

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of )  
)  
Distribution of 2012 DART Sound )  
Recordings Fund/Copyright )  
Owners Subfund )  
)

Docket No. 2013-4 CRB DD 2012(SRF)

ORDER DENYING MOTION FOR RECONSIDERATION  
BY BRUCE JAMES HARVEY

On June 6, 2013, the Alliance of Artists and Recording Companies (AARC) filed a motion seeking the dismissal of claims to the 2012 Digital Audio Recording Technology (DART) royalties in the Sound Recordings Fund/Copyright Owners Subfund filed by Bruce James Harvey, Henri Jordan, and Eric N. Burns. On July 11, 2013, the Copyright Royalty Judges (Judges) issued an Order to Show Cause why the challenged claims should not be dismissed. Mr. Harvey filed responses to the Order to Show Cause on July 16 and 18. AARC filed an opposition to Mr. Harvey’s filings on July 25. The Judges granted AARC’s motion on July 30, 2013, dismissing Mr. Harvey’s claim to 2012 DART royalties in the Sound Recordings Fund/Copyright Owners Subfund.

On August 13, 2013 Mr. Harvey sent an electronic mail message to the Judges captioned “Writ of scire facias for US Copyright TX 7-383-278 Emug Algorithms for Condensed Internet Video. CBP Agency Tracking ID: 06003299660” (Motion). The writ of *scire facias* was abolished in federal civil practice by Federal Rule of Civil Procedure 81(b), and is not a form of relief authorized under the Judges’ rules. Consequently, the Judges will treat the Motion as one for reconsideration of the Judges’ Order of July 30 dismissing Mr. Harvey’s DART claim. The Judges now deny that Motion.

The Judges’ procedural regulations are silent on the standard for reconsideration of a ruling on a motion. Under 17 U.S.C. § 802(f)(1)(A), however, the Judges clearly have authority to consider and rule on such a motion. In *Order Denying SoundExchange’s Motion to Reconsider the Board’s Order Requiring, In Part, the Production of Certain Income Tax Returns*, Docket No. 2005-1 CRB DTRA, 1 (May 3, 2006) the Judges applied the following standard of review in ruling on a motion to reconsider an interlocutory decision regarding production of documentary evidence: “Such motions should be granted only where (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct a clear error or prevent manifest injustice. *Regency Communications Inc. v. Cleartel Communications, Inc.* 212 F. Supp 2d 1, 3 (D.D.C. 2002); *see also Firestone v. Firestone*, 76 F. 3rd 1205, 1208 (D.C. Cir. 1996).” The Judges find this standard to be appropriate and applicable in connection with the instant Motion.

Mr. Harvey has cited no intervening change in controlling law, presented no new evidence, and identified no clear error or manifest injustice in the Order of July 30. In fact, Mr. Harvey offers no evidence or arguments concerning the validity of his DART claim. Although it is not entirely clear, his communication to the Judges appears to seek clarification about the proper means of seeking vindication of his copyright rights in a computer program that he believes have been infringed. This merely reinforces the Judges' earlier conclusion that Mr. Harvey does not have a valid claim *to DART royalties under the Audio Home Recording Act*.

Whether Mr. Harvey has valid claims *for copyright infringement* is a matter entirely separate from his claim for DART royalties. The Judges adjudicate controversies over the rates and terms of certain statutory licenses and the distribution of royalties thereunder. The Judges play no role in enforcement of copyright rights. To the extent that Mr. Harvey has valid infringement claims, those claims are not properly addressed to the Judges.<sup>1</sup>

Since Mr. Harvey has presented no further evidence or arguments to support his claim for royalties from the DART Sound Recordings Fund/Copyright Owners Subfund, his motion for reconsideration is **DENIED**.

Further, since the Copyright Royalty Board is not a proper forum for any further action on Mr. Harvey's behalf, the Judges will accept no further pleadings from Mr. Harvey in this matter.

**SO ORDERED.**

  
Suzanne M. Barnett  
Chief Copyright Royalty Judge

DATED: August 15, 2013

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<sup>1</sup> A great deal of general information about the functioning of the U.S. copyright system is available online at <http://www.copyright.gov/circs/>. Legal counsel may be consulted about the application of U.S. copyright law to specific facts and issues.