

Before the
COPYRIGHT ROYALTY JUDGES
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)

**MOTION OF BROADCAST MUSIC, INC., THE AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS, SESAC, INC., AND THE HARRY FOX
AGENCY LLC AS SETTLING CLAIMANTS FOR FINAL DISTRIBUTION OF
2009-2011 DART MUSICAL WORKS FUND ROYALTIES**

Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”), and 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 submit the following motion (“Motion”) to the Copyright Royalty Judges (“Judges”) for the final distribution of the remaining five percent (5%) of 2009, 2010, and 2011 Digital Audio Recording Technology (“DART”) Musical Works Fund royalties to the Settling Claimants, pursuant to 17 U.S.C. § 801(b)(3)(A).

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.

On August 29, 2017, the Judges published a Notice announcing commencement of proceeding with request for Petitions to Participate in the above-referenced docket with respect to the 2009, 2010, and 2011 DART Musical Works Fund royalties. 82 Fed. Reg. 41663 (September 1, 2017) (“Notice”). On October 2, 2017, the Settling Claimants timely filed a Joint Petition to Participate in response to the Notice and submitted the \$150 filing fee. No other party has filed a petition to participate, either through eCRB or in hard copy with the Judges, and the filing deadline has passed.³

With no parties other than the Settling Claimants filing a petition to participate and submitting the applicable filing fee, no controversy exists as to the 2009, 2010, and 2011 Musical Works Fund royalties. The Judges have clear statutory authority to distribute all remaining funds when “the distribution of such fees is not subject to controversy.” 17 U.S.C. § 801(b)(3)(A); *see also* 17 U.S.C. § 801(c). Accordingly, the Settling Claimants move for final distribution of the 2009, 2010, and 2011 Musical Works Fund royalties, both the Writers Subfund and Publishers Subfund, to the Settling Claimants pursuant to 17 U.S.C. § 801(b)(3)(A).

The Settling Claimants have already received a partial distribution of ninety-five percent (95%) of the royalties in this proceeding.⁴ For the foregoing reasons, the Settling Claimants request that the Judges order final distribution of the remaining five percent (5%) of 2009, 2010, and 2011 Musical Works Fund royalties (both Writers Subfund and Publishers Subfund) to Settling Claimants.

³ In the event that any individual or entity submits a late-filed petition to participate, such late-filed petition to participate must relate to a claim filed by the petitioner to the 2009, 2010, and/or 2011 Musical Works Writers or Publishers Subfunds in accordance with Section 1007 of Title 17. If the late-filed petition is not dismissed for failure to show good cause, the petition should be limited to funds and years in which the timely claim was filed and all remaining royalties from the other funds should be distributed to the Settling Parties.

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).

Respectfully submitted,

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