

**COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DISTRIBUTION OF DIGITAL AUDIO  
RECORDING TECHNOLOGY MUSICAL  
WORKS ROYALTY FUNDS**

**DOCKET NO. 2010-8 CRB DD 2005-  
2008 (MW)**

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**ORDER REGARDING COMMENCEMENT  
OF PAPER PROCEEDINGS**

The Copyright Royalty Judges (Judges) ordered, on April 12, 2013, distribution of royalties deposited to the Musical Works fund for the years 2005, 2007, 2008, to the Settling Parties in this proceeding.<sup>1</sup> One claimant, Mr. David Powell, remains with regard to the Musical Works fund deposited for 2006. By the same order, the Judges established a Voluntary Negotiation Period<sup>2</sup> to permit all participants to attempt to settle the remaining controversy. The order required participants to file a joint report of the progress of their settlement negotiations on or before August 5, 2013.

The Judges received Mr. Powell's report<sup>3</sup> on August 2. On August 5, 2013, the Settling Parties in this proceeding filed their joint report on the status of negotiations and a Motion for Paper Proceeding. The filings confirm that negotiations between the Settling Parties and Mr. Powell were unsuccessful.

The Settling Parties contend that Mr. Powell has provided insufficient evidence of the validity of his claim and that they have been unable to substantiate his claim independently. The Settling Parties seek dismissal of Mr. Powell's claim as "void on its face." In the alternative, the Settling Parties urge a paper proceeding under 17 U.S.C. § 803(b)(5)(B). The Settling Parties submit that a this controversy might qualify as small claims procedure under 17 U.S.C. § 803(b)(4)(A).

**Small Claims**

The Judges acknowledge that Congress included a small claims provision in chapter 8 of the Copyright Act to minimize expense to individual and unrepresented claimants. The Judges must utilize the small claims procedure for any claim valued at less than \$10,000, or any claim,

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<sup>1</sup> The Settling Parties are: Broadcast Music, Inc.; the American Society of Composers, Authors and Publishers; SESAC, Inc.; and The Harry Fox Agency, Inc.

<sup>2</sup> See 17 U.S.C. § 803(b)(3); 37 C.F.R. § 351.2.

<sup>3</sup> Mr. Powell included his settlement negotiation report in a document entitled "Motion for Reversible Error Objection 2005, 2007, 2008 DART Musical Works Funds; Results Announcing Voluntary Negotiations Period."

regardless of its stated value, for which the claimant will agree to accept less than \$10,000. The small claims procedure is not, however, a summary judgment procedure in which the Judges may, as a threshold matter, weigh evidence of value. In this proceeding, the Settling Parties assert that Mr. Powell's claim, if valid, is amenable to treatment as a small claim. Mr. Powell has asserted, however, that his claim is valued at amounts between \$50,000 and \$700,000. This valuation controversy removes the claim from the "small claims" category.

### **Paper Proceeding**

The issues remaining between the Settling Parties and Mr. Powell are, however, amenable to resolution as "paper proceedings". The remaining issues relate to the validity and amount of Mr. Powell's claim. The Copyright Royalty Board (CRB) accepts all timely claims that are facially valid. The CRB does not evaluate or verify the content of the claims. Now that the amount and validity of Mr. Powell's claim for royalties from the Musical Works Fund are challenged, he bears the burden of proving both. He can do this by disclosing authentic documentation to establish his claim. The parties can and must, therefore, state their competing assertions in writing, allowing the Judges to weigh the issue and make a determination without an in-person hearing.

Section 803(b)(5) provides that the Judges may determine issues

on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant.

17 U.S.C. § 803(b)(5).<sup>4</sup> The Judges shall conduct a paper proceeding in cases in which there is no genuine issue of material fact. *Id.* at § 803(b)(5)(A). The Judges may conduct a paper proceeding "under such other circumstances as the ...Judges consider appropriate." *Id.* at § 803(b)(5)(B). The amount and validity of Mr. Powell's claim are questions of fact—and the only remaining issues relating to the Musical Works royalty funds for the period 2005 through 2008, inclusive. Given the narrowness of the issues, the Judges consider this an appropriate circumstance for application of the statute regarding paper proceedings.

Prior to making a decision to proceed under section 803(b)(5), the Judges must offer all parties to the proceeding an opportunity to comment on that decision.

### **Order**

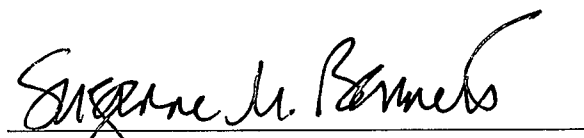
The Judges conclude that a controversy exists with regard to the 2006 Musical Works royalty funds. By this Order, therefore, the Judges seek comment from all parties to the captioned proceeding regarding the initiation of paper proceedings in this matter. Parties

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<sup>4</sup> The Judges' regulations provide that the Judges rely on the filing of the written direct statement by the participant..., the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

37 C.F.R. § 351.3(c)(2). The Judges interpret the variation in the language of the procedural regulation in such a way to make it consistent with the statutory requirements.

desiring to comment may do so by filing comments with the Judges on or before September 10, 2013.

  
\_\_\_\_\_  
Suzanne M. Barnett  
Chief Copyright Royalty Judge

DATED: August 20, 2013

## Keys, LaKeshia

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**From:** Keys, LaKeshia  
**Sent:** Tuesday, August 20, 2013 12:21 PM  
**To:** crb  
**Subject:** 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement  
**Attachments:** 8-20-13 Order Regarding Commencement of Paper Proceedings.pdf

Attached please find the 2010-8 CRB DD 2005-2008 (MW) Order Regarding Commencement of Paper Proceedings.

**Please reply as confirmation that you received this email.**

Thanks,  
Copyright Royalty Board

## Keys, LaKeshia

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**From:** Microsoft Exchange  
**To:** Cardinale, Philip J.; David Powell; Dimona, Joseph; Hope Lloyd; Joan McGivern; John Beiter; Michael Remington; Michael Simon; Samuel Mosenkis  
**Sent:** Tuesday, August 20, 2013 12:21 PM  
**Subject:** Relayed: 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement

**Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:**

Cardinale, Philip J.

David Powell

Dimona, Joseph

Hope Lloyd

Joan McGivern

John Beiter

Michael Remington

Michael Simon

Samuel Mosenkis

Subject: 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement

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Sent by Microsoft Exchange Server 2007

## Keys, LaKeshia

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**From:** Block, Stephen [Sblock@harryfox.com]  
**Sent:** Tuesday, August 20, 2013 7:34 PM  
**To:** Keys, LaKeshia  
**Cc:** Ingram, Jennie; Simon, Michael; Sofge, Eudora  
**Subject:** FW: 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement  
**Attachments:** 8-20-13 Order Regarding Commencement of Paper Proceedings.pdf; ATT16508701.htm

Dear Ms. Keys:

I write to confirm The Harry Fox Agency's receipt of the Copyright Royalty Board's decision.

On behalf of Michael Simon, CEO & President, HFA, I respectfully request that I be made the representative of The Harry Fox Agency who receives notices from the CRB.

Thank you for your consideration.

Best regards,

Stephen H. Block  
Deputy General Counsel  
HFA

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From: "Keys, LaKeshia" <lkey@loc.gov>  
To: "crb" <crb@loc.gov>  
Subject: 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement

Attached please find the 2010-8 CRB DD 2005-2008 (MW) Order Regarding Commencement of Paper Proceedings.

Please reply as confirmation that you received this email.  
Thanks,  
Copyright Royalty Board

**Keys, LaKeshia**

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**From:** Cardinale, Philip J. [Philip.Cardinale@dbr.com]  
**Sent:** Wednesday, August 21, 2013 9:46 AM  
**To:** Keys, LaKeshia  
**Subject:** RE: 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement  
**Attachments:** 8-20-13 Order Regarding Commencement of Paper Proceedings.pdf

Dear Ms. Keys

Per your request below, I am replying to confirm receipt of the attached.

Thank you.

Best,  
Phil Cardinale

Philip J. Cardinale  
**Drinker Biddle & Reath LLP**  
1500 K Street, N.W.  
Washington, DC 20005-1209  
(202) 230-5160 office  
(202) 842-8465 fax  
Philip.Cardinale@dbr.com  
www.drinkerbiddle.com

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**From:** Keys, LaKeshia [mailto:lkey@loc.gov]  
**Sent:** Tuesday, August 20, 2013 12:21 PM  
**To:** crb  
**Subject:** 2010-8 CRB DD 2005-08 (MW) Order Regarding Commencement

Attached please find the 2010-8 CRB DD 2005-2008 (MW) Order Regarding Commencement of Paper Proceedings.

**Please reply as confirmation that you received this email.**

**Thanks,  
Copyright Royalty Board**

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