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Copyright
Arbitration
Royalty
Panels

In the Matter of
Distribution of 1992, 1993,
and 1994 Digital Audio
Royalty Funds

Docket No. 95-1 CARP DD 92-94

RECOMMENDATION AND ORDER

LIBRARY
OF
CONGRESS

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station
Washington
D.C. 20024

Following the suspension of the precontroversy discovery period in this proceeding to consider motions to dismiss several of the parties, the Library of Congress announced a revised precontroversy discovery schedule. See Recommendation and Order, dated May 9, 1996. The parties were given until June 14, 1996, to file "motions related to document production." Id. at 14. The initial precontroversy discovery order to this proceeding described "motions related to document production" as "[t]ypically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders." See Recommendation and Order, dated February 21, 1996. The Library has received three separate motions from the parties which appear to fall in this category.[1]

The Settling Parties

Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., The Harry Fox Agency, Copyright Management, Inc., The Songwriters Guild of America, and the Gospel Music Coalition (collectively, the "Settling Parties") filed a motion on June 14, 1996, seeking to compel production of

[1] We use the word "appear" because, with the exception of the motion of the Settling Parties, it is difficult to tell from the captions of Curry's and Evelyn's motions whether they fit in this category. The Library directs the parties, in future pleadings, to clearly delineate in the caption of the pleading what it is for, and not to place motions or requests within the body of unrelated pleadings and responses.

underlying documents to the written direct case of Eugene "Lambchops" Curry ("Curry"). Specifically, the Settling Parties request documentation, in the form of a list of titles and proof of ownership, underlying Curry's assertion in his written direct case that he has "written over three hundred songs." The Settling Parties state that Curry has informed them that he will only provide such information directly to the CARP. Curry has not opposed the Settling Parties' motion.

Section 251.45(c)(1) of the rules, 37 C.F.R., states that any party "may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony." Curry asserts in his written direct case that:

> I've been in the record business for twenty years. I've written over three hundred songs. In the last four years I've produce [sic] and written and performed six albums.

Curry, Written Direct Case at 1. It would appear that Curry's statement that he has "written over three hundred songs" is in the nature of background information and is not related to his claims in the current proceeding. However, if one or more of these "three hundred" songs is part of Curry's claim in this proceeding, then the Settling Parties are entitled to a list identifying those works.[2]

Consequently, the Librarian is granting the Settling Parties' motion to the extent that any of the "three hundred songs" are a part of Curry's claim in this proceeding. If one or more songs are included in Curry's claim to royalties in this proceeding, he is

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[2] Curry is not required to provide documented proof at this time that he is the copyright owner of any songs which he may list that comprise his claim in this proceeding. However, should his ownership of one or more of these songs be brought into question, the CARP may permit further discovery on such matter.

required to provide a list of such songs to the Settling Parties within ten days of the issuance of this Order. He does not have to list any songs which are not a part of his claim. The consequences of failure to produce such a list, if one is required, shall be resolved by the CARP.

Alicia Carolyn Evelyn

Alicia Carolyn Evelyn ("Evelyn") filed a pleading on June 21, 1996[3] styled "Objections of Alicia Carolyn Evelyn, Non-Settling Claimant, to the Conduct, Responses and Non-Production of Documents, Et. Al., of the "Settling Parties" in the Above-Referenced Proceedings, Precontroversy Discovery Period and Generally, in These Matters." The pleading mostly challenges the merits of the Settling Parties' case, which is not germane to the precontroversy discovery period and is not properly before the Librarian, but does allege that the Settling Parties have failed to comply with three of her document requests. The pleading does not, however, identify those requests.

The Librarian is denying Evelyn's pleading, to the extent that it is a request to compel production of documents, as untimely. Motions related to document production, including motions to compel, were due no later than June 14, 1996. Evelyn's pleading was not received until June 21, 1996. To the extent that Evelyn's pleading contains objections to the Settling Parties' written direct case relative to the merits, those arguments are properly made to the CARP and not the Librarian.

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[3] The certificate of service indicates that the pleading was mailed on June 18, 1996, but it was not received in the Library until June 21, 1996.

Eugene Curry

Curry has filed two papers with the Library; one entitled "Follow-Up Requests for Underlying Documents" on June 3, 1996, the other entitled "Production of Documents in Response to Follow-Up Requests" on June 21, 1996. Both papers refer to "documents that the Settling Parties refuse to supply" and state that Curry is "requesting that the Office, and or Librarian consider rule 251.42(2) in this instance." In almost all respects, both papers are identical, even though they were filed separately and in response to different stages of the precontroversy discovery process.

Curry misapprehends the purpose of allowing the parties to make follow-up requests for document production, and producing documents in response to follow-up requests, even though it was clearly spelled out in the precontroversy discovery order. See Order, dated February 21, 1996 at p. 5. The reason for allowing the parties to make follow-up discovery requests is to allow them to obtain underlying documents that are identified as a result of initial discovery requests. Furthermore, the production stage in response to follow-up requests is to produce documents, not to make further or continued requests of other parties.

Curry's statement in both his papers that he is "requesting that the Office, and or Librarian consider rule 251.42(2) in this instance" is inapposite and does not require Library action. First, there is no subsection (2) to 37 C.F.R. 251.42 and, second, that rule governs the CARP's authority to waive or suspend the rules of part 251 and has nothing to do with the precontroversy discovery process.

In sum, the Library concludes that Curry's papers do not require action because they are not motions to compel document production. The Settling Parties apparently reached the same conclusion because they did not file an opposition to either paper. The time period for filing motions to compel document production has passed, and Curry is now precluded from filing such motions.

Wherefore, IT IS ORDERED that the Settling Parties' motion to compel document production from Curry is GRANTED IN PART, and Evelyn's motion for document production from the Settling Parties IS DENIED.

SO RECOMMENDED.

Marybeth Peters
Register of Copyrights.

SO ORDERED.

James H. Billington
The Librarian of Congress.

DATED: July 2, 1996