works that were embodied in a digital or analog recording and distributed in the form of a digital or analog recording or disseminated to the public in transmissions during the 2009-2011 time period. The Settling Claimants have participated in and received a share of the funds, through settlement or award, in every DART distribution proceeding since the enactment of the Audio Home Recording Act of 1992, Pub. L. No. 102-563, 106 Stat. 4237.³ Furthermore, the Settling Claimants have already received a partial distribution of ninety-five percent (95%) of the royalties in this proceeding.⁴ In the past five DART proceedings, the Settling Claimants have received more than ninety-nine percent (99%) of the Musical Works royalty funds, while non-settling individual writer and publisher claimants collectively have either received less than one tenth of one percent (0.1%) of the Musical Works Fund royalties or have been dismissed altogether.⁵

³ See Librarian's Decision in Docket No. 95-1 CARP DD 92-94, 62 Fed. Reg. 6558 (February 12, 1997); Librarian's Decision in Docket No. 99-3 CARP DD 95-98, 66 Fed. Reg. 9360 (February 7, 2001); Copyright Office Order Regarding Distribution of Remaining Funds in Docket No. 2002-6 CARP DD 99-01 (March 12, 2003); Order, In the Matter of Distribution of 2002, 2003 and 2004 Digital Audio Recording Funds, Docket No. 2006-5 CRB DD 2002-2004 (June 24, 2009); Order Regarding Distribution of Royalties and Announcing Voluntary Negotiation Period, Docket No. 2010-8 CRB DD 2005-2008 (MW) (April 12, 2013); and Order Granting Claimants' Request for Final Distribution of 2006 DART Musical Works Fund Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW) (February 20, 2014).

⁴ See Order Granting Claimants' Request for Partial Distribution of 2009 Through 2011 DART Musical Works Fund Royalties, Docket No. 2013-6 CRB DD 2009-2011 (MWF) (February 4, 2014).

⁵ See Librarian's Decision in Docket No. 95-1 CARP DD 92-94, 62 Fed. Reg. 6,558 (February 12, 1997) (awarding the Settling Claimants more than 99.9% of the 1992-1994 DART Musical Works Fund royalties, and awarding the remaining individual claimants a *de minimis* amount); Librarian's Decision in Docket No. 99-3 CARP DD 95-98, 66 Fed. Reg. 9,360 (February 7, 2001) (awarding the Settling Claimants more than 99.9% of 1995-1998 DART Musical Works Fund royalties, and awarding the remaining individual claimants a *de minimis* amount); Order, In the Matter of Distribution of 1999, 2000 and 2001 Digital Audio Recording Funds, Docket No. 2002-6 CARP DD 99-01 (January 31, 2003) (dismissing the case of an individual claimant for failure to file a written direct case concerning the distribution of 1999-2001 DART Musical Works Fund royalties); Order, In the Matter of Distribution of 2002, 2003 and 2004 Digital Audio Recording Funds, Docket No. 2006-5 CRB DD 2002-2004 (June 24, 2009) (dismissing the lone non-settling individual claimant for failure to file a written direct case and ordering a complete distribution of the remaining Musical Works Funds for 2002-2004 to the Settling Claimants); Order Regarding Distribution of Royalties and Announcing Voluntary Negotiation Period, Docket No. 2010-8 CRB DD 2005-2008 (MW) (April 12, 2013) (dismissing the only non-settling claimant for failure to assert a controversy with regard to the 2005, 2007, and 2008

I. Petition to Participate

The Settling Claimants have similar interests as described above, and, pursuant to 17 U.S.C. § 803(b)(1)(B) and 37 C.F.R. § 351.1(b)(2)(ii), hereby file a single Joint Petition to Participate in the 2009, 2010, and 2011 DART royalty distribution proceeding for the Musical Works Funds, Publishers and Writers Subfunds. Each of the Settling Claimants, whose contact information appears in the signature blocks below, has an interest in receiving royalty payments in both Musical Works Fund Subfunds for all of the years at issue in this proceeding. Accordingly, each of the Settling Claimants is asserting and has filed a claim to the 2009 Writers Subfund, 2009 Publishers Subfund, 2010 Writers Subfund, 2010 Publishers Subfund, 2011 Writers Subfund, and 2011 Publishers Subfund. Lists of the individual songwriters and music publishers and affiliated foreign performing rights and mechanical rights organizations represented by each of the Settling Claimants in this proceeding were submitted with their respective claims and are incorporated herein by reference. The undersigned counsel hereby certify that, as of the date of this Joint Petition, they have the authority and consent to represent the participants set forth below and collectively to work together in this distribution proceeding.

II. Filing Fee

The Settling Claimants will seek a distribution of more than one thousand dollars (\$1,000). Accordingly, in accordance with 17 U.S.C. § 803(b)(2)(D) and 37 C.F.R. § 351.1(b)(4), the Settling Claimants are submitting the filing fee of one hundred and fifty dollars (\$150) through the eCRB filing system.

Musical Works Fund royalties); and Order Resolving Controversy and Concluding Paper Proceedings, Docket No. 2010-8 CRB DD 2005-2008 (MW) (determining that the non-settling claimant failed to establish a right to 2006 DART Musical Works Fund royalties and awarding all royalties to the Setting Claimants).

III. Paper Proceeding

The Settling Claimants note with appreciation the Judges' decision "to conduct a paper proceeding in this matter in light of the relatively modest amount of royalties in dispute and the anticipated small number of non-settling claimants." Notice at 41664. As noted in the Motion of BMI, ASCAP, SESAC, and HFA as Settling Claimants for Commencement of a Proceeding filed on March 16, 2017, in this proceeding, the Settling Claimants have reached confidential settlements concerning their respective distribution shares of the 2009-2011 DART Musical Works Funds. Moreover, as described above, the Settling Claimants have received one hundred percent (100%) of all Musical Works Fund royalties in the past three proceedings.⁶

Conclusion

The Settling Claimants have provided all of the information required by 37 C.F.R. § 351.1(b)(2). Accordingly, the Settling Claimants herein request that the Judges grant their Joint Petition to Participate in the distribution of the 2009, 2010 and 2011 DART Musical Works Royalty Funds, which, pursuant to the Notice, shall be conducted as a paper proceeding in accordance with 17 U.S.C. § 803(b)(5)(B).

⁶ In the very few cases in which individual claimants have been awarded DART Musical Works Fund royalties, no individual claimant has ever been awarded more than approximately eleven dollars (\$11.00). *See* Librarian's Decision in Docket No. 95-1 CARP DD 92-94, 62 Fed. Reg. 6,558 (February 12, 1997) (granting a total award of \$11.03 allocated between two individual claimants); Librarian's Decision in Docket No. 99-3 CARP DD 95-98, 66 Fed. Reg. 9,360 (February 7, 2001) (granting a total award of \$6.06 to the same two individual claimants).

Respectfully submitted,

**AMERICAN SOCIETY OF COMPOSERS,
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