

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

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SEP 03 2009

Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings)
Fund/Sound Copyright Owners' Subfunds)
Royalties For 2008)
)

Docket No. 2009-3 CRB DD 2008

**OPPOSITION OF THE ALLIANCE OF ARTISTS AND RECORDING COMPANIES
TO THE FILING OF TAJAI MUSIC INC./EUGENE "LAMBCHOPS" CURRY¹**

The Alliance of Artists and Recording Companies ("AARC") is a non-profit organization formed to administer Audio Home Recording Act of 1992 ("AHRA") royalties for sound recording copyright owners, as authorized by sound recording copyright owners. Audio Home Recording Act of 1992, 17 U.S.C. §§ 1001-1010 (2007). AARC is an Interested Copyright Party ("ICP") in AHRA proceedings as an organization that represents sound recording copyright owners. 17 U.S.C. § 1001(7)(D). AARC, as an ICP, filed claims in the proceedings for the 2008 DART/Sound Recordings Fund/ Sound Recording Copyright Owners' Subfunds.²

I. Background.

In the 2008 DART/Sound Recordings Fund/Sound Recording Copyright Owners royalty distribution proceeding, AARC filed, with the Copyright Royalty Board ("CRB"), a notice of settlement and request for partial distribution of 98% of the 2008 DART/Sound Recordings

¹ Eugene Curry has filed his claim and corresponding pleadings in the names of Eugene Curry, Lambchops and TAJAI, his record company.

² In compliance with the governing regulations of the Copyright Royalty Board Alliance of Artists and Recording Companies has filed this timely opposition to TAJAI's filing within the requisite five-business days from receipt of TAJAI's filing. 37 C.F.R. § 350.4(f) (2007).

Fund/Sound Recording Copyright Owners royalties to the parties that had settled. The notice was filed on behalf of AARC, 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, Kosmic Daydream, Nation, John Kazian, Neptune, Vanessa Thomas and JC Records (collectively referred to as the Settling Parties). In the notice, the Settling Parties reported that the 2008 DART/Sound Recordings Fund/Sound Recording Copyright Owners royalties proceeding was settled, except for the claims TAJAI and Matthew Primous ("Primous"). On August 19, 2009, the CRB issued an Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds Docket No. 2009-3 CRB DD 2008 (August 19, 2009), granting distribution of 98% of the 2008 AHRA/Sound Recordings Fund/Sound Recording Copyright Owners to the Settling Parties.

In the 2008 DART Distribution Proceeding, the Settling Parties maintained that partial distribution was warranted to prevent any further delay in the distribution of 98% of the royalties, which represents the percent of royalties *not* in controversy. The Settling Parties cited section 1007(c) of the AHRA and section 351.2 (b) of the CRB's regulations for the proposition that the CRB is authorized to order precontroversy partial distributions of monies that are *not* in controversy: "During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims *with respect to which a controversy exists*, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy." 17 U.S.C. § 1007(c) (emphasis added); *see also* 37 C.F.R. § 351.2(b)(1) (2007). The Settling Parties also included precedent confirming the CRB's authority to order a partial distribution of royalties that are not in controversy, before a formal declaration of

controversy.³ In each proceeding, the CRB approved the Settling Parties' request for 98% of the Sound Recordings Fund royalties based on the Settling Parties representation that these funds were not in controversy. Also, the Settling Parties agreed that should it be concluded, based on a hearing for the relevant years' royalties, that the allocation percentages per claimant were different than originally believed at the time of the partial distribution, the Settling Parties would refund the overpaid royalties plus interest.

On August 28, 2009, shortly after the CRB issued its distribution Order, AARC received by regular mail TAJAI's motion requesting 50% of the remaining 2% of the 2008 Sound Recording Sound Recording Copyright Owners' Subfund.⁴ TAJAI argues that he is entitled, based on his allegations, to 50% of the remaining 2% of the 2008.

II. Distribution of 50% of the Remaining 2% in Each of the 2008 DART Sound Recordings Fund Proceedings to TAJAI Is Not Warranted Nor Permitted Based on TAJAI's Motion.

As detailed above, the CRB may issue a partial distribution only of royalties that are *not* in controversy.⁵ All royalties in controversy require further proceedings in the form of a formal hearing unless an abbreviated proceeding is invoked by the CRB. 37 C.F.R. §§ 351.3(a), 351.8.

³ See Order, In The Matter of Distribution of the 1995,1996,1997 and 1998 Digital Audio Home Recording Funds, Docket No. 99-3 CARP DD 95-98 (December 22, 1999); see also Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 2000-6 CARP CD 98 (October 12, 2000); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (October 8, 1998); Order, In The Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (October 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (October 23, 1996); Orders, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 and In The Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 993 (September 12, 1994 and Sept. 24, 1994); see also Order, In The Matter of Distribution of the 1992-1995 Satellite Royalty Funds, Docket No 97-1 CARP SD 92-95 (March 17,1997).

⁴ TAJAI is required by CRB regulations to serve its pleading on AARC, "by means no slower than overnight express mail on the same day the pleading is filed." TAJAI sent the pleading on August 25, 2009, by regular mail, and so it reached AARC on August 28, 2009. Therefore, TAJAI's service of this motion on AARC by regular mail violates the Copyright Royalty Boards' service requirements. 37 C.F.R. § 350.4(h). The service is thereby flawed and the motion should be dismissed on procedural grounds.

⁵ See cases cited *supra* note 3.

A Small Claims abbreviated proceeding may be invoked if the contested amount of the claim is \$10,000 or less. 37 C.F.R. § 351.3(b). The CRB may invoke a Paper Proceeding, the second of the two abbreviated proceedings, if the case has no genuine issue of material fact, evidentiary hearings are not necessary and all parties in the proceeding agree in writing, or the CRB applies the proceeding based on a motion or *sua sponte*. 37 C.F.R. § 351.3(c). Outside of holding a formal hearing or an abbreviated proceeding, royalties that are in controversy may not be distributed by the CRB. 17 U.S.C. § 1007(c); 37 C.F.R. §§ 351.2(b)(1), 351.3. TAJAI's motion therefore violates the AHRA and CRB regulations.

III. Conclusion.

Accordingly, the Settling Parties respectfully request that the CRB deny TAJAI's motion on the basis that, pursuant to the AHRA and CRB regulations, royalties in controversy cannot be distributed based on a motion, without holding a formal hearing or an abbreviated proceeding.

Moreover, the Settling Parties respectfully suggest that a hearing or abbreviated proceeding at this time, of a mere 2% of the less than \$500,000 in 2008 Sound Recording Copyright Owners' royalties, would not be cost-effective or administratively prudent. Incurring the cost of a distribution proceeding to determine allocation of such a small sum, could lead to a proceeding where the costs, both for the CRB and the parties, outweigh the financial results of the proceeding.

Equally relevant are the facts that, based on SoundScan data⁶, TAJAI and Primous, the

⁶ SoundScan is the industry-recognized source for sound recording sales in the United States and so the data source used by AARC as the basis for its motions for partial distribution and annual allocation of royalties to its participant featured artists and sound recording copyright owners. Historically decision makers in DART distribution proceedings have recognized SoundScan as a reliable sales data source. Distribution Order, Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360 (February 7, 2001); *see also* Distribution Order, Distribution of 1992, 1993 and 1994 Musical Works Fund, 62 Fed. Reg. 6558 (February 12, 1997).

only non-settling parties remaining in the DART 2008 proceeding, have no sales as sound recording copyright owners.⁷ Therefore, postponing a distribution proceeding, which the Settling Parties support, will not deprive the non-settling parties of any amount of royalties.

WHEREFORE, for the reasons set forth above, the Settling Parties respectfully request that the CRB deny TAJAI's motion for the distribution of 50% of the remaining DART 2008 royalties.

Respectfully submitted,



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August 3, 2009

⁷ Declaration of Richard Seltzer, Ex. A.

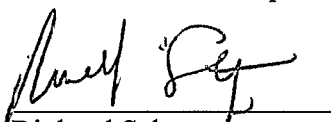
EXHIBIT A

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.

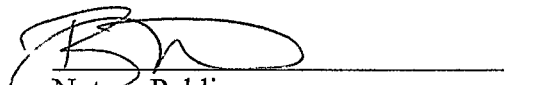
I declare under penalty of perjury that the foregoing is true and correct.


Richard Seltzer

9/3/09
Date

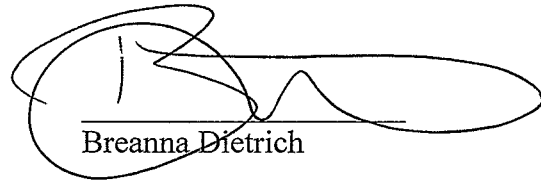
City of Alexandria, VA
Commonwealth of VA

Certified this 3 day of 9, 2009


Notary Public
My commission expires: 5/31/2013

CERTIFICATE OF SERVICE

I, Breanna Dietrich, Deputy Director of Royalties of the Alliance of Artists and Recording Companies, certify that on this September 3, 2009, a copy of the foregoing "Opposition of the Alliance of Artists and Recording Companies to the Filing of TAJAI Music Inc./Eugene "Lambchops" Curry" was served, by the designated delivery method, on the following parties:



Breanna Dietrich

BY OVERNIGHT MAIL

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Matthew Scott Primous
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