

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

Received
NOV 25 2013
Copyright Royalty Board

In the Matter of :

Distribution of 2009 Through :
2011 DART Musical Works :
Funds Royalties :

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

**COMMENTS OF BROADCAST MUSIC, INC., AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS, SESAC, INC., AND THE HARRY FOX
AGENCY, INC., AS SETTLING CLAIMANTS ON THEIR MOTION FOR PARTIAL
DISTRIBUTION OF THE MUSICAL WORKS FUND**

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, Inc. (“HFA”) submit the following Comments in response to the October 21, 2013 Notice published by the Copyright Royalty Judges (“Judges”) at 78 Fed. Reg. 64023 (October 25, 2013) (“Notice”).¹ This Notice seeks comments related to the Settling Claimants’ motion for partial distribution of ninety-five percent (95%) of the Digital Audio Recording Technology (“DART”) Funds Writers and Publishers Subfunds of the 2009, 2010 and 2011 Musical Works Funds (filed September 6, 2013) (“Motion”).

¹ 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 about 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.

RECEIVED
Public Interest Center
NOV 25 2013
COPYRIGHT OFFICE

The Settling Claimants strongly support distributing the requested funds in accordance with the Motion and respectfully request that the Judges order a prompt partial distribution of 95% of the 2009, 2010 and 2011 DART Musical Works Funds.² As the Motion indicates, the Settling Claimants have reached confidential settlements concerning their respective allocation of funds for these years and believe that a sufficient amount of royalties would remain in the DART Musical Works Funds for the relevant years to satisfy any future claims and proceedings. Motion at 2. Because the amounts agreed to be allocated among the Settling Claimants are confidential, the Settling Claimants reiterate that, pursuant to common practice, these funds should be transferred in bulk to a common distribution agent. *Id.* at 2. As set forth in the Motion, there is ample precedent for partial distribution of statutory royalties. See, e.g., Order Granting Claimants' Request for Partial Distribution of 2005 Through 2008 DART Musical Works Funds Royalties, In the Matter of Distribution of 2005-2008 DART Musical Works Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW) (April 14, 2011). Motion at 3.

As the Notice indicates, the Settling Claimants have accepted their obligation to comply with the requirements for a partial distribution set forth in 17 U.S.C. § 803(b)(3)(C). Notice at 64024. Consequently, under Section 801(b)(3)(C), the Judges may distribute the royalty fees sought by the Motion to the Settling Claimants if, "based upon" responses timely received in response to the Notice, the Judges conclude that "no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution." 17 U.S.C. § 801(b)(3)(C).

² According to the U.S. Copyright Office Licensing Division, the funds available for distribution from the DART Musical Works Funds as of September 30, 2013 were approximately \$492,859.20 for 2009, \$784,704.30 for 2010 and \$705,584.88 for 2011.


Conclusion

Accordingly, if the Judges, after considering comments filed by other interested claimants, conclude that no claimant has stated a reasonable objection, the Settling Claimants respectfully request that the Judges order a prompt 95% partial distribution of the 2009, 2010 and 2011 DART Musical Works Funds to the Settling Claimants.

Date: November 25, 2013


Respectfully submitted,

BROADCAST MUSIC, INC.


Joseph J. DiMona – DC Bar No. 413159
Hope Lloyd – NY No. 3903754
Broadcast Music, Inc.
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 220-3149 (Phone)
(212) 220-4456 (Fax)
jdimona@bmi.com
hlloyd@bmi.com


Michael J. Remington – DC Bar No. 344127
Philip J. Cardinale – DC Bar No. 979949
Drinker Biddle & Reath LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005
(202) 842-8839 (Phone)
(202) 842-8465 (Fax)
michael.remington@dbr.com
philip.cardinale@dbr.com

**AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS**


Samuel Mosenkis – NY No. 2628915
ASCAP
One Lincoln Plaza, Sixth Floor
New York, NY 10023
(212) 621-6204 (Phone)
(212) 787-1381 (Fax)
smosenkis@ascap.com

SESAC, INC.


John C. Beiter – TN Bar No. 012564
Shackelford, Zumwalt & Hayes
1014 16th Avenue South
Nashville, TN 37212
(615) 256-7200 (Phone)
(615) 256-7106 (Fax)
jbeiter@shacklaw.net

THE HARRY FOX AGENCY, INC.

Stephen H. Block/mjr
Stephen H. Block – SDNY Bar No. SB4280
The Harry Fox Agency, Inc.
40 Wall Street, 6th Floor
New York, New York 10005
(212) 370-5330 (Phone)
(212) 922-3299 (Fax)
sblock@harryfox.com