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The Library of Congress

In re

Distribution of Digital Audio Recording
Royalty Funds

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

**ORDER DENYING CURRY MOTION TO RESUBMIT
WRITTEN DIRECT STATEMENT**

On October 30, 2019, Eugene Curry, a pro se participant in this proceeding, filed with the Copyright Royalty Judges (Judges) his Motion to Re-Submit Written Direct Statement Previously Denied for Subject Title ([Motion](#)). The Alliance of Artists and Recording Companies (AARC) filed its Response in Opposition to the Motion ([Opposition](#)) on November 13, 2019. Mr. Curry filed his [Reply](#) on November 14, 2019. For the reasons discussed below, the Judges **DENY** the Motion.

Discussion

The Motion states:

I am asking your honors to permit me to resubmit my written direct case which I submitted three times. I contacted the CRB help department for clarification on how to correct it. After several phone conversations, it was determined that the title and subject didn't match. AARC never contacted me doing the negotiations, settlement period. Although they did reach out to the other claimants. So after realizing when they filed on the day of October 3, 2019 I tried to submit mine on the 4th. So I proceeded to ask for documentation for the discovery period which was accepted and approved. So if you would allow me to re-submit my written direct case, with the title correction, which is allowed I believe. 801(c). I don't believe this will interfere with the discovery schedule.

Motion at 1.

The deadline for filing Written Direct Statements (WDSs) in this proceeding was October 3rd. *See Notice of Participants, Voluntary Negotiation Period, and Case Schedule* at 5 ([Scheduling Order](#)) (Feb. 27, 2019). Mr. Curry had more than seven months' advance notice of that deadline. Nevertheless, by his own admission, Mr. Curry did not file—or even attempt to file—his WDS by that date.

According to the Motion, Mr. Curry made three attempts to file his WDS, only to have his filings rejected by the CRB. By design the Copyright Royalty Board (CRB)'s electronic filing and case management system (eCRB) does not permit anyone to file a Written Direct Statement once the deadline has passed. To bypass this technical restriction, it appears that Mr. Curry sought to file his WDS under a different document type. According to CRB records, Mr. Curry made three such attempts, on October 16th, 21st, and 23rd. On rejecting the filings the CRB

informed Mr. Curry of the mismatch between the document type he selected and the document he was attempting to file, and of the fact that the deadline for filing a WDS had passed.

After the third attempt, the CRB emailed Mr. Curry to advise him that a late WDS could only be filed pursuant to an order of the Judges granting permission to do so, and that a request for permission must be made in the form of a motion. The Motion ensued.¹

The Judges' procedural rules do not speak directly to the permissibility of filing a WDS after the deadline. In his Reply, Mr. Curry argues that "[u]nder 37 CFR § 351.4(c) a participant may amend or submit a new written statement during or after the discovery period." This is an overly-broad interpretation of the provision. Section 351.4(c) states

A participant in a proceeding may amend a written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period. An amended written direct statement must explain how it differs from the written direct statement it will amend and must demonstrate that the amendment is based on new information received during the discovery process. The participant amending its written direct statement may file either the amended portions of the written direct statement or submit complete new copies at its option.

37 C.F.R. § 351.4(c). The requirement that the amended WDS "must explain how it differs from the written direct statement it will amend" confirms that the purpose of the provision is to allow amendment of an already-filed WDS, not the filing of a late WDS.

Section 303.7(b)² addresses extensions of time more generally, but requires a motion for an extension to be filed *before* the deadline has expired. While 17 U.S.C. § 801(c) grants the Judges authority to make "any necessary procedural or evidentiary rulings in any proceeding"—including the ruling sought in the Motion—the Judges will not exercise that authority without, at a minimum, (1) a showing by the moving party that it has met the requirements set forth in section 303.7(b) for seeking an extension of time (including "[t]he reason or reasons why there is good cause for the delay" and "[t]he justification for the amount of additional time being sought,") and (2) an explanation why there is good cause for the moving party's failure to request an extension in advance of the deadline. 37 C.F.R. § 303.7(b)(4) and (5). Moreover, given that other parties may have taken action in reliance on the fact that the moving party has not filed by the deadline, the Judges must take into account any prejudice to those other parties. *See, e.g., Order Granting Leave to File Late Response*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II), at 3 (Dec. 19, 2013).

The Motion does not state a reason for Mr. Curry's failure to file his WDS by the deadline the Judges imposed in the *Scheduling Order*. The Judges do not regard the allegation that AARC failed to contact Mr. Curry during the negotiation period, even if true, to constitute an explanation for not meeting the deadline. Nor does the Motion attempt to justify the fact that it was filed more than three weeks *after* the filing deadline for WDSs. In addition, the Motion does not address whether AARC would be prejudiced if the Judges were to accept a late WDS

¹ Mr. Curry attempted to file a document on October 24th captioned "Motion to Accept Response to AARC Written Direct Statement," that was not a motion, but another copy of Mr. Curry's WDS. The CRB rejected it.

² Formerly section 350.7(b).

from Mr. Curry. Finally, the Judges note that they have already cautioned Mr. Curry, *in this very proceeding*, “to take greater care to comply with all of the Judges’ procedural regulations in the future.”³ *Order Granting Eugene Curry Leave to File Late PTP*, at 2 (Apr. 19, 2019).

In the absence of any explanation for failing to meet the deadline and failing to seek an extension of time in advance of that deadline, the Judges are unable to make a determination that there is sufficient cause for the Judges to excuse those failures. Consequently, the Motion is **DENIED**.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: November 15, 2019.

³ In his Reply, Mr. Curry decries AARC’s use of procedural arguments against him instead of “arguing the facts.” Reply at 1. The procedural regulations apply to all participants, whether represented by counsel or acting on their own behalf. They exist to provide for fair and efficient proceedings, and it is imperative that all participants follow them.