

Before the
Copyright Royalty Board
United States Copyright Office
Washington, D.C. 20540

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FEB 17 2012

Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings)
Fund Copyright Owners Subfund)
Royalties for 2008)

Docket No. 2009-3CRB DD 2008

SUPPLEMENTAL REQUEST FOR DISTRIBUTION OF THE 2008 DART SOUND RECORDINGS FUND COPYRIGHT OWNERS SUBFUND ROYALTIES

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself and ROIR Records, VP Records, Kosmic Daydream, Eric N. Burns, Eric N. Burns D.B.A. Art Seigner, Herman Kelly, Fred James, Sylar, the Process, J Rad, Barry Cohen, Joel Evan, Kettle, Joe, Nation, John Kazian, Neptune, Vanessa Thomas and JC Records (collectively referred to as the “Settling Parties”), submits this Supplemental Request For Distribution Of The 2008 DART Sound Recordings Fund Copyright Owners Subfund portion of the additional 2008 DART royalties paid into the U.S. Copyright Office since the issuance of the Copyright Royalty Board (“CRB”) order granting the Settling Parties’ request for partial distribution.¹ Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds Docket No. 2009-3 CRB DD 2008.

¹ This supplemental request is only for the 2008 DART Sound Recordings Fund Copyright Owners Subfund because AARC has been informed by the Licensing Division of the Copyright Office that the 2008 DART Sound Recording Fund Featured Recording Artists Subfund portion of these back monies will be distributed in March to AARC, on behalf of all featured recording artists claimants. Licensing Division of Copyright Office, Supplemental DART Distribution 2008 Featured Recording Artists Subfund, (2012).

I. Background.

On July 21, 2009, AARC, on behalf of the Settling Parties, submitted a notice of settlement and request for partial distribution of the 2008 DART Sound Recordings Fund Copyright Owners Subfund ("2008 Sound Recordings Fund"). Pursuant to section 801(b)(3)(A), the Settling Parties requested distribution of 98% of the 2008 Sound Recordings Fund, asserting that the remaining 2% would be sufficient to satisfy any claims of Matthew Scott Primous and Eugene "Lambchops" Curry/Tajai Music (collectively referred to as the "Non-Settling Parties"). 17 U.S.C. § 801(b)(3)(A). The Settling Parties demonstrated with the use of SoundScan data, which has been routinely recognized as reliable record sales data in DART proceedings,² that the Non-Settling Parties had no record sales in 2008. *See* Seltzer Decl. Ex. A, July 21, 2009. On August 19, 2009, the CRB issued an order granting the Settling Parties' request for distribution of 98% of the 2008 Sound Recordings Fund. The order went on to comment on the two Non-Settling Parties' claims. It called one claim "facially implausible" and noted that the other claim presented no proof of the one million record sales it purported to have sold. Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds Docket No. 2009-3 CRB DD 2008. On September 17, 2009, pursuant to the CRB order, the Licensing Division of the U.S. Copyright Office distributed 98% of the 2008 Sound Recordings Fund to AARC on behalf of the Settling Parties. Since the issuance of the CRB's partial distribution order and the Settling Parties' receipt of the funds, the Copyright Office has received a significant back payment of nearly four hundred thousand dollars in 2008 Sound Recordings Fund royalties.

² Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (Feb. 7, 2001); *see also* Distribution of 1992, 1993 and 1994 Musical Works Fund, 62 Fed. Reg. 6558, 6562 (Feb. 12, 1997)

II. Argument

The Settling Parties request a 100% distribution of the 2008 DART Sound Recordings Fund Copyright Owners Subfund portion of the back payments received by the Copyright Office since issuance of the CRB's partial distribution order. Sections 801(b)(3)(A) and 1007 (c) direct the CRB to order distribution of royalties, "to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy." The Copyright Royalty and Distribution Reform Act ("CRDRA"), 17 U.S.C. § 801(b)(3)(A) (2009); Audio Home Recording Act of 1992 ("AHRA"), 17 U.S.C. § 1007(c) (2006). In section 1007(c) of the AHRA, Congress specifically provided that even if there is a controversy, the CRB "shall, to the extent feasible, authorize the distribution of *any* amounts that are not in controversy." 17 U.S.C. § 1007(c) (2006) (emphasis added). Congress further emphasized its intent that royalties be distributed to interested copyright parties in a timely manner by amending section 801(b)(3) of the CRDRA "to mandate that the CRB make partial distribution during the pendency of a distribution proceeding." H.R. Rep. 108-408, at 23, (2004). This amendment not only required that the CRB grant partial distributions of funds that are not in controversy, but went on to mandate "that the CRJs make a partial distribution during the pendency of a distribution proceedings for the licenses..., whether [the funds] are in controversy or not, so long as all participants provide the CRJs with a signed written agreement obligating them to return any excess amounts necessary to comply with a final determination of a distribution proceeding." *Id.*³ By repeatedly mandating partial distributions, Congress has recognized that there is often a "lengthy period of time between the payment of royalties by copyright users and the conclusion

³ Although the Settling Parties submit that they are entitled to these additional 2008 DART Sound Recordings Fund Copyright Owners Subfund royalties because they are not in controversy, we are prepared to provide the CRB with a signed agreement obligating us to return any excess amounts necessary to comply with a final determination of a distribution proceeding should the CRB determine that one is necessary.

of the distribution proceedings,” which can burden interested copyright parties. *Id.* Avoiding delays in the distribution of uncontested royalties to parties who, like the Settling Parties, have negotiated in good faith to avoid litigation conforms to both the letter and the spirit of the AHRA and CRDRA.

Notably, in keeping with Congressional intent, the CRB has historically awarded distributions of the full amount of Sound Recordings Funds and Musical Works Funds not in controversy.⁴ The CRB’s predecessors, the Copyright Arbitration Royalty Panel (“CARP”) and the Copyright Royalty Tribunal (“CRT”), also regularly awarded full distributions of uncontested royalties, expediting the distribution to the interested copyright parties who were entitled to them.⁵

Here, a full distribution of these additional payments is warranted because the CRB has already issued a determination as to what portion of the 2008 Sound Recordings Fund royalties remain in controversy. Specifically, the CRB granted the Settling Parties’ request for 98% of the 2008 Sound Recordings Fund because it was settled. By granting the Settling Parties’ motion, the CRB determined that the remaining 2% of the 2008 Sound Recordings Fund royalties deposited with the Copyright Office at that time would be sufficient to satisfy the claims of the Non-Settling Parties therefore this 2% is the amount that remains in controversy. Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds Docket No. 2009-3 CRB

⁴ Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds, Docket No. 2009-3 CRB DD 2008 (August 19, 2009); Order, In the Matter of Distribution of 2007 Digital Audio Recording Royalty Funds, Docket No. 2008-3 CRB DD 2007 (October 14, 2008).

⁵ See e.g., Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9365 (Feb. 7, 2001); Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 99-3 CARP DD 95-98 (Dec. 22, 1999); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (Oct. 8, 1998); Order, In The Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (Oct. 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (Oct. 23, 1996); Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 (Sept. 12, 1994); Order, In The Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 993 (Sept. 24, 1994).

DD 2008. Indeed, it is likely that the 2% is much more than will be needed to satisfy any claim that the Non-Settling Parties can establish at hearing since the CRB has already found them “facially implausible” and unsupported by any facts. The CRB has finally determined that 2% of the 2008 Sound Recordings Fund royalties deposited with the Copyright Office on September 17, 2009 are sufficient to cover any claims of the Non-Settling Parties therefore, any additional 2008 payments deposited with the Copyright Office after that date are not in controversy and should be distributed in accordance with the CRB’s August 19, 2009 Order, AHRA and CRDRA. Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds Docket No. 2009-3 CRB DD 2008; 17 U.S.C. § 1007(c) (2006); 17 U.S.C. § 801(b)(3)(A) (2009).

III. Conclusion

WHEREFORE, for the reasons set forth above, the Settling Parties respectfully request that pursuant to its Order of August 19, 2009, the Copyright Royalty Board distribute to AARC, as a common agent for the Settling Parties under 17 U.S.C. § 1007(a)(2) (2006), the 2008 DART Sound Recordings Fund Copyright Owners Subfund royalties paid into the Copyright Office since the September 17, 2009 partial distribution.

Respectfully submitted,
On Behalf Of The Settling Parties



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February 17, 2012

EXHIBIT A

DECLARATION OF RICHARD SELTZER

I, Richard Seltzer, declare under penalty of perjury as follows:

1. I am a Professor of Political Science at Howard University, and I currently teach two advanced graduate courses in statistics and two other courses in statistics and survey techniques. I have also designed and conducted surveys for over twenty years. I have previously been qualified as an expert in statistics and survey research in several federal and state courts. In addition to my teaching responsibilities, I have acted as a consultant to a variety of organizations in creating and maintaining complex databases. In conjunction with one of these clients – the Alliance of Artists and Recording Companies (“AARC”) – I have become familiar with SoundScan sound recordings sales data.
2. I confirm that AARC’s Royalty Distribution System uses SoundScan data to determine the annual allocation of Sound Recordings Fund royalties among claimants before the Copyright Royalty Board.
3. I have reviewed the 2008 SoundScan sales data in the AARC Royalty Distribution System.
4. The 2008 universe of record sales for claimants to the copyright owners subfunds, which include the Settling Parties as defined in AARC’s “Report of Settlement Status and Request for Partial Distribution of the 2008 Sound Recordings Fund,” Matthew Scott Primous and Eugene Lambchops Curry(Tajai Music) is 1,223,490,142 units.
5. I also searched the 2008 SoundScan data but did not find a label named “Matthew Scott Primous”, “Eugene Lambchops Curry”, or “Tajai Music”. Therefore, I confirm that SoundScan reported no sales for “Matthew Scott Primous”, “Eugene Lamchops Curry”, or “Tajai Music” during 2008.

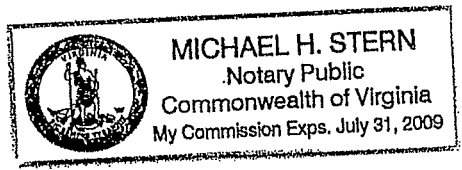
I declare under penalty of perjury that the foregoing is true and correct.

Richard Seltzer
Richard Seltzer

7-21-09
Date

Certified this 21 day of 7, 2009

Michael H. Stern
Notary Public
My commission expires: 7-31-09



CERTIFICATE OF SERVICE

I, Sarah Koons, Junior Royalty Administrator of the Alliance of Artists and Recording Companies, certify that on this February 17, 2012, a copy of the foregoing "Supplemental Request for Distribution of the 2008 Sound Recordings Fund Copyright Owners Subfund Royalties" was served, by the designated delivery method, on the following parties:


Sarah Koons

NON-SETTLING PARTIES BY OVERNIGHT MAIL:

Matthew Scott Primous
PO Box 973
Penfield, NY 14526

Eugene "Lambchops" Curry/Tajai Music
4000 Gypsy Lane
Apt. 245
Philadelphia, PA 19129

SETTLING PARTIES BY STANDARD MAIL:

*Kosmic Daydream	* The Process
*Barry Cohen	*Kettle Joe
*Sylar	*Vanessa Thomas
*J Rad	*John Kazian
*Neptune	*Zen Tricksters
*Joel Evan	*Nation
*VP Records	*ROIR Records

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