

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**Distribution of 2014 Digital Audio
Recording Royalty Funds**

**Docket No. 15-CRB-0011-SRF (CO/FA)
(2014)**

**ORDER DENYING HERMAN KELLY’S REQUEST
FOR PARTIAL DISTRIBUTION OF FUNDS**

On August 5, 2015, Herman Kelly, on behalf of himself and claimant Afterschool Publishing Company (APC), filed with the Copyright Royalty Judges (Judges) a document entitled *Herman Kelly Interested Party’s Settlement Proposal Offer and Request* (Request). In it, Mr. Kelly requests that the Judges distribute to him and APC “a proper equal share of any amounts from the 2014 funds if possible.” Request at 1. The Request includes no proposal for how the Judges should determine a “proper equal share.”

On August 12, 2015, AARC filed an *Opposition to the Herman Kelly Interested Party’s Settlement Proposal Offer and Request* (Opposition). As a threshold matter, AARC requests that the Judges dismiss the Request of APC because it is not represented by an attorney. (Opposition) at 3. The Judges agree that APC’s interest is not properly presented because it was not presented by an attorney and will disregard it. AARC argues that the Request is a motion for partial distribution to which it reasonably objects. Its objection is based on Mr. Kelly’s lack of any showing “that [he is] entitled to any portion of the royalties that remain in controversy.” Opposition at 4.

The Judges agree that a request for a share of funds is a request for partial distribution. In order to grant a request for partial distribution¹, the Judges must find that no claimant entitled to receive the funds raises a reasonable objection to the requested distribution. *See* 17 U.S.C. § 801(b)(3)(C). The Judges cannot fairly distribute funds without evidence that the claimant is entitled to the funds or in what proportion the funds should be allocated to the claimants. It is reasonable to object to an arbitrary distribution based on a vague request for a “proper and equal” share.

For the reason stated, the Judges DENY the Request. In addition, the Judges prohibit APC from submitting filings in this proceeding in the future unless it is represented by an attorney.

¹ Although the Judges could have published notice of the request in the Federal Register and requested comments they had not done so before the Opposition was filed. To publish for comment now would only serve to increase costs and delay and do nothing to further a just distribution of funds.

Based on the Request and Opposition, the Judges determine that a controversy exists regarding the proper distribution of the remaining funds in the Featured Artists Subfund² of the 2014 DART Sound Recordings Fund and will forthwith publish a notice of commencement of proceedings. *See* 17 U.S.C. 804(b)(8).

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: January 18, 2017

² This is the subfund against which Mr. Kelly's Claim was filed. *2014 DART Claims List*. APC's claim was filed against the Copyright Owners subfund. *Id.*