

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Determination and Allocation of Initial
Administrative Assessment to Fund
Mechanical Licensing Collective

Docket No. 19-CRB-0009-AA

**THE MECHANICAL LICENSING COLLECTIVE'S
MOTION TO DISMISS PETITIONS TO PARTICIPATE FILED BY
THE SONGWRITERS GUILD OF AMERICA AND CIRCLE GOD NETWORK**

The Mechanical Licensing Collective (the “MLC”) respectfully requests that the Copyright Royalty Judges (the “Judges”) dismiss the Petitions To Participate (“Petitions”) filed by The Songwriters Guild of America, Inc. (“SGA”) and Circle God Network Inc., d/b/a David Powell (“Mr. Powell”) in the above-captioned Administrative Assessment Proceeding (the “Proceeding”). The MLC and the Digital Licensee Coordinator (“DLC”) are the required participants in the Proceeding.¹ 37 C.F.R. § 355.2(c). SGA and Mr. Powell are not eligible participants in this Proceeding pursuant to 37 C.F.R. § 355.2(d), and have not satisfied the requirements of 37 C.F.R. § 355.2(e)(4).²

¹ Counsel for the DLC has informed the MLC in writing that the DLC does not oppose this motion.

² This request is properly the subject of motion practice. The regulations governing this Proceeding contemplate such a motion, and the Judges regularly consider and grant similar motions in both ratesetting and distribution proceedings. *See* 37 C.F.R. § 355.5(b) (stating that the Judges, “sua sponte or upon motion of a participant,” may exclude a participant from the hearing); *In re Distribution of Digital Audio Recording Royalty Funds*, Docket No. 2008-3 CRB DD (2007-2011 SRF), Order Granting AARC Motion To Reject David Powell’s Defective Filings And Dismissing David Powell (February 27, 2019), available at <https://app.crb.gov/case/viewDocument/3733> (“AARC Order”); *In re Determination Of Royalty Rates And Terms For Transmission Of Sound Recordings By Satellite Radio And “Preexisting” Subscription Services (SDARS III)*, Docket No. 16-CRB-0001 SR/PSSR (2018-2022), Order
(*cont’d*)

I. Legal standard

On July 8, 2019, the Judges announced commencement of the above-captioned Proceeding to determine the initial administrative assessment to fund the total costs of the MLC. Consistent with the governing statute, the notice announcing the commencement of the Proceeding stated that the regulations require the participation of the MLC and the DLC, and “permit the participation of copyright owners, digital music providers, and significant nonblanket licensees.” *In re Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective*, Docket No. 19-CRB-0009 AA (“Initial AA”), *Notice Announcing Commencement of Initial Administrative Assessment Proceeding and Requesting Petitions to Participate*, 81 Fed. Reg. 32475 (July 8, 2019); 37 C.F.R. § 355.2(d) (An “eligible participant” is a “copyright owner, Digital Music Provider, or Significant Nonblanket Licensee”).

Additionally, the Judges may dismiss the petition of even a copyright owner, digital music provider or significant nonblanket licensee, if the Judges “find that the petitioner lacks a significant interest in the proceeding.” 37 C.F.R. § 355.2(d).

Moreover, the regulations governing Petitions in this Proceeding provide that each petition “must include ... [f]actual information sufficient to establish that the petitioner has a significant interest in the determination of the Administrative Assessment.” 37 C.F.R. § 355.2(e)(4).

Granting SoundExchange’s Motion To Dismiss Music Reports, Inc. and David Powell (June 24, 2016), available at <https://app.crb.gov/case/viewDocument/3705> (“*SoundExchange Order*”).

II. The SGA Petition should be dismissed

As discussed above, to be eligible to participate in this Proceeding, a petitioner (other than the MLC or the DLC) must be either a copyright owner, a digital music provider, or a significant nonblanket licensee. SGA's Petition (available at <https://app.crb.gov/case/petitionToParticipate/3>) includes a Statement of Significant Interest which explicitly states that "SGA is not itself a copyright owner," but rather acts as administrator of "musical compositions, the copyrights of which are owned and controlled by those dozens of members who have designated SGA as their exclusive representative." Because SGA does not claim to be a copyright owner, digital music provider or significant nonblanket licensee, it is not an eligible participant in this Proceeding under 37 C.F.R. § 355.2(d).

Counsel for the MLC reached out to counsel for SGA and requested further clarification regarding SGA's standing to participate, and did not receive information indicating that SGA is a copyright owner and thus entitled to participate in the Proceeding. A copyright owner is an entity that has an interest in copyright by virtue of "an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of copyright or any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license." 17 U.S.C. § 101. SGA's Petition should be dismissed because, by its own statement, it is not an entity of the type with standing to participate as enumerated in 37 CFR 355.2(d).

III. Mr. Powell's Petition should be dismissed

Mr. Powell filed a Petition in the Proceeding (available at <https://app.crb.gov/case/petitionToParticipate/1>) with a purported Statement of Significant Interest as follows:

Copyright Owners, Digital Music Provider, Significant Non-Blanket License
significant interest 17 U.S.C. 115(d)(7)(D)(vii),801(b)(8) 2018, 37 CFR 355.2(c)-

(d),355.2(e),17 U.S.C. 1001(7)(D)AHRA, Certificate SRU628-683, TXU1-344-005.

Mr. Powell's Petition also lists as "Petitioners" the following:

circle god network inc d/b/a david powell
Circle God Network Inc. members (Copyright owners)
Digital Music License members of CGN
Mechanical License members of CGN
Music Publisher members (Performance License) of CGN
Music Publisher members (Synchronization License) of CGN
Non & Subscription Service members of CGN

Mr. Powell's Petition does not clarify which category of eligible participant Mr. Powell purports to be (copyright owner, digital music provider or significant nonblanket licensee), as all three are listed. Nor does Mr. Powell's Petition "include ... [f]actual information sufficient to establish that [he] has a significant interest in the determination of the Administrative Assessment." 37 C.F.R. § 355.2(e)(4).

While the parties eligible to participate in this Proceeding are more limited than those eligible to participate in rate setting proceedings, the Judges have previously interpreted the term "significant interest" in the context of rate setting proceedings, where it is also used. *See* 17 U.S.C. § 803(b)(2)(C); 37 C.F.R. § 351.1(c). As the Judges have held in that context: "To establish a significant interest in a proceeding, a petitioner must demonstrate that it has a 'direct or tangible interest' in the proceeding." *SoundExchange Order* at 3.

Mr. Powell has not provided facts to demonstrate that he is a copyright owner, digital music provider, or significant nonblanket licensee, or that he will be affected by the initial administrative assessment to be determined herein. Further, as in the numerous other proceedings where Mr. Powell's petitions to participate were dismissed, Mr. Powell's Petition here too should be dismissed for failure to demonstrate relevant "significant interest." *See, e.g., SoundExchange Order* at 3 ("Powell's Petition to Participate fail[ed] to state any grounds upon

which the Judges could conclude that he has any interest, much less the required “significant interest” in the current proceeding.”); *AARC Order* at 3 (“The Powell Filings are inadequate because they fail to describe Mr. Powell’s significant interest in the proceeding. That requirement is both statutory and regulatory [and] critical to the Judges’ ability to determine whether parties have a sufficient interest to participate in a proceeding.”); *In re Determination Of Royalty Rates And Terms For Performance Or Display Of Nondramatic Musical Works And Pictorial, Graphic, And Sculptural Works By Public Broadcasting Entities (PB III)*, Order to Show Cause (July 25, 2016), available at <https://app.crb.gov/case/viewDocument/1564> (“Because Mr. Powell’s Petition to Participate does not describe his interest in this proceeding, the Judges are unable to determine that Mr. Powell has a ‘significant interest’ in the proceeding”).

CONCLUSION

For the reasons sent forth above, the Petitions of SGA and Mr. Powell should be dismissed.

Dated: August 26, 2019

Respectfully submitted,

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Counsel for the MLC

Proof of Delivery

I hereby certify that on Monday, August 26, 2019, I provided a true and correct copy of the Motion to Dismiss Petitions to Participate to the following:

Digital Licensee Coordinator, Inc., represented by Allison Stillman, served via Electronic Service at astillman@mayerbrown.com

Songwriters Guild of America, Inc., represented by Charles J Sanders, served via Electronic Service at csanderslaw@aol.com

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

Signed: /s/ Benjamin K Semel