

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Distribution of 2010 Digital Audio
Recording Royalty Funds

Docket No. 2011-6 CRB DD 2010

ORDER GRANTING AARC'S REQUEST FOR PARTIAL DISTRIBUTION OF
2010 DART SOUND RECORDINGS FUNDS

On August 23, 2011, the Alliance of Artists and Recording Companies ("AARC") and certain claimants with which it has reached agreement (collectively the "Settling Claimants"), filed, pursuant to Section 801(b)(3)(C) of the Copyright Act, a *Notice of Settlement and Request for Partial Distribution of the 2010 Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfund Royalties*. A notice soliciting comments on the Notice and Request was published in the Federal Register on September 13, 2011. 76 FR 56483. In addition to the Settling Claimants, which supported their own request, we received comments from two other, non-settling claimants, Treasa Fennie (dba Write 4 U Publishing) and Herman Kelly (dba Afterschool Publishing Company); both opposed the Settling Claimants' request for partial distribution of 98% of the 2010 Sound Recordings Fund (Copyright Owners Subfund and Featured Artists Subfund). Ms. Fennie contends that the statistical data that AARC submitted to support its request underestimated the number of units that Ms. Fennie sold in 2010. In particular, Ms. Fennie contends that one such work, "Heal My Heart," sold more than 2,000 units in 2010. She also contends that she released a song entitled "Ancestors" during 2010, for which total unit sales are presently unknown. Finally, Ms. Fennie contends that she should have been given credit for a song entitled "Young Heart," but that such credit was wrongfully attributed to another artist.¹ For his part, Mr. Kelly contends, among other things, that AARC's request should be denied because AARC has failed to provide an itemized budget plan detailing how funds AARC receives would be distributed to artists and copyright owners that AARC represents in this case.

AARC counters that it has settled with 433 of the 441 individual claimants for the 2010 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds. AARC represents that record sales of the Settling Claimants' 2010 Featured Recording Artists Subfund claims total 99.9998% of the record sales (approximately 1 billion units) of the 2010 DART Featured Recording Artists Subfund claimants. AARC further contends that record sales of the Settling Claimants' 2010 Copyright Owners Subfund claims total 99.9997% of the record sales (approximately 1.1 billion units) of the 2010 Copyright Owners Subfund claimants. AARC

¹ In its response to Ms. Fennie's opposition, AARC contends that even if Ms. Fennie were credited with all of the sales she claims for each of the songs she claims to have credit her share of the 2010 DART Sound Recordings Fund royalties would total less than \$1.00, far less than the 2% of the 2010 DART Sound Recordings Fund royalties (approximately \$20,000) that AARC requests be reserved to resolve outstanding claims.

contends that, based on the percentage of units sold for 2010, the nonsettling claimants combined would earn approximately \$2.00. AARC states that reserving 2% of the 2010 Sound Recording Funds would be more than sufficient to satisfy any remaining claims of the nonsettling claimants.

Section 801(b)(3)(C) of the Copyright Act provides that:

[T]he [J]udges, at any time after the filing of claims under [section 1007 of the Copyright Act]...may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the [Judges] conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

Based on the data that AARC has provided, we find persuasive AARC's contention that reserving 2% of the 2010 Sound Recordings Fund should be sufficient to resolve any remaining claims of the nonsettling claimants. Regarding Mr. Kelly's assertion that AARC's request should be denied because AARC did not submit an itemized budget plan, we know of no provision of the Copyright Act that requires the filing of such an itemization and we see no reason to impose one here. As a result, we conclude that no claimant entitled to receive a share of the 2010 DART Sound Recordings Fund royalties has stated a reasonable objection to AARC's request.

Therefore, the Settling Claimants' request is **GRANTED**.

Wherefore, **IT IS ORDERED** that 98% of the DART royalties held in the 2010 Sound Recordings Fund (Copyright Owners Subfund and Featured Artist Subfund) shall be distributed to AARC as the designated agent for the Settling Claimants to be distributed among the Settling Claimants pursuant to the terms of the settlement that they have reached.

The Copyright Office shall make such a distribution to AARC as the designated agent of the Settling Claimants **PROVIDED THAT** AARC, in its capacity as the designated agent, provides to the Copyright Office a signed agreement prepared by the Copyright Royalty Board stating that any overpayment that results from the distribution of these funds shall be repaid to the Copyright Office with interest according to the amount that would have accrued if the

principal had remained in the fund. In addition, all pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than December 8, 2011. The distribution shall take place on or after December 15, 2011.

SO ORDERED.



James Scott Sledge
Chief U.S. Copyright Royalty Judge

DATED: November 17, 2011