



LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF)]

Distribution of Digital Audio Recording Royalty Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final distribution determination.

SUMMARY: The Copyright Royalty Judges announce their final determination of the distribution of the digital audio recording technology (DART) royalty fees in the 2007, 2008, 2009, 2010, and 2011 Sound Recordings Funds.

ADDRESSES: Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF).

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

SUPPLEMENTARY INFORMATION: On December 26, 2018, the Copyright Royalty Judges (Judges) commenced a proceeding to determine the distribution of the digital audio recording technology (DART) royalties in the 2007, 2008, 2009, 2010, and 2011 Sound Recordings Funds, which, for purposes of this proceeding, consist of the Featured Recording Artists Subfund and the Copyright Owners Subfund. 83 FR 66312,

66313.¹ The Judges had already distributed 100% of the royalties in the Featured Recording Artists Subfund of the 2008 Sound Recordings Fund. *Id.*; *Distribution Order*, Docket No. 2009-3 CRB DD 2008 (Jun. 24, 2009). Consequently, that subfund is not part of this proceeding. Because the Judges made only partial distributions of the 2007, 2009, 2010, and 2011 Featured Recording Artist Subfunds and the 2007, 2008, 2009, 2010, and 2011 Copyright Owners Subfunds, those subfunds were covered by this proceeding (Covered Subfunds). *Id.*

The Judges received Petitions to Participate (PTP) from David Powell, Eugene “Lambchops” Curry, Herman Kelly, and the Alliance of Artists and Recording Companies (AARC).² Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Attachment A) (Feb. 27, 2019).³ According to Copyright Royalty Board (CRB) claims records, Mr. Powell filed a claim for the 2007 Copyright Owners Subfund and for no other Covered Subfund. Mr. Curry filed a claim for the 2008 and 2010 Copyright Owners Subfunds and no other Covered Subfund. Mr. Kelly filed claims for all Covered Subfunds except the 2007 Featured Recording Artists Subfund and the 2007 Copyright Owners Subfund. AARC filed claims for all Covered Subfunds. The following table summarizes the claims:

¹ Pursuant to sec. 1006(b)(1) of the Copyright Act, small portions of each fund have already been distributed to representatives for nonfeatured musicians and nonfeatured vocalists and are not part of this proceeding.

² In its petition to participate, AARC states that it “is a non-profit organization formed to administer the Audio Home Recording Act of 1992...royalties for featured recording artists and sound recording copyright owners, who have authorized it to do so” and “represents over 440,000 featured recording artists and over 16,000 labels.” AARC PTP at 2.

³ The Judges dismissed the original Powell and Curry PTPs as defective, *Order Granting AARC Motion to Reject David Powell’s Defective Filings and Dismissing David Powell* (Feb. 27, 2019); *Order Granting AARC Motion to Reject Eugene Curry’s Defective Filing and Dismissing Eugene Curry* (Feb. 27, 2019), but later permitted Mr. Powell and Mr. Curry to file corrected PTPs after the filing deadline. *Order Granting Motion of David Powell to Accept Late Petition to Participate* (Jun. 19, 2019); *Order Granting Eugene Curry Leave to File Late Petition to Participate* (Apr. 19, 2019).

Year	Subfund	AARC	Curry	Powell	Kelly
2007	FRA	✓			
	CO	✓		✓	
2008	FRA	✓			✓
	CO	✓	✓		✓
2009	FRA	✓			✓
	CO	✓			✓
2010	FRA	✓			✓
	CO	✓	✓		✓
2011	FRA	✓			✓
	CO	✓			✓

Because no participant other than AARC filed a claim to the 2007 Featured Recording Artist Subfund, the Judges determined that the royalties in that fund were not in controversy and were available for distribution to AARC. 84 FR 27362 (Jun. 12, 2019). Consequently, the 2007 Featured Recording Artist Subfund is no longer a part of this proceeding.

On April 24, 2019, AARC filed a Notice of Settlement on its own behalf and on behalf of Mr. Kelly. The Notice of Settlement stated that AARC and Mr. Kelly “have reached a settlement for the relevant royalty years, 2008 – 2011, the years for which Kelly filed claims” and that “AARC will represent Kelly as an AARC participant (member) in this consolidated proceeding” Notice of Settlement at 1. Mr. Kelly is, therefore, no longer a separate participant in this proceeding.

On January 15, 2020, the Judges granted AARC’s Motion to Dismiss Eugene Curry from the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund Distribution Proceeding. *See Order Granting AARC Motion to Dismiss Curry* (Jan. 15, 2020).

On January 17, 2020, the Judges granted AARC's Motion to Dismiss CGN's Claim to Any Portion of the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund. *See Order Granting AARC Motion to Dismiss David Powell and Circle God Network* (Jan. 17, 2020).⁴

Section 801(b)(3)(A) of the Copyright Act states that the Judges may authorize distribution of royalty fees collected pursuant to Section 1005 of the Copyright Act if they find that the distribution is not subject to controversy. 17 U.S.C. 801(b)(3)(A). In the current proceeding, AARC is the only remaining party with claims to DART royalties in the 2009, 2010, and 2011 Featured Recording Artists Subfunds and the 2007, 2008, 2009, 2010, and 2011 Copyright Owners Subfunds. Therefore, the DART royalties in the enumerated Subfunds are not in controversy.

The Judges therefore **ORDER** that the remaining royalties in the 2009, 2010, and 2011 Featured Recording Artists Subfunds of the Sound Recording Funds and the 2007, 2008, 2009, 2010, and 2011 Copyright Owners Subfunds of the Sound Recording Funds be distributed to AARC.

The Judges will forward this determination to the Register of Copyrights and the Librarian of Congress for review and approval. The Librarian shall publish this Determination within 60 days of the date of this order. This Determination will become final upon publication in the Federal Register.

SO ORDERED.

Jesse M. Feder,
Chief United States Copyright Royalty Judge.

⁴ At various points in this proceeding Mr. David Powell has filed documents as "David Powell, Pro Se" and "circle god network inc d/b/a/ david powell." Both appear to refer to the same party, and the Judges have dismissed that party.

David R. Strickler
United States Copyright Royalty Judge.

Steve Ruwe
United States Copyright Royalty Judge.

Dated: January 22, 2020.

The Register of Copyrights closed her review of this Determination on March 6, 2020,
with no finding of legal error.

Dated: March 9, 2020.

Jesse M. Feder,
Chief United States Copyright Royalty Judge.

Carla D. Hayden,
Librarian of Congress.
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