RESPONSE TO WRITE 4 U (PUBLISHING)/TREASA FENNIE’S COMMENTS REGARDING DISTRIBUTION OF THE 2010 SOUND RECORDINGS FUND

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself and claimants listed in exhibit A, see Settling Claimants, Ex. A, (collectively “Settling Claimants”), addresses certain incorrect assertions made by Write 4 U (Publishing)/Treasa Fennie (“Fennie”) in her comments regarding the distribution of the 2010 Sound Recordings Fund.

Fennie’s incoherent comments provide no support for her absurd claim for 50% of the 2010 Sound Recordings Fund royalties\(^1\); nor do they include a “reasonable objection” to the Settling Claimants’ request for partial distribution. Therefore, Fennie should not be permitted to further delay the distribution of the 2010 Sound Recordings Fund royalties to the Settling Claimants, who represent the majority of the claimants entitled to them.

In her comments, Fennie claims to represent the nonsettling claimants in this proceeding. See Write 4 U Comments, (Sept. 19, 2011); Write 4 U Comments (Sept. 23, 2011). However, pursuant to the regulations of the Copyright Royalty Board, she is unable to represent any claim other than her own, because “individual parties in proceedings before the Judges may represent ...\

\(^1\) Settling Claimants are astounded by the fact that Fennie has repeatedly characterized their SoundScan substantiated claim for 98% of the 2010 Sound Recordings Fund as “inflated” and an “overpayment.” However, she requests 50% of the 2010 Sound Recordings Fund without providing any supporting evidence.
themselves or be represented by an attorney. All other parties must be represented by an attorney.” See 350 C.F.R. § 350.2 (2008). Fennie is not an attorney and therefore can only represent herself in this proceeding. Moreover, she provides no evidence that any of the nonsettling claimants have authorized her to represent them.

As Settling Claimants detailed in their prior filings in this proceeding, the well-established credible SoundScan data\(^2\) reports only 13 record sales for featured recording artist Write 4U/Fennie and 13 record sales for copyright owner Write 4U/Fennie. See Notice and Request, (Aug. 23, 2011); Response to Comments Ex. B ¶¶ 3-6 (Oct. 14, 2011) (the document titled “Seltzer Decl.”). Therefore, Fennie is entitled to less than one fourth of a cent of the 2010 Featured Recording Artists Subfund royalties and less than a cent of the 2010 Copyright Owners Subfund royalties.

Fennie now asserts that she is the featured recording artist and copyright owner for songs entitled “ANCESTORS” and “Young Heart, Sandy riverea[sic] aka king[sic] Of[sic] Tomorrow,” and a featured recording artist on “Heal my Heart.” See Write 4 U Comments, (Sept. 19, 2011); Write 4 U Comments (Sept. 23, 2011). According to SoundScan data, Fennie is not the featured recording artist on nor copyright owner of these titles. Notably, she does not provide any evidence to support her claim to these titles. See Write 4 U Comments, (Sept. 19, 2011); Write 4 U Comments (Sept. 23, 2011). Even if we assume, for the sake of argument, that she is entitled to credit for the record sales of these titles, according to SoundScan data, her record sales would

increase from 13 record sales as a featured recording artist and 13 record sales as a copyright owner to 45 record sales for each category. See Ex. B ¶¶ 3-6 (Oct. 14, 2011) (the document titled “Seltzer Decl.”). Therefore, if Fennie was in fact entitled to credit for the record sales of these additional titles, which she is not, her share of the 2010 Featured Recording Artists Subfund royalties would increase from less than one fourth of a cent to one cent and her share of the 2010 Copyright Owners Subfund royalties would increase from less than one cent to one cent.

Fennie, however, baldly asserts that “2k[sic] units” of “Heal My Heart” were released in 2010 but, as has been her custom, she does not provide even a scintilla of evidence to support her allegations. See Write 4 U Comments (Sept. 23, 2011). Nonetheless, even assuming arguendo that Fennie was entitled to credit for the alleged 2,000 record sales of “Heal My Heart” and the other titles she claims, then she would be entitled to credit for 2,045 record sales in 2010 as a featured recording artist and 2,045 record sales as a copyright owner. These 2,045 record sales would entitle her to a sum total of 29 cents in the 2010 Featured Recording Artists Subfund royalties and 43 cents in the 2010 Copyright Owners Subfund royalties – a total of less than $1.00. If her assertion were true it would increase the 2010 Featured Recording Artists Subfund universe to 1,093,041,534⁴ record sales and the 2010 Copyright Owners Subfund universe to 1,125,923,911⁵ record sales. Fennie’s 2,045 record sales would therefore amount to merely .0000018709% of the total universe of 2010 Featured Recording Artists Subfund royalties and

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³ Fennie makes baseless allegations that Kings of Tomorrow took her featured recording artist credit for “Young Heart.” Write 4 U Comments (Sept. 23, 2011). While SoundScan reports Sandy Rivera/Kings of Tomorrow as the featured recording artist for this title, for the sake of this hypothetical, Settling Claimants have credited Fennie with “Young Hearts” recorded sales.

⁴ This is the number of record sales for featured recording artists verified by SoundScan and Professor Richard Seltzer (1,093,039,534, which already includes 13 record sales for Fennie and 32 record sales by Kings of Tomorrow to which Fennie claims to be entitled but which SoundScan reports as belonging to Kings of Tomorrow, an existing AARC member) plus the 2,000 record sales of “Heal My Heart,” which do not show up in SoundScan.

⁵ This is the number of record sales for copyright owners verified by SoundScan and Professor Richard Seltzer (1,125,921,911, which already includes 13 record sales for Fennie and 32 record sales by Kings of Tomorrow to which Fennie claims to be entitled but which SoundScan reports as belonging to Kings of Tomorrow, an existing AARC member) plus the 2,000 record sales of “Heal My Heart,” which do not show up in SoundScan.
.0000018163% of the total universe of 2010 Copyright Owners Subfund royalties. See Ex. B ¶ 3-6 (Oct. 14, 2011) (the document titled “Seltzer Decl.”). Even if we credit Fennie with the record sales of all these additional titles she claims, but for which she provides no proof, she would still not be entitled to anywhere near 50% of the 2010 Sound Recordings Fund. The truth is that, even if she could substantiate that she is entitled to credit for all the titles she alleges to own and be featured on, she could expect a judgment of far less than $1.00, not 50% of the 2010 Sound Recordings Fund. Clearly, the 2% of the 2010 Sound Recordings Fund that will remain, once the 98% partial distribution that the Settling Claimants have requested is made, represents more than enough funds to cover any plausible claim that Fennie could make during a hearing. Therefore, nowhere in the two documents that she filed as “comments” does she include a “reasonable objection” to the partial distribution that the Settling Claimants have requested.

Accordingly, the Settling Claimants respectfully request distribution of 98% of the 2010 Sound Recordings Fund because Fennie provided no “reasonable objection” for further delaying distribution of these royalties to the claimants who are entitled to them.

Respectfully submitted,
On Behalf of the Settling Claimants

[Signature]

Linda R. Bocchi, Esq.
DC BAR # 338012
VA BAR # 77599
Executive Director
Alliance of Artists and Recording Companies
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Alexandria, VA 22314
(703) 535-8101 (phone)
(703) 535-8105 (facsimile)

October 14, 2011
EXHIBIT A

2010 SETTLING CLAIMANTS
October 14, 2011

Featured Recording Artists
Ernst Andre**
James Cannings
Claimants represented by Jeffrey E. Jacobson, Esq.:
  J RAD Music
  Daniel Greenwald
  Kosmic Daydream
  Kim Angelis
  Bill Gravel
  John Kaizan Neptune
  The Process
  Aaron Shragge**
  Beatrice Thomas
  Vaneese Thomas
Claimants represented by Lawrence E. Feldman:
  4:00 PM
  AD LIBS
  ANDREWS*LEE & THE HEARTS
  BAKER*LAVERN
  BAKER*RON
  BALLARD*HANK
  BARBARIANS
  BELL*TONY
  BELLAMY BROTHERS
  BELMONTS
  BENNO*MARC
  BLACKFOOT
  BOBBETTES
  BRASS CONSTRUCTION
  BRODIE*HUGH
  BROWN*ALEX
  BROWN*MAXINE
  BROWN*SHARON
  CAPITOLS
  CARLEBACH*SHELOMO
  CATHY JEAN & ROOMATES
  CHAD & JEREMY
  CHAKA DEMUS
  CHAKA DEMUS & PLIERS
  CHANTELS
  CHIFFONS
CLANTON*JIMMY
CLASSICS IV
COLD CRUSH BROTHERS
COLLINS*LYN
COOKIES
CRASH CREW
CREED*LINDA
CRUDUP BROTHERS
DALE & GRACE
DAYVINA
DEE*LENNY
DEL-VIKINGS
DICK & DEEDEE
DIMUCCI*DION
DION
DION & BELMONT'S
DREAM STREET
DRY KILL LOGIC
DUBS
ELEGANTS
E-TYPE
FAUST*WAYNE
FEARING*CHARLES
FLIPMODE SQUAD
FUNKY FOUR PLUS ONE
GARDNER*TAANA
GEORGE*BARBARA
GQ
GRANDMASTER FLASH & FURIOS FIVE AKA FURIOUS FIVE
GRAVEDIGGER
GROOVE THEORY
GUILBEAU*GIB
HAGGARD*MERLE
HAMILTON*ROB
HARPTONES
HARRIS*NORMAN
HARRIS*THURSTON
HARRISON*WILBERT
HEARTBEATS
HOLMES*RICHARD "GROOVE"
HORNE*LENA
HORSTMAN*CINDY
JACKSON CHUCK
JIVE FIVE
KENNER*CHRIS
KERSEY*RON
LARRIEUX*AMEL
LEADERS OF THE NEW SCHOOL
LEWIS*JERRY LEE
LITTLE EVA
LYMON*FRANKIE
LYMON*FRANKIE & TEENAGERS
MEL*MELLE AKA GRANDMASTER MELLE MEL
MOONGLOWS
NEALE*BILL
NUTMEGS
OMAR & THE HOWLERS
ORIOLES
ORLONS
PARRISH*DEAN
PASSIONS
PENGUINS
PITTMAN*WAYNE AKA O'KAYSIONS
PRETTY BOY FLOYD
QUIET ELEGANCE
RAE*FONDA
ROSIE & ORIGINALS
RUNAWAYS
RUSH*TOM
SAM THE SHAM & THE PHAROAHS
SANDS*TOMMY
SEVAG*OYSTEIN
SEXUAL HARRASSMENT
SHEP & THE LIMELITES
SHIRELLES
SIHOUETTES
SMITH*PRESTON
SMITH*VERDELLE
SOUL SONIC FORCE
STANDELLS
TEMPOS
TERRY*JOHNNY
VANILLA ICE
VINCELLI*JOSEPH
VINCENT*GENE & BLUE CAPS
WALLS*HARRY VANN
WESLEY*FRED
WHITNEY*MARVA
WILLIAMS*CAROL
WILLIAMS*OTIS & CHARMS
WILLOWS
WORL-A-GIRL
YARBROUGH*GLENN
AKENS*JEWEL
AYERS*ROY
BAD BRAINS
BELL*ARCHIE
BERRY*RICHARD
BLACK UHURU
BLOSSOMS
BOB B. SOXX & BLUE JEANS
BROWN*RUTH
BUSTA RHYMES
BYRD*BOBBY
CAKE
CASCADES
CHAMBERS BROTHERS
CHANGE
COASTERS
CORBIN-HANNER BAND
CRESPO*RICKY
CRESTS
CRUDUP*ARTHUR "BIG BOY"
CRYSTALS
DANNY & THE JUNIORS
DELLS, THE
DIAMONDS
DIXIE CUPS
DOUGLAS*CAROL
FABULOUS THUNDERBIRDS
FLAMINGOS
FLYING BURRITO BROTHERS
GILLESPIE*DIZZY
HAPPENINGS
HELM*LEVON
INXS
JAY & THE AMERICANS
JAYNETTES
JB'S
JUNGLE BROTHERS
KLEINOW*PETER
KNACK
LEWIS*BARBARA
LITTLE ANTHONY & THE IMPERIALS
LITTLE TEXAS
LOBO
LOVE*DARLENE
MANGIONE*CHUCK
MANHATTANS
MANN* BARRY
MANN* HERBIE
MARCELS
MARLEY* RITA
MARTINO* AL
MARVELETTES
MCPHATTER* CLYDE
MELVIN* HAROLD & BLUE NOTES
MFSB
MONOTONES
NEWTON* JUICE
NICK CAVE & BAD SEEDS
PARIS SISTERS
PATRA
PAUL* BILLY
PEACHES & HERB
PENN* DAWN
PITNEY* GENE
PLATTERS
RANDY & THE RAINBOWS
REEVES* MARTHA & VANDELLAS
RONETTES
ROSE* MICHAEL
SCOTT* FREDDIE
SEALS* DAN
SHA NA NA
SHANGRI-LAS
SIMONE* NINA
SMITH* FRANKIE
SOUL SURVIVORS
TAMS
TESH* JOHN
TRAMMPS
TROY* DORIS
WEIDER* JIM
WELK* LAWRENCE
WHEELER* CHERYL
YAKI-DA

**These claimants have signed on with AARC. Therefore, AARC will represent them in all current and future AHRA Sound Recording Fund proceedings.
All other claimants have settled with AARC only with regard to the 2010 proceeding.
Copyright Owners
Reginald C. Woodward, Jr.**
Ernst Andre**
James Cannings
Claimants Represented by Dayna D. Staggs:
   Dayna D. Staggs**
   Songwriters Guild of America
   National Music Publishers Association
   Dayna Staggs Music Publishing**
   Dayna Faryss Entertainment, LLC
   Doin Peeps Music Publishing, LLC
Claimants Represented by Jeffrey E. Jacobson, Esq.:
   ROIR
   Norton Records, Inc.
   J Rad Music
   Daniel Greenwald
   Kosmic Daydream
   Reachout International Records, Inc.
   Skysong Record
   CQK
   Bill Gravel
   John Kaizan Neptune
   VP Record Distributers, Inc.
Claimants Represented by Lawrence E. Feldman:
   ANDREWS*LEE & THE HEARTS
   BAKER*RON
   BARBARIANS
   BELL*TONY
   BLOSSOMS
   BRODIE*HUGH
   BROWN*ALEX
   CATHY JEAN & ROOMATES
   COLD CRUSH BROTHERS
   COOKIES
   CREED*LINDA
   CRUDUP BROTHERS
   DALE & GRACE
   DAYVINA
   DICK & DEEDEE
   DREAM STREET
   FEARING*CHARLES
   FUNKY FOUR PLUS ONE
   GARDNER*TAANA
   GEORGE*BARBARA
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   HEARTBEATS
HORSTMAN*CINDY
JAYNETTES
KERSEY*RON
NEALE*BILL
ORLONS
PARRISH*DEAN
PITTMAN*WAYNE AKA O'KAYSIONS
RAE*FONDA
SHEP & THE LIMELITES
SMITH*VERDELLE
TEMPOS
TERRY*JOHNNY
VINCELLI*JOSEPH
WALLS*HARRY VANN
WEIDER*JIM
WHITNEY*MARVA
YAKI-DA
4:00 PM
AD LIBS
AKENS*JEWEL
AYERS*ROY
BAD BRAINS
BAKER*LAVERN
BALLARD*HANK
BELL*ARCHIE
BELLAMY BROTHERS
BELMONTS
BENNO*MARC
BERRY*RICHARD
BLACK UHURU
BLACKFOOT
BOB B. SOXX & BLUE JEANS
BOBBETTES
BRASS CONSTRUCTION
BROWN*MAXINE
BROWN*RUTH
BROWN*SHARON
BUSTA RHYMES
BYRD*BOBBY
CAKE
CAPITOLS
CARLEBACH*SHLOMO
CASCADES
CHAD & JEREMY
CHAKA DEMUS
CHAKA DEMUS & PLIERS
CHAMBERS BROTHERS
CHANGE
CHANTELS
CHIFFONS
CLANTON*JIMMY
CLASSICS IV
COASTERS
COLLINS*LYN
CORBIN-HANNER BAND
CRASH CREW
CRESPO*RICKY
CRESTS
CRUDUP*ARTHUR "BIG BOY"
CRYSTALS
DANNY & THE JUNIORS
DEE*LENNY
DEL-VIKINGS
DELLS, THE
DIAMONDS
DIMUCCI*DION
DION
DION & BELMONTS
DIXIE CUPS
DOUGLAS*CAROL
DRY KILL LOGIC
DUBS
E-TYPE
ELEGANTS
FABULOUS THUNDERBIRDS
FAUST*WAYNE
FLAMINGOS
FLIPMODE SQUAD
FLYING BURRITO BROTHERS
GILLESPIE*DIZZY
GQ
GRANDMASTER FLASH & FURIOS FIVE AKA FURIOUS FIVE
GRAVEDIGGAZ
GROOVE THEORY
GUILBEAU*GIB
HAGGARD*MERLE
HAMILTON*ROY
HAPPENINGS
HARTTONES
HARRIS*THURSTON
HARRISON*WILBERT
HELM*LEVON
HOLMES*RICHARD "GROOVE"
HORNE*LENA
INXS
JACKSON CHUCK
JAY & THE AMERICANS
JB'S
JIVE FIVE
JUNGLE BROTHERS
KENNER*CHRIS
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LYMON*FRANKIE & TEENAGERS
MANGIONE*CHUCK
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MARLEY*RITA
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MARVELETTES
MCPHATTER*CLYDE
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MELVIN*HAROLD & BLUE NOTES
MFSB
MONOTONES
MOONGLOWS
NEWTON*JUICE
NICK CAVE & BAD SEEDS
NUTMEGS
OMAR & THE HOWLERS
ORIOLES
PARIS SISTERS
PASSIONS
PATRA
PAUL*BILLY
PEACHES & HERB
PENGUINS
PENN*DAWN
PITNEY*GENE
PLATTERS
PRETTY BOY FLOYD
QUIET ELEGANCE
RANDY & THE RAINBOWS
REEVES*MARSHA & VANDELLAS
RONETTES
ROSE*MICHAEL
ROSIE & ORIGINALS
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RUSH*TOM
SAM THE SHAM & THE PHAROAHS
SANDS*TOMMY
SCOTT*FREDDIE
SEALS*DAN
SEVAG*OYSTEIN
SEXUAL HARRASSMENT
SHA NA NA
SHANGRI-LAS
SHIRELLES
SILHOUETTES
SIMONE*NINA
SMITH*FRANKIE
SMITH*PRESTON
SOUL SONIC FORCE
SOUL SURVIVORS
STANDELLS
TAMS
TESH*JOHN
TRAMMPS
TROY*DORIS
VANILLA ICE
VINCENT*GENE & BLUE CAPS
WELK*LAWRENCE
WESLEY*FRED
WHEELER*CHERYL
WILLIAMS*CAROL
WILLIAMS*OTIS & CHARMS
WILLOWS
WORL-A-GIRL
YARBROUGH*GLENN

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All other claimants have settled with AARC only with regard to the 2010 proceeding.
EXHIBIT B

DECLARATION OF RICHARD SELTZER

I, Richard Seltzer, declare under penalty of perjury as follows:

1. My name is Richard Seltzer, and I am a Political Science professor at Howard University, where I currently teach graduate courses in statistics and research methods. For the past thirty-one years, I have also designed and conducted various surveys. Additionally, I have authored numerous publications, which are listed in the attached curriculum vitae. On account of my experience in the field, I have previously been qualified as an expert in statistics and survey research in several federal and state courts. In addition to my teaching responsibilities, I have acted as a consultant to a variety of organizations in creating and maintaining complex databases. For the last fourteen years, I have worked with the Alliance of Artists and Recording Companies (“AARC”) as a royalty distribution system and sales data consultant. It is through this professional relationship that I have become familiar with Nielsen SoundScan’s sales data, the data my following testimony is based upon.

2. I confirm that AARC’s Royalty Distribution System uses SoundScan data to determine the annual allocation of the DART Sound Recordings Fund royalties among claimants before the Copyright Royalty Board.

3. I have reviewed the 2010 SoundScan record sales data in the AARC Royalty Distribution System and found 32 record sales for title “Young Heart” by Sandy Rivera aka Kings of Tomorrow aka KOT(“KOT”) as a featured recording artist, 13 record sales for “Heal My Heart” by Write 4 U (Publishing)/Treasa Fennie (“Fennie”), and 0 record sales for “Ancestors” by Fennie.

4. I have reviewed the 2010 SoundScan record sales data in the AARC Royalty Distribution System and found 32 record sales for title “Young Heart” by KOT as a copyright owner, 13 record sales for “Heal My Heart” by Fennie, and 0 record sales for “Ancestors” by Fennie.

5. The 2010 universe of record sales for claimants to the 2010 Featured Recording Artists Subfund, the 13 total record sales for Fennie and 32 record sales for KOT is 1,093,039,534 record sales.

6. The 2010 universe of record sales for claimants to the 2010 Copyright Owners Subfund, 13 total record sales for Fennie and 32 record sales for KOT is 1,125,921,911 record sales.

1 “Nielsen provides charts and insights for both music broadcast and sales. We capture in excess of 100 million song performances on more than 2,000 radio, satellite radio, network radio, and music video channels across Canada, Mexico, Puerto Rico and the United States. Nielsen’s tracking of music sales data is used by all major and most independent record companies as well as distribution companies, artist managers, booking agents, concert promoters, performing rights organizations, government agencies, venue owners, traditional retailers, online retailers, and digital delivery companies. Nielsen’s data on airplay and sales is featured weekly in Billboard magazine and is widely cited by numerous publications and broadcasters as the standard for music industry measurement.” See: http://www.nielsen.com/us/en/industries/media-entertainment/music.html
I declare under penalty of perjury that the foregoing is true and correct.

Richard Seltzer

10/14/2011

Date

City of Alexandria

Commonwealth of Virginia

Certified this 14th day of 18, 2011

Notary Public
My commission expires: 7/31/17
CURRICULUM VITAE

RICHARD A. SELTZER
Department of Political Science
Howard University
Washington, D.C. 20059

Telephone:  (202) 806-6857
EMail: rseltz@howard.edu
Web: http://rickseltz.googlepages.com (source for many of my publications)

Rank: Professor

II. EDUCATION

Undergraduate: University of Denver

Ph.D.: Graduate School of International Studies
University of Denver, August, 1978

III. ACADEMIC FIELDS OF INTEREST

a. Methodology: including public opinion surveys, statistical analysis, and the philosophy of science.

b. Legal Studies: including juror decision making processes and jury composition.

IV. LIST OF PUBLICATIONS


Seltzer, R., Michael Frazier and Irelene Ricks (1995). Multiculturalism, Race, and Education. Journal of Negro Education. 64:2, 124-140.


V. PRESENTATIONS AT PROFESSIONAL CONFERENCES AND SELECTED REPORTS


Gilliam, Aisha and R. Seltzer. The Efficacy of Educational Films on AIDS Among College Stu-


Seltzer, R. Joseph McCormick, and Walter Hill. Housing Conditions and Attitudes Toward Housing and Related Issues in Washington, D.C. monograph available by writing the authors at the Department of Political Science at Howard University. 1981.

