

**UNITED STATES COPYRIGHT ROYALTY JUDGES**

<b>In the Matter of</b>	)	
	)	
<b>Distribution of the 2005, 2006, 2007 and 2008 DART Musical Works Funds Royalties</b>	)	<b>Docket No. 2010-8 CRB DD 2005-2008 (MW)</b>
	)	
	)	

**ORDER REGARDING DISTRIBUTION OF ROYALTIES AND  
ANNOUNCING VOLUNTARY NEGOTIATION PERIOD**

The issue before the Judges is whether to grant a motion to distribute the remaining royalties in the DART Musical Works fund for royalty years 2005 through 2008.

On July 20, 2012, the Copyright Royalty Judges (“Judges”) published in the **Federal Register** a notice acknowledging the existence of a controversy and commencing a proceeding to determine distribution of the 2005-2008 digital audio recording technology (“DART”) funds in the Musical Works Fund. 77 FR 42764. The Judges also called for the filing of petitions to participate (PTP) by any party seeking a distribution of these funds and intending to participate in the proceeding. *Id.* In response to the notice, the Judges received two PTPs: a joint petition from Broadcast Music, Inc., American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency, Inc. (the “Settling Claimants”) and a single petition from Mr. David Powell.

The CRB received Mr. Powell’s PTP initially on August 21, 2012. The deadline for filing PTPs was August 20, 2012. The PTP was incomplete and not accompanied by the filing fee. Unable to ascertain Mr. Powell’s intent, the Judges entered an Order to Show Cause on September 6, 2012, requiring Mr. Powell to clarify the purpose of his petition and to show cause why his filing should not be dismissed and, if it was intended as a PTP, why he should not pay the required \$150 filing fee. Mr. Powell filed a response to the Judges show cause order, which he captioned as an “order.” The filing, accompanied by the filing fee, re-asserted his claim to Musical Works royalties for the years at issue in this proceeding.<sup>1</sup>

The Settling Claimants filed a motion to dismiss Mr. Powell’s PTP and invalidate his claim. In their motion, the Settling Claimants allege that Mr. Powell filed a claim for Musical Works royalties due for only one year (2006) of the relevant royalty period, *viz.*, 2005 through 2008. The CRB record supports this assertion.<sup>2</sup> Mr. Powell responded with a motion to dismiss

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<sup>1</sup> Although the text of Mr. Powell’s “order” says he claims Musical Works funds, he inserts a table with claims to sound recording funds as well. According to Mr. Powell’s filings, he seeks royalties as “owner” from the Sound Recordings fund described in 17 U.S.C. § 1006(b)(1) for the years 2006 and 2007. This proceeding is one to distribute funds only from the Musical Works fund described in 17 U.S.C. § 1006(b)(2).

<sup>2</sup> In fact, Mr. Powell filed three claims for 2006 funds, claiming sound recording royalties as “owner” and Musical Works funds as “writer” and “publisher” of his work. He also filed a claim against the Sound Recordings fund as “owner” for the 2007 royalty year. The sole work for which Mr. Powell claims payment is identified as “Liberation Movement”.

the Settling Claimants' motion and for "summary judgment". In reply to Mr. Powell's November 2012 filings, taking those filings to be opposition to the Settling Claimants' motion to dismiss his earlier filing, the Settling Claimants replied, reiterating their request that Mr. Powell's PTP be dismissed and his claim disallowed.

For the 2006 royalty year, Mr. Powell claims royalties from both the writers' and publishers' subfunds of the Musical Works fund. In his initial filings, Mr. Powell sought distribution of \$150,000 per year. By the time of the most recent filings without any explanation, Mr. Powell was seeking \$500,000 for each royalty year from the Musical Works writers' subfund.<sup>3</sup>

#### Timeliness of Petition to Participate

As an initial matter, the Judges must address the issue of Mr. Powell's original PTP in this proceeding. Section 803(b)(1)(A)(ii) of the Copyright Act found in title 17 U.S.C. (Act), provides that the Judges may accept PTPs at any time up to 90 days prior to the date on which participants must file their written direct statements for hearing. The standard for accepting a late claim is "for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions". *Id.*

Mr. Powell is a *pro se* claimant in this proceeding. The CRB received Mr. Powell's PTP one day after the published deadline for receipt of PTPs. Nonetheless, the CRB did not reject Mr. Powell's PTP; rather the Judges asked Mr. Powell to show cause regarding his presumed petition. In response, Mr. Powell clarified his intentions, amended his PTP, and paid the necessary filing fee. The Judges will not dismiss Mr. Powell's PTP because *i)* Mr. Powell is proceeding *pro se*, *ii)* his PTP was only one day late, and *iii)* the Settling Claimants have failed to show prejudice by having Mr. Powell participate in the proceeding.

#### Status of Proceeding

Given the uncertainty with respect to Mr. Powell's participation in this proceeding, the Judges have postponed the announcement of the Voluntary Negotiation Period required by 37 C.F.R. § 351.2(a). The Judges, by this order, accept Mr. Powell's PTP as a claimant in the 2006 Musical Works fund. Mr. Powell did not file claims to Musical Works royalties for the years 2005, 2007, and 2008. The Judges find, therefore, that no controversy exists with regard to the Musical Works fund royalties for 2005, 2007, and 2008.

The Judges make no ruling regarding any claim asserted by Mr. Powell regarding royalties in the Sound Recording fund.

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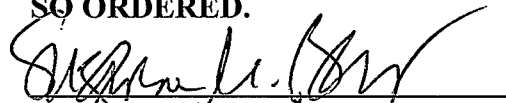
<sup>3</sup> By separate "order", Mr. Powell seeks \$700,000 for each royalty year from the Sound Recordings fund. It appears Mr. Powell asserts a claim to all current funds and a portion of the funds distributed earlier in this proceeding, as well as interest.

ORDER

The Judges conclude that a controversy exists only with respect to the 2006 Musical Works royalty fund. Having found no controversy with respect to royalties held in the Musical Works fund for royalty years 2005, 2007, and 2008, the Judges ORDER that all remaining royalties in both the Publishers and Writers subfunds for those years be distributed to a common agent for the Settling Claimants. The distribution shall take place on or after May 9, 2013, provided that by May 2, 2013, the Settling Claimants shall submit to the Licensing Division of the Copyright Office all pertinent information to effect the transfer of funds.

Having found that a controversy exists with regard to the Musical Works fund for royalty year 2006, the Judges hereby commence the Voluntary Negotiation Period, which shall occur from April 29, 2013, through July 29, 2013. The claimants shall file their respective reports on the results of negotiations within five days of any settlement, or by August 5, 2013, whichever is earlier. If the reports indicate the existence of a continuing controversy relating to the 2006 Musical Works royalties, the Judges will issue an order, as required by 37 C.F.R. § 351.3(a) for further proceedings.

**SO ORDERED.**

  
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Suzanne M. Barnett  
Chief Copyright Royalty Judge

DATED: April 12, 2013

**Keys, LaKeshia**

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**From:** crb  
**Sent:** Friday, April 12, 2013 3:33 PM  
**Cc:** crb  
**Subject:** 2010-8 CRB DD 2005-08 ORDER  
**Attachments:** 4-12-13 Order Regarding Distribution of Royalties and Announcing VNP.pdf

Attached please find the 2010-8 CRB DD 2005-08 (MW) Order Regarding Distribution of Royalties and Announcing Voluntary Negotiation Period.

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

**Thanks,**

**Copyright Royalty Board**

**Keys, LaKeshia**

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Murzinski, Vincent

crb

Strasser, Richard

Keys, LaKeshia

Subject: 2010-8 CRB DD 2005-08 ORDER

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**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'  
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'John Beiter'

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'Michael Simon'

'Samuel Mosenkis'

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**Keys, LaKeshia**

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