



LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 15-CRB-0011 DART (SRF/CO) (2014)]

Distribution of Digital Audio Recording Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of paper proceeding, requesting Petitions to Participate, and allowing comments.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine the distribution of digital audio recording technology royalty fees in the 2014 Sound Recordings Fund. The Judges also announce the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying filing fee, if applicable.

DATES: Petitions to Participate and the filing fee are due no later than **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Each Petition to Participate must include the proceeding docket number, 15-CRB-0011 DART (SRF/CO) (2014). Participants must file using the online form on the CRB's electronic filing application, eCRB, at <https://app.crb.gov/>, unless they do not have access to the Internet, in which case they may file using any of the following methods:
U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or
Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Instructions: Unless submitting online, claimants must submit an original, two paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number. All submissions received will be posted without change on eCRB including any personal information provided.

Docket: For access to the docket, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/>, and search for docket number 15-CRB-0011 DART (SRF/CO) (2014).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (AHRA), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution to eligible claimants. 17 U.S.C. 1005, 1007. Royalties are divided into two funds: the Sound Recordings Fund (66-2/3%) and the Musical Works Fund (33-1/3%). These fees in turn are allocated to specific subfunds. 17 U.S.C. 1006(b). The Sound Recordings Fund, which is the subject

of this notice, is divided between the Copyright Owners Subfund (60%) and the Featured Recording Artists Subfund (40%), after small portions are distributed to nonfeatured musicians and nonfeatured vocalists. 17 U.S.C. 1006(b)(1).

Distribution of the fees in the two subfunds may occur in one of two ways. The interested copyright parties within each subfund may negotiate the terms of a settlement as to the division of royalty funds. If, after any such agreements, funds remain in dispute, the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. 17 U.S.C. 1006(c) & 1007(c).

On January 21, 2016, the Judges ordered distribution of 98% of the royalties held in the Featured Recording Artists Subfund and the Copyright Owners Subfund of the 2014 Sound Recordings Fund to settling claimants. *Order Granting AARC's Request for Partial Distribution of Royalties from the 2014 DART Sound Recordings Fund.*

The Judges subsequently denied requests from two nonsettling claimants for distribution of funds. *Order Denying Eugene Curry/Tajai Music, Inc's Request for Partial Distribution of Funds from the Copyright Owners Subfund* (Jan. 18, 2017) ("Tajai Music Order"); *Order Denying Herman Kelly's Request for Partial Distribution of Funds* (Jan. 18, 2017) ("Kelly Order").

In the Kelly order, the Judges found that a controversy exists regarding the proper distribution of the remaining funds in the Featured Artists Subfund.

Tajai Music, Inc. has not settled its interest in the Copyright Owners Subfund. *See Motion in Support of Settling Claimants' Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties* at 1 (Dec. 2, 2015); Tajai Music Order at 1.

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that, for the reasons stated above, a controversy exists with respect to the distribution of the 2014 Sound Recordings Fund royalties from the Copyright Owners Subfund and the Featured Recording Artists Subfund.

Commencement of Proceeding

By this notice, the Judges announce the commencement of a proceeding to determine the final distribution of DART Sound Recordings Funds (from both the Copyright Owners Subfund and the Featured Recording Artists Subfund) for royalty year 2014.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2). Participants also must identify each subfund in the Sound Recordings Fund to which they are asserting a claim (*i.e.*, Copyright Owners, Featured Recording Artists, or both).

Petitions to Participate submitted by interested parties whose claims do not exceed \$1,000 must contain a statement that the party will not seek a distribution of more than \$1,000. 37 CFR 351.1(b)(4). No filing fee is required for such parties. Interested parties with claims exceeding \$1,000, however, must submit a filing fee of \$150 with their respective Petitions to Participate, or the petition will be rejected. **CASH WILL NOT BE ACCEPTED.** Parties filing online through eCRB must pay by credit card. Any party without access to the Internet must pay the filing fee with a check or money order made payable to the “Copyright Royalty Board” and mailed or delivered with a paper

claim form, as described in the “Addresses” section above. If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Any participant that is an individual may represent herself or himself. All other participants must be represented by counsel. In accordance with 37 CFR 303.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. The Judges will address further procedural matters, including scheduling, after Petitions to Participate have been filed.

Intention to Conduct a Paper Proceeding

In accordance with Section 803(b)(5)(B) of the Copyright Act, the Judges find it appropriate to conduct a paper proceeding in this matter in light of the relatively modest amount of royalties in dispute after previously approved partial distributions and the anticipated small number of non-settling claimants. In paper proceedings, the Judges enter an order scheduling the filing of a written direct statement by each participant, a response of an opposing participant, and one additional response from the participant. 17 U.S.C. 803(b)(5). The Judges make their determination on the basis of these filings. Any party wishing to comment on the Judges’ intention to conduct a paper proceeding should include such comments in its Petition to Participate.

Dated: September 17, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

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