

UNITED STATES COPYRIGHT ROYALTY JUDGES

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In the Matter of))
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Distribution of the 2002-2004))
Digital Audio Recording))
Technology))
Royalty Funds))
_____)

Docket No. 2006-5 CRB DD 2002-2004

**ORDER AUTHORIZING DISTRIBUTION
OF 2003 and 2004 MUSICAL WORKS FUNDS and PUBLISHERS SUBFUND
OF 2002 MUSICAL WORKS FUNDS**

On August 22, 2008, the Copyright Royalty Judges published in the *Federal Register* a notice announcing the commencement of a proceeding to determine the distribution of the digital audio recording technology (“DART”) royalty fees in the 2002, 2003, and 2004 Musical Works Funds and requesting Petitions to Participate.¹ In response, the Judges received two Petitions to Participate. One was a joint petition from Broadcast Music, Inc., American Society of Composers, Authors and Publishers, SESAC, Inc. and the Harry Fox Agency, Inc. (“Joint Petitioners”). The other was a single petition from Yvonne Davis. Royalty fees allocated to the Musical Works Fund for each of the years at issue are divided equally between two subfunds: the Publishers Subfund and the Writers Subfund.²

Joint Petitioners represent that they have filed claims to and have an interest in royalty payments in both the Publishers and Writers Subfunds for each of the years 2002, 2003, and 2004. In their petition, the Joint Petitioners state that they have finalized confidential settlements among themselves for each year and subfund at issue in this proceeding. Nevertheless, they state that they “anticipate that a handful of claimants may file a Petition to Participate, in which case the [Joint Petitioners] would have a controversy over their individual shares.” Joint Petition at n.2.

Ms. Davis has petitioned to participate in the proceeding to distribute the royalty fees in the Musical Works Fund for 2002, 2003, and 2004. Joint Petitioners have alleged,³ and the Judges have confirmed, however, that Ms. Davis has filed a timely claim for DART royalties only for 2002 and only for the Writers Subfund. We could not locate timely claims from her for 2003 or 2004 or for the Publishers

¹ 73 FR 49708.

² 17 U.S.C. 1006(b)(2).

³ See Joint Petitioners Report on the Status of Settlement Negotiations at 2 (filed Feb. 2, 2009). Ms. Davis does not dispute the allegation.

Subfund of the 2002 Musical Works Fund. The rules of the Copyright Royalty Board require interested copyright parties claiming to be entitled to digital audio recording devices and media royalty payments to file a claim during January or February of the year succeeding the year in which the claimant believes he or she is entitled to such royalties.⁴ The rules further state that “[n]o royalty payments for the previous calendar year shall be distributed to any interested copyright party who has not filed a claim to such royalty payments during January or February of the following calendar year.”⁵ Given that Ms. Davis did not file timely claims for 2003 or 2004 for either Musical Works subfund or for the 2002 Publishers Subfund and that the Joint Petitioners have reached an agreement on the allocation of all royalties for 2002, 2003, and 2004, other than those in which there is a dispute with a claimant not represented by the Joint Petitioners, the Judges determine that there is no longer a controversy with respect to the Publishers Subfund of the 2002 Musical Works Fund or with respect to the 2003 and 2004 Musical Works Funds. Therefore, we order that the remaining royalties in those funds be distributed to a representative designated by the Joint Petitioners to be distributed in the manner agreed to by the Joint Petitioners.

Wherefore, **IT IS ORDERED** that all remaining funds in the Publishers Subfund of the 2002 Musical Works Fund and all remaining funds in the 2003 and 2004 Musical Works Funds be distributed consistent with this order on or after March 26, 2009, provided that the Joint Petitioners submit to the Licensing Division of the Copyright Office all pertinent information to effect the transfer of funds no later than March 19, 2009.

SO ORDERED.


James Scott Sledge
Chief Copyright Royalty Judge

Dated: February 24, 2009

⁴ 37 CFR 360.21(a).

⁵ 37 CFR 360.21(b). Although filing a timely claim is a necessary component in qualifying for royalty payments, it is not the only requirement. For example, claimants must also file a petition to participate in response to the Judges' request for such petitions. See 37 CFR 351.1(b)(3) (requiring, with a limited exception for certain late petitions, that petitions to participate be filed by no later than 30 days after publication of the notice of commencement of a proceeding).