

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2006-5 CRB DD 2002-2004]

Distribution of the 2002, 2003, and 2004 Digital Audio Recording Technology Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2002, 2003, and 2004 Musical Works Funds. The Judges are also announcing the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying \$150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the \$150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the \$150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the \$150 filing fee, must be addressed to: Copyright Royalty Board, P.O. 70977, Washington, DC 20024-0977. If hand delivered by a private party, Petitions to Participate, along with the \$150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE, Washington, DC 20559-6000. If delivered

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by a commercial courier, Petitions to Participate, along with the \$150 filing fee, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE, Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Brent, CRB Program Specialist.
Telephone: (202) 707-7658. Telefax: (202) 252-3423 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (the "AHRA"), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties by the Copyright Royalty Judges ("Judges"), provided that the interested copyright parties file a claim with the Copyright Royalty Board each year during the months of January and February. 17 U.S.C. 1005, 1007.

The AHRA provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66 2/3% of the royalties and the Musical Works Fund receives the remaining 33 1/3%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists

Subfund. The royalty fees allocated to the Sound Recordings Funds are divided among these four subfunds according to the percentages set out in section 1006 of the Copyright Act. 17 U.S.C. 1006(b)(1). Similarly, the statute prescribes that the royalty fees allocated to the Musical Works Fund be divided equally between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b)(2).

Distribution of these fees may occur in one of two ways. The interested copyright parties within each subfund may either negotiate the terms of a settlement as to the division of royalty funds,¹ or the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. *See* 17 U.S.C. 1006(c).

On May 19, 2006, the Judges received a motion filed jointly by Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency (hereinafter “the Settling Parties”) asking the Judges to authorize a partial distribution of 95% of the 2002, 2003, and 2004 digital audio recording technology (“DART”) Musical Works Funds. The Settling Parties sought the distribution under 17 U.S.C. 801(b)(3)(A), which provides that royalty fees not subject to controversy may be distributed by the Judges. Subsequently, on September 27, 2006, the Judges held a hearing on the motion; and after considering the views of the claimants participating in the hearing, including an objection to the motion by one claimant, the Judges granted the motion, finding that retention of 5% of the 2002, 2003, and 2004 DART Musical Works Funds would be sufficient to resolve any potential controversies as to the distribution of royalties. *See* Order in Docket No. 2006-5 CRB DD 2002-2004 (October 2, 2006). The Judges also determined that it would begin a proceeding to resolve

¹ For each of the claim years 2002, 2003, and 2004, the interested copyright parties to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves as to the proportionate share that each party receives from the subfunds; consequently, these funds have been distributed.

any existing controversies as to the remaining 5% of the 2002, 2003, and 2004 DART Musical Works Funds.² *Id.* Today's notice commences that proceeding.

Commencement of Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that a controversy exists as to the distribution of the 2002, 2003, and 2004 DART Musical Works Fund. We reach this determination, in this instance, for two reasons. First, an objection to the motion for partial distribution was raised by a claimant who participated in the September 27, 2006, hearing. Second, to date we have not received notification that any settlements have been reached for any of these years, nor have we received motions for final distribution.

The Judges are consolidating the consideration of the distribution of the 2002, 2003, and 2004 DART Musical Works Funds into a single proceeding because the issues regarding the distribution of the royalty fees are similar, if not the same, for each year. Moreover, due to the relatively low amount of funds for each year, consolidation provides a cost savings to the parties and promotes administrative efficiencies.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2). Participants also must identify by year each subfund in the Musical Works Fund to which they are asserting a claim to royalties. Petitions to Participate submitted by interested parties whose claims do not exceed \$1,000³ must contain a statement that the party will not seek a distribution of more than \$1,000. No filing fee is required for these parties. Interested parties

² On July 1, 2008, the Settling Parties filed a motion requesting commencement of the proceeding mentioned in the October 2, 2006, order.

³ The Copyright Royalty Judge Program Technical Corrections Act, Public Law No. 109-303, changed the amount from \$10,000 to \$1,000.

with claims exceeding one thousand dollars (\$1,000), however, must submit a filing fee of one hundred and fifty dollars (\$150) with their Petition to Participate or it will be rejected. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the "Copyright Royalty Board." If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Further procedural matters, including scheduling, will be addressed after Petitions to Participate have been received.

In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless the party is an individual who represents herself or himself.

Dated: August 18, 2008



James Scott Sledge,
Chief United States Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]