

**Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.**

In the Matter of)	
)	
Distribution of DART Sound Recordings Fund)	Docket No. 15–CRB–0011 DART
Featured Recording Artists and Copyright Owners)	(SRF/CO) (2014)
Subfunds Royalties for 2014)	

**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**

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself, Emmanuel Adeyinka and Benjamin Bacon (collectively referred to as the “Settling Parties”), submit these comments to the Copyright Royalty Board Notice Soliciting Comments on the Motion for Partial Distribution of 2014 DART Sound Recordings Fund Royalties, (“Copyright Royalty Board Notice”). The Settling Parties respectfully offer this filing in support of their Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties¹ (“Notice of Settlement and Request”).

AARC was unable to obtain settlements with Herman Kelly (“Kelly”), Tajai Music, Inc. (“Tajai”), and Afterschool Publishing Company (“APC”)² (collectively referred to as the

¹ Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties Docket No. 15–CRB–0011 DART (SRF/CO) (2014) (Copyright Royalty Bd. Jul. 23, 2015).

² Kelly has filed two claims; Kelly filed under his name as a claimant to the 2014 Featured Recording Artists Subfund, and under APC as a claimant to the 2014 Copyright Owners Subfund.

“Non-Settling Parties”)³ for the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds (“2014 DART Sound Recordings Fund”).

For the reasons set forth in AARC’s Notice of Settlement and Request and as elaborated below, AARC, on behalf of the Settling Parties, respectfully submits this Motion in Support of its Notice of Settlement and Request.

I. Given the Settling Parties’ Significant Share of Record Sales for Royalty Year 2014, Distribution of 98% of the 2014 DART Sound Recordings Fund is Warranted.

Pursuant to the Audio Home Recording Act of 1992, if the distribution of royalty payments is in dispute, the Copyright Royalty Judges must allocate the Sound Recordings Fund’s royalties based on the distribution (record sales) of the claimant’s sound recordings during the relevant period (the “Royalty Year”).⁴ Further, the Copyright Royalty Board has the ability to partially distribute Sound Recordings Fund royalties that are not in dispute, provided that “no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution .

.”⁵

Partial distribution of 98% of the 2014 DART Sound Recordings Fund royalties to the Settling Parties is warranted because the remaining 2% of the DART Sound Recordings Fund royalties is more than sufficient to satisfy the Non-Settling Parties’ claims based on their low record sales during the 2014 Royalty Year.

³ See Order Dismissing Claims of Eric Burns and Dr. Dwight Sanders, Docket No. 15-CRB-0011 DART (SRF-CO) (2014) (Copyright Royalty Bd. Sep. 11, 2015) (the 2014 DART Sound Recordings Fund Claims of Dwight Sanders (“Sanders”) and Eric Burns (“Burns”) were dismissed by the Copyright Board pursuant to 37 C.F.R. 360.22(b)(6) after both Burns and Sanders failed “to satisfy a required element upon which a valid DART claim [could] be based.”).

⁴ 17 U.S.C. § 1006(c)(1) (2015).

⁵ 17 U.S.C. § 801(b)(3)(C) (2015).

a. Non-Settling Featured Recording Artists Subfund Claims

Nielsen SoundScan sound recording data sales have been recognized in the music industry, and previous DART proceedings, as credible evidence of distribution for allocation of royalties.⁶ The SoundScan sales data reports that the total record sales for all claimants of the 2014 Featured Recording Artists Subfund, including the Settling Parties' sales, are 945,787,630 units.⁷ The 2014 record sales of the Settling Parties totals 945,786,343 units which makes up 99.99986% of the 2014 Featured Recording Artists Subfund.⁸ SoundScan data reported 1,287 record sales for those titles claimed by Non-Settling Party Kelly as a featured recording artist.⁹ Kelly's record sales for those titles therefore amount to \$0.128, or less than 0.000136% of the total 2014 Featured Recording Artists Subfund of \$93,890.63.¹⁰

Based on the SoundScan sound recording data, which indicates that Non-Settling Party Kelly's claim amounts to less than 1% of the total 2014 Featured Recording Artists Subfund, partial distribution of 98% of the 2014 Featured Recording Artists Subfund to the Settling Parties is appropriate because the remaining 2% is more than sufficient to satisfy Kelly's claim.

b. Non-Settling Copyright Owners Subfund Claims

The total record sales for all claimants of the 2014 Copyright Owners Subfund, including the Settling Parties' sales, are 939,816,923 units.¹¹ The 2014 record sales of the Settling Parties

⁶ See e.g. Distribution of the 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (Copyright Office Feb. 7, 2001) (“[F]inding no other basis for determining the universe of total record sales in the written record, the Panel accepted the testimony of Michael Fine [concerning the use of SoundScan data] for determining the total number of record sales in any given year.”); Distribution of 1992, 1993 and 1994 Musical Works Funds, 62 Fed. Reg. 6558, 6562 (Copyright Office Feb. 12, 1997) (concluding that the Copyright Arbitration Royalty Panel's use of SoundScan data to determine record sales “was not arbitrary”); see *Music Sales Measurement*, THE NIELSEN COMPANY (2015), <http://www.nielsen.com/us/en/solutions/measurement/music-sales-measurement.html> (explaining that Nielsen data collection “is the authority” in determining record sales for music).

⁷ Notice of Settlement and Request, *supra* note 1, at 3; Stern Decl. Ex. A at para 3.

⁸ Notice of Settlement and Request, *supra* note 1, at 4.

⁹ Notice of Settlement and Request, *supra* note 1, at 4; Stern Decl. Ex. A at para. 3.

¹⁰ Notice of Settlement and Request, *supra* note 1, at 4.

¹¹ Notice of Settlement and Request, *supra* note 1, at 4; Stern Decl. Ex. A at para. 6

total 939,022,454 units, or 99.91546% of the 2014 Copyright Owners Subfund.¹² SoundScan's data reported 5,301 record sales in 2014 for a title claimed by Non-Settling Party Tajai, but Tajai is not listed as the copyright owner for the title.¹³ SoundScan's data further reported 789,168 record sales in 2014 for the titles claimed by Non-Settling Party APC, yet APC was credited as the copyright owner for only 1,287 of those record sales.¹⁴ For purposes of this pleading, the Settling Parties will credit the Non-Settling Parties with combined record sales of 794,469.¹⁵ The Non-Settling Copyright Owners Parties' combined record sales amount to \$119.05, less than 0.0845% of the total Copyright Owners Subfund of \$140,835.94.¹⁶

Based on the SoundScan sound recording data, which indicates that the Non-Settling Copyright Owners Parties' claims amount to less than 1% of the total 2014 Copyright Owners Subfund, partial distribution of 98% of the Copyright Owners Subfund to the Settling Parties is appropriate because, in the best case scenario for the Non-Settling Parties, the remaining 2% is more than sufficient to satisfy the Non-Settling Copyright Owner Parties' claims.

II. The Settling Parties Agree to Return Any Excess Royalty Amounts Plus Interest to the Extent Necessary to Comply With the Copyright Board's Final Determination Regarding the Distribution of the 2014 DART Sound Recordings Fund.

The Settling Parties agree to comply with the conditions set forth under 17 U.S.C. § 801. If the Copyright Board agrees to partial distribution of 98% of the 2014 DART Sound Recordings Fund royalties and later concludes that a controversy exists as to the distribution of such funds,¹⁷ the Settling Parties agree "to return any excess amounts to the extent necessary to

¹² Notice of Settlement and Request, *supra* note 1, at 5.

¹³ See Notice of Settlement and Request, *supra* note 1, at 4-5; Stern Decl. Ex. A, at para. 4(a).

¹⁴ See Notice of Settlement and Request, *supra* note 1, at 5; Stern Decl. Ex. A, at para. 4(d)-(e).

¹⁵ AARC, on behalf of the Settling Parties, reserves the right to challenge Tajai's and APC's total record sale claims at a hearing.

¹⁶ Notice of Settlement and Request, *supra* note 1, at 5.

¹⁷ 17 U.S.C. §801(a)(3)(B) (2015).

comply with the final determination on the distribution [of the 2014 DART Sound Recordings Fund royalties.]”¹⁸ Further, the Settling Parties agree to sign such an agreement and “file the agreement with the Copyright Royalty Judges . . .”¹⁹

III. Conclusion

In view of the foregoing, the Settling Parties believe that there can be no reasonable objection to the partial distribution of 98% of the 2014 DART Sound Recordings Fund to the Settling Parties.

Accordingly, the Settling Parties respectfully request that the Copyright Board grant their Notice of Settlement and Request for Partial Distribution of 2014 DART Sound Recordings Fund, and distribute 98% of the 2014 DART Sound Recordings Fund to AARC as agent for the Settling Parties.

Respectfully submitted,
On Behalf of the Settling Parties



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December 2, 2015

¹⁸ § 801(b)(3)(C).

¹⁹ § 801(b)(3)(C)(ii)-(iii).

CERTIFICATE OF SERVICE

I, Sarah Koons, Royalty Administrator of the Alliance of Artists and Recording Companies, certify that on this December 2, 2015, a copy of the foregoing "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" was served, by the designated delivery method, on the following parties:


Sarah Koons

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