

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



MAR 16 2017

Copyright Royalty Board

In re

**Distribution of Digital Audio Recording
Technology Musical Works Royalty
Funds**

Docket No. 2013-6 CRB DD (MW) 2009-2011

**MOTION OF BROADCAST MUSIC, INC., AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, SESAC, INC., AND THE HARRY FOX AGENCY LLC,
AS SETTLING CLAIMANTS, FOR COMMENCEMENT OF A PROCEEDING**

Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”), SESAC, Inc. (“SESAC”) (collectively, the “Performing Rights Organizations” or “PROs”) and The Harry Fox Agency LLC¹ (“HFA” and, together with the PROs, the “Settling Claimants”)² submit the following motion for the commencement of a proceeding for the purpose of determining the distribution of the remaining five percent (5%) of the 2009, 2010, and 2011 Digital Audio Recording Technology (“DART”) Musical Works Fund royalties (the “Funds At Issue”).³ As in past DART distribution proceedings, the Settling Claimants have reached

¹ The Harry Fox Agency LLC, a Delaware limited liability company, was formerly The Harry Fox Agency, Inc.

² The PROs, together, represent hundreds of thousands of composer, lyricist, songwriter, and publisher members and affiliates with combined repertoires of millions of copyrighted musical works. On behalf of their members and affiliates, BMI, ASCAP and SESAC license the public performance rights granted to their respective members and affiliates as copyright owners under Section 106(4) of the Copyright Act (17 U.S.C. § 106(4)). The PROs are also affiliated with over ninety foreign performing rights societies around the world and license the repertoires of those societies in the United States. HFA acts as a licensing agent for thousands of music publishers, who in turn represent the interests of hundreds of thousands of songwriters. HFA also represents multiple foreign societies that represent foreign songwriters and music publishers through agreements with such foreign mechanical rights organizations. Lists of the individual songwriters and music publishers and affiliated foreign performing rights and mechanical rights organizations represented by each of the Settling Claimants in this proceeding were submitted with their respective claims and are incorporated herein by reference.

³ It is the Settling Claimants’ understanding that the NewsNet announcement of March 10, 2017, regarding DART royalties applies only to 2016 and beyond and therefore does not apply to the instant motion.

confidential settlements concerning their respective distribution shares for these years and collectively submit this motion.

The Settling Claimants hereby request that the Copyright Royalty Judges (“Judges”) publish a notice in the Federal Register for commencement of a proceeding to determine the distribution of the Funds At Issue, to therein request comments on the existence of controversies and petitions to participate in the proceeding, and also to apprise parties of filing fee requirements and small claims procedures, pursuant to 17 U.S.C. §§ 803(b)(1) and 1007(c).

I. Background.

On September 6, 2013, the Settling Claimants filed a Motion for Partial Distribution of ninety-five percent (95%) of the Writers and Publishers Subfunds of the 2009 through 2011 DART Musical Works Funds, pursuant to 17 U.S.C. § 801(b)(3)(C) (the “Motion”). On October 21, 2013, the Judges published a notice in the Federal Register requesting comments on the Motion (the “Notice”). 78 Fed. Reg. 64023 (October 25, 2013). Only the Settling Claimants submitted comments on the Motion in response to the Notice, on November 25, 2013. As a result, on February 4, 2014, the Judges granted the Motion and ordered the partial distribution to the Settling Claimants on or after February 20, 2014. Such distribution having been accomplished, the Copyright Office (“Office”) now retains only five percent (5%) of the Musical Works Fund royalties collected for 2009, 2010, and 2011, *i.e.*, the Funds At Issue.

II. The Judges Have Authority to Initiate a Distribution Proceeding.

The authority of the Judges to initiate a proceeding is unequivocal. Section 803(b)(1)(A) of Title 17 provides that:

The Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter, calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making

the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be – ...

17 U.S.C. § 803(b)(1)(A). *See also* 37 C.F.R. § 351.1.

The Judges and their predecessors have published notices in the Federal Register to initiate DART distribution proceedings in the past, including in the most recent DART Musical Works Fund distribution proceedings. On August 18, 2008, the Judges published a notice directing claimants to royalties collected for DART 2002-2004 Musical Works Fund royalties to file petitions to participate asserting a claim to such royalties. 73 Fed. Reg. 49708 (August 22, 2008). Similarly, on July 16, 2012, the Judges published a notice directing claimants to royalties collected for DART 2005-2008 Musical Works Fund royalties to file petitions to participate asserting a claim to such royalties. 77 Fed. Reg. 42764 (July 20, 2012). As in these prior proceedings, the Judges have clear authority to initiate a proceeding and resolve any and all distribution controversies with regard to the Funds At Issue.

III. Pursuant to Chapter 8 of the Copyright Act, Participants May Be Required to Disclose the Amount of their Claims.

Because 95% of the 2009-2011 DART Musical Works Funds have already been distributed pursuant to the February 4, 2014 Order, the Funds At Issue comprise only the remaining 5% of funds. Given that the Settling Claimants have already reached agreement between and among themselves, any individual participants in the proceeding are likely to have small claims (statutorily defined as under \$10,000). *See* 17 U.S.C. § 803(b)(4)(A). Accordingly, the Settling Claimants request that the Federal Register notice remind participants that they are statutorily required to submit either a filing fee or disclose whether the monetary amount in controversy is less than \$1,000 (relieving the participant of paying the filing fee, pursuant to 17 U.S.C. § 803(b)(2)(D)) or is less than \$10,000 (permitting the Judges to order a paper proceeding pursuant to 17 U.S.C. §

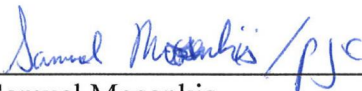
803(b)(3)(5)). Such a notice to all parties would not only comport with the statute but also would promote judicial efficiency.

Conclusion

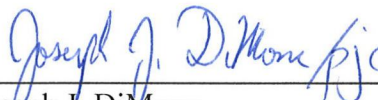
For the reasons set forth above, the Settling Claimants respectfully request that the Judges publish a notice in the Federal Register to commence a proceeding to determine the distribution of the Funds At Issue, *i.e.*, the remaining 5% of the 2009, 2010, and 2011 DART Musical Works Fund royalties.

Respectfully submitted,

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Date: March 16, 2017