

Before the
Copyright Royalty Board
Washington, D.C. 20540

Received
SEP 08 2012
Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings Fund)
Featured Recording Artists and Copyright Owners)
Subfunds Royalties for 2011)

Docket No. 2012-3 CRB DD 2011

**SUPPORT OF SETTling CLAIMANTS' NOTICE OF SETTLEMENT AND REQUEST
FOR PARTIAL DISTRIBUTION OF THE 2011 DART SOUND RECORDINGS FUND
FEATURED RECORDING ARTISTS AND COPYRIGHT OWNERS SUBFUNDS
ROYALTIES**

The Alliance of Artists and Recording Companies ("AARC"), on behalf of itself, Jason Le Sure, the Estate of Leroy Hamilton, and Ingrid R. Taylor (collectively referred to as the "Settling Claimants"), submit these comments to the Copyright Royalty Board Notice Soliciting Comments on the Motion for Partial Distribution. Distribution of 2011 DART Sound Recordings Fund Royalties, 77 Fed. Reg. 152, 47120 (Aug. 7, 2012). The Settling Claimants respectfully offer this filing in support of their Notice of Settlement and Request for Partial Distribution of the 2011 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties. Docket No. 2012-3 CRB DD 2011 (July 11, 2012) ("Notice and Request"). AARC has settled with 3 of the 8¹ individual claimants for the 2011 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds ("2011 Sound Recordings Fund"). AARC was unable to obtain settlements with Treasa Fennie aka Write 4 U ("Write 4

¹ Although there were initially 9 individual claimants in addition to AARC, authorized representative Kobalt Neighboring Rights, Ltd. withdrew its 2011 DART Sound Recordings Fund Featured Recording Artists Subfund claim for Featured Recording Artist Benny Gallagher on April 12, 2012.

U”), Herman Kelly², Eric N. Burns, Marc Alan Suaton, and Pramod Kesav Narayana Pillai³

(collectively referred to as the “Non-Settling Claimants”).

I. Given the Settling Claimants’ significant share of record sales for royalty year 2011, distribution of 98% of the 2011 Sound Recordings Fund is warranted.

The Audio Home Recording Act of 1992 (“DART”)⁴ requires allocation of the 2011 Sound Recordings Fund royalties to be based on distribution (record sales) of the claimants’ sound recordings during the royalty year, in this case 2011. 17 U.S.C. § 1006(c)(1) (2006). SoundScan has been recognized in every DART proceeding as credible evidence of distribution for allocation of royalties. *See e.g.* Distribution of the 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (Copyright Office Feb. 7, 2001). Based on SoundScan data, the total record sales for all claimants of the 2011 Featured Recording Artists Subfund is 1,150,306,223 record sales, and the total record sales for all claimants of the 2011 Copyright Owners Subfund is 1,261,449,205 record sales. *See* Notice and Req. Ex. A (July 11, 2011) (the document titled “Seltzer Decl.”). As noted in the Notice and Request, the 2011 sales titles and figures compiled by SoundScan, the following record sales exist for the Non-Settling Claimants: 133 record sales for featured recording artist Write 4 U, 133 record sales for copyright owner Write 4 U, 2,384 record sales for featured recording artist Herman Kelly; 2,384 record sales for copyright owner Herman Kelly, and 14 record sales for copyright owner Marc Alan Suaton. *Id.* The 2011 record sales data does not list record sales for any copyright owners named Eric N. Burns or Pramod Kesav Narayana Pillai. *Id.*

² Herman Kelly lists the following aliases on his 2011 DART claims: Herman Kelly And Life, Herman Kelley, and H. Kelly. In an abundance of caution, AARC researched SoundScan record sales data using all the aforementioned names for Herman Kelly, as well as an alias he filed on previous DART claims, Afterschool Publishing Company.

³ AARC filed a motion to dismiss Pramod Kesav Narayana Pillai on April 27, 2012. Until the issue is resolved, AARC will continue to include Mr. Pillai in the list of Non-Settling Claimants; however, evidence overwhelmingly suggests Mr. Pillai’s work is not a sound recording but print material.

⁴ 17 U.S.C. §§ 1001-10 (2006).

Record sales of the Settling Claimants' 2011 Featured Recording Artists Subfund claims total 1,150,303,706 of the 1,150,306,223 universe or 99.9998% of the record sales of the 2011 Featured Recording Artists Subfund claimants. The Non-Settling Featured Recording Artists Claimants' 2011 record sales of 2,517 amount to less than .000219% of the 1,150,306,223 universe of the 2011 Featured Recording Artists Subfund claimants, which translates to less than \$1.29 for Write 4 U and Herman Kelly combined.

Record sales of the Settling Claimants' 2011 Copyright Owners Subfund claims total 1,261,446,674 of the 1,261,449,205 universe or 99.9998% of the record sales of the 2011 Copyright Owners Subfund claimants. The Non-Settling Copyright Owners Claimants' 2011 record sales of 2,531 amount to less than .0002006% of the 1,261,449,205 universe of the 2011 Copyright Owners Subfund claimants, which translates to less than \$1.77 for Write 4 U, Herman Kelly, Eric N. Burns, Marc Alan Suaton, and Pramod Kesav Narayana Pillai combined.

Given the SoundScan record sales data for the Non-Settling Claimants, the 2% of the 2011 Sound Recordings Fund that would remain after the 98% partial distribution would provide more than sufficient funds to cover any claims by the Non-Settling Claimants. The Settling Claimants do not believe that the Non-Settling Claimants could plausibly claim even 1% of the 2011 Sound Recordings Fund. Claims that are baseless and implausible are considered unreasonable. *See* Distribution of 2010 Digital Audio Recording Royalty Funds, Docket No. 2011-6 CRB DD 2010 (Copyright Royalty Bd. Nov. 17, 2011) (Order finding that the filings attempting to block partial distribution of the 2010 DART Sound Recordings Fund filed by Non-Settling Claimants Write 4 U Publishing/Treasa Fennie and Herman Kelly, who are also Non-Settling Claimants in this current DART proceeding, did not amount to reasonable objections and so, could not block the partial distribution.); Distribution of 2009 Digital Audio Recording

Royalty Funds, Docket No. 2010-5 CRB DD 2009 (Copyright Royalty Bd. Nov. 2, 2010); Partial Distribution of 2008 DART Sound Recordings Fund, 2009-3 CRB DD 2008 (Copyright Royalty Board Aug. 19, 2009) (order granting) (rejecting an objection to a request for partial distribution because the objection was baseless and “facially implausible”). Here, there can be no reasonable objection to the 98% partial distribution of the 2011 Sound Recordings Fund, therefore, the partial distribution is warranted. Moreover, the 98% partial distribution will further the congressional mandate of efficient and swift distribution of royalties to entitled copyright holders.

II. If the final 2011 royalty percentages for the Settling Claimants differ from the partial distributions made to them pursuant to Settling Claimants’ Notice and Request, the Settling Claimants agree to return any excess amounts plus interest to the extent necessary to comply with the CRB’s final determination on the distribution of fees.

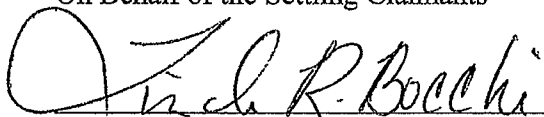
In the Notice and Request, the Settling Claimants agreed to be bound by the condition uniformly imposed under section 801(b)(3)(C), as a condition to the partial distribution of the 2011 Sound Recordings Fund royalties. Here, the Settling Claimants confirm that in the event that the final 2011 royalty percentages for the Settling Claimants differ from the partial distributions made to them pursuant to their Notice and Request, any claimant who has received more than its share will “return any excess amounts to the extent necessary to comply with the final determination on the distribution of fees” plus interest. *See* 17 U.S.C. § 801(b)(3)(C)(ii); *see also* Distribution of 2010 Digital Audio Recording Royalty Funds, Docket No. 2011-6 CRB DD 2010 (Copyright Royalty Bd. Nov. 17, 2011); Distribution of 2005-2008 DART Musical Works Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW) (Copyright Royalty Bd. Apr. 14, 2011). The Settling Claimants agree to sign and file such an agreement as prepared by the Copyright Royalty Judges pursuant to §801(b)(3)(C)(ii)(iii).

III. Conclusion

In view of the foregoing, the Settling Claimants believe that there can be no reasonable objection to the partial distribution of 98% of the 2011 Sound Recordings Fund to the Settling Claimants.

WHEREFORE, the Settling Claimants respectfully request that the CRB grant their Notice and Request, thereby distributing 98% of the 2011 Sound Recordings Fund to AARC, as agent for the Settling Claimants.

Respectfully submitted,
On Behalf of the Settling Claimants

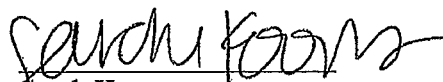
A handwritten signature in cursive script that reads "Linda R. Bocchi". The signature is written in black ink and is positioned above the typed name and contact information.

Linda R. Bocchi, Esq.
DC BAR # 338012
VA BAR # 77599
Executive Director
Alliance of Artists and Recording Companies
700 N. Fairfax Street, Suite 601
Alexandria, VA 22314
(703) 535-8101 (phone)
(703) 535-8105 (facsimile)

September 6, 2012

CERTIFICATE OF SERVICE

I, Sarah Koons, Junior Royalty Administrator of the Alliance of Artists and Recording Companies, certify that on this September 6, 2012, a copy of the foregoing "Support of Settling Claimants' Notice of Settlement and Request for Partial Distribution of the 2011 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties" was served, by the designated delivery method, on the following parties:


Sarah Koons

NON-SETTLING CLAIMANTS BY OVERNIGHT MAIL:

Eric N. Burns
16568 Coriander Place
Fontana, CA 92337

Treasa Fennie aka Write 4 U
P.O. Box 812
New Brunswick, NJ 08903

Herman Kelly
aka Herman Kelly, Herman Kelly And Life,
Herman Kelley, H. Kelly
P.O. Box 14157
Detroit, MI 48214

Marc Alan Suaton¹
13 Faubourg de Paris
89340 Villeneuve-la-Guyard
FRANCE
areplica@alanreplica.com

Pramod Kesav Narayana Pillai²
Payikkattu House
Kalawamkodan PO
Cherchala

¹ No postal carrier is able to guarantee overnight delivery service to France. We have therefore sent this pleading to Mr. Suaton electronically via email and by USPS Flat Rate Express Mail, which will arrive in an estimated 3-5 business days.

² No postal carrier is able to guarantee overnight delivery service to India. We have therefore sent this pleading to Mr. Pillai electronically via email and by USPS Flat Rate Express Mail, which will arrive in an estimated 3-5 business days.

688586 Alleppy, Kerala
INDIA
pramodpillai@bsnl.in

SETTLING CLAIMANTS BY STANDARD MAIL:

Estate of Leroy Hamilton
c/o LaTonya Hamilton
PO Box 20325
Baltimore, MD 21284

Ingrid R. Taylor
5620 New England Drive
New Orleans, LA 70129

Jason Le Sure
1243 S. Mariposa Ave
Apt. 7
Los Angeles, CA 90006