

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Distribution of the 2005 and 2006
Digital Audio Recording Royalty Funds

Docket No. 2009-4 CRB DD 2005-2006

ORDER SETTING DEADLINE AND PROCEDURES FOR
THE FILING OF WRITTEN DIRECT STATEMENTS AND
THE ANNOUNCEMENT OF THE DISCOVERY PERIOD

On September 14, 2009, pursuant to 17 U.S.C. § 803(b)(3), the Copyright Royalty Judges (“Judges”) announced the three-month voluntary negotiation period to allow the parties to negotiate in an effort to produce a settlement resolving the distribution of the royalties remaining in the 2005 and 2006 DART Sound Recording Funds. At the conclusion of the negotiation period, the Alliance of Artists and Recording Companies (“AARC”), on its behalf and that of the Settling Parties, and Edward Mazique notified the Judges that they were unable to reach agreement on this issue. In the absence of such an agreement, the Judges are announcing the deadline for the filing of written direct statements and setting forth the procedures for the filing and exchange of the statements as well as announcing the 45-day discovery schedule and the date for the post-discovery settlement conference.

Because of the difficulties associated with the receipt and processing of documents at the Library of Congress in general, it is critical that all parties to this proceeding carefully follow the filing requirements contained herein, as well as the requirements for service of the written direct statements.

Filing of Written Direct Statements with the Copyright Royalty Board

The deadline for filing written direct statements with the Copyright Royalty Board (“Board”) is **Friday, May 14, 2010**. Written direct statements **MUST** be in the possession of the Board by 3 p.m. on Friday, May 14, 2010.

Filing by U.S. Mail and Commercial Couriers

The written direct statements must be properly addressed and delivered. Experience counsels that parties work on the preparation of their direct statements right up to the time of the filing deadline and seek to file them on the last day. Mailing a statement on that day, or even several days before the deadline, is not sufficient if it does not reach the Board by 3 p.m. on May 14. Likewise, delivering the statement to a commercial courier on or shortly before the deadline does not guarantee that the Board will have it by 3 p.m. on May 14. Due to delivery restrictions placed on all Capitol Hill buildings, commercial couriers are directed to the Congressional

Courier Acceptance Site which can result in the Board not receiving the item for several days. Likewise, written direct statements filed using the United States Postal Service are sent offsite to be screened, often resulting in delays of several days or even weeks before receipt by the Board. Again, what is controlling in this proceeding with respect to timeliness is not whether the party attempted to deliver the written direct statement by 3 p.m. on May 14, 2010, but rather that the Board received it by that time.

Filing by Hand

Consequently, unless a party seeks to file its written direct statement well in advance of the May 14 deadline, the Judges strongly recommend that parties hand deliver their written direct statements to the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000. Statements must be delivered by a private person (such as a paralegal from a law firm). If a party's written direct statement all fits in one or more envelopes carried by the private person, that person will be allowed access to the building and should proceed to the Public Information Office of the Copyright Office, Room LM-401, which is located on the fourth floor of the Madison Building. The filing may then be made at the Public Information Office. If a party's written direct statement must be placed in one or more boxes, that party must make arrangements to deliver its statement to the Loading Dock of the Madison Building. Parties are advised that they will be required to furnish their own cart or dolly, if needed, to transport their box(es) from the Loading Dock to the fourth floor. Specific procedures for delivering items to the Loading Dock will be sent to the parties closer to the May 14 deadline.

The Board must receive the correct number of copies of the written direct statements, which is an original and five paper copies, as well as one electronic copy as required by 37 C.F.R. § 350.4(a). If the filing does not contain the correct number of copies, both paper and electronic, or an original, it will be returned.

Parties may receive date-stamped copies of their filing in accordance with the following: If the statement is filed by hand, an extra copy must accompany the filing. If the statement is filed by mail, an extra copy and a stamped, self-addressed envelope must be included. Under no circumstances will the Board make extra copies of a written direct statement for purposes of providing a date-stamped copy.

Service on Other Parties

One copy of a party's written direct statement must be served on each person who appears on the "Counsel or Representative" box on the service list on or before May 14, 2010. By this we mean that each of the parties must have copies of everyone's written direct statement by no later than 5 p.m. on May 14, 2010. Mailing a written direct statement on May 14 does **not** satisfy this requirement, nor does delivering it after 5 p.m. The purpose of this requirement is to ensure that all parties have each other's written direct statements by the close of business on May 14 so that all will have an equal amount of time to prepare their requests for underlying documents. Parties may choose their own delivery methods for serving written direct statements on other parties.

Failure to file a written direct statement, or to properly serve it, are grounds for dismissal of the party from the proceeding. Questions regarding the timeliness of written direct statements should be directed to the CRB Specialist at (202) 707-7658 or e-mail at crb@loc.gov.

Discovery Schedule

The 45-day discovery schedule for this proceeding is set forth below:¹

ACTION	DATE
Filing of Written Direct Statements	May 14, 2010
Requests for Underlying Documents	May 21, 2010
Responses to Requests for Underlying Documents	May 28, 2010
Completion of Document Production	May 31, 2010
Follow-Up Requests for Underlying Documents	June 7, 2010
Responses to Follow-Up Requests	June 14, 2010
Motions Related to Document Production	June 18, 2010
Production of Documents in Response to Follow-Up Requests	June 22, 2010
Last day of discovery. Final discovery motions deadline.	June 28, 2010

By 3pm

Parties shall serve all documents, responses, objections, and requests upon the appropriate party or parties by facsimile transmission, electronic transmission or by hand no later than 5 p.m. on the date of the deadline. No discovery is filed with the Copyright Royalty Board. Only motions are filed with the Board. The provisions of regulations of General Administrative Provisions, 37 C.F.R. Part 350, apply.

¹ If the contested amount of the Mazique share is \$10,000 or less, then the small claims procedures provided for in 17 U.S.C. § 803(b)(4) and 37 C.F.R. § 351.3(b) will apply.

Settlement Conference

The post-discovery settlement conference will take place, outside the presence of the Copyright Royalty Judges, on **Wednesday, July 14, 2010**. The parties' written Joint Settlement Conference Report shall be filed with the Judges on **Thursday, July 15, 2010**. *See* 37 C.F.R. § 351.7.

SO ORDERED.



James Scott Sledge
Chief United States Copyright Royalty Judge

Dated: January 14, 2010