

**Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC**

In the Matter of)	
Distribution of DART Sound Recordings)	
Fund Featured Recording Artists and)	
Copyright Owners Subfunds Royalties for 2013)	
	Docket No. 14-CRB-0006 DART SR (CO/FA) (2013)

PETITION TO PARTICIPATE

Pursuant to section 351.1(b)(2)(i) and in accordance with the notice issued by the Copyright Royalty Board (“CRB”), the Alliance of Artists and Recording Companies (“AARC”) hereby files its Petition to Participate in the proceeding to determine the distribution for the remaining two percent (2%) of the royalty fees in the 2013 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds (“2013 Sound Recordings Fund”). 37 C.F.R. § 351.1(b)(2)(i) (2014); Notice, In re Distribution of 2013 Digital Audio Recording Technology Royalty Funds, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013), 80 Fed. Reg. 15,632 (Mar. 24, 2015) (“Notice”).¹ Jeffrey E. Jacobson, Esq. (“Jacobson”), the other settling party, has settled out of the proceeding and is no longer prosecuting his 2013 claims, as reported in the Notice of Settlement and Request For Partial Distribution filed with the CRB on August 18, 2014. Notice of Settlement and Req. For Partial Distribution, In re Distribution of 2013 Digital Audio Recording Technology Royalty Funds, Docket No. 14-CRB-0006 DART SR (CO/FA) 2013 (August 18, 2014) (“Settlement Notice”).

AARC is a non-profit organization formed to administer the Audio Home Recording Act of 1992 (“AHRA”) royalties for featured recording artists and sound recording copyright owners,

¹ The Notice does not require comments on controversies because the CRB has already determined that a controversy exists. See Notice at 15632.

who have authorized it to do so. Audio Home Recording Act of 1992, 17 U.S.C. §§ 1001-1010 (2011). AARC represents over 500,000 featured recording artists and over 14,000 independent record companies and labels.

On August 18, 2014, AARC, on behalf of the Settling Parties, reported to the CRB on the status of settlement, and requested partial distribution. Settlement Notice; *see also*, 17 U.S.C. § 1007 (2011) (permitting designation of a common agent to negotiate or receive payment on behalf of interested copyright parties). The Settlement Notice reported that the Featured Recording Artists Subfund proceeding was settled, except for the claims of David C. Powell, Jr., George Clinton and Ronald Ford. Settlement Notice at 2–3. It also reported that the Copyright Owners Subfund was settled except for the claims of George Clinton and David C. Powell, Jr., (also Non-Settling 2013 Featured Recording Artists Subfund Claimants), Eugene Curry, Kami Talpa, and Herman Kelly. *Id.*

In response to the Settlement Notice, on December 19, 2014, the CRB granted the Settling Parties request for partial distribution. Order Granting AARC’s Request for Partial Distribution of Royalties from The 2013 DART Sound Recordings Fund, In re Distribution of 2013 Digital Audio Recording Technology Royalty Funds, 14-CRB-0006 DART SR (CO/FA)(2013) (Dec. 19, 2014) (“Order”).

I. PETITION TO PARTICIPATE

AARC has a significant interest in the 2013 DART Sound Recordings Fund distribution proceeding as outlined in the Notice because it represents the majority of the featured recording artists who have performed on and copyright owners of sound recordings that have been embodied in digital or analog musical recordings that were distributed during the 2013 royalty year and who have filed claims in the 2013 DART Sound Recordings Fund distribution

proceeding. AARC has participated in and received all or substantially all of the funds through settlement or award, in every DART distribution proceeding since the enactment of the AHRA. Furthermore, AARC has already received a distribution of ninety-eight percent (98%) of the royalties in this proceeding. Order; Settlement Notice.

II. PAPER PROCEEDINGS

The Notice reported that the CRB finds it appropriate to conduct a paper proceeding because of “the relatively modest amount of royalties in dispute and the anticipated small number of non-settling claimants.” Notice, 80 Fed. Reg. at 15,633, *see also* 17 U.S.C. § 803(b)(5)(B); 37 C.F.R. § 351.3(c). Therefore, the CRB will determine the remaining issues “on the basis of the filing of written direct statements by each participant, a response of an opposing participant, and one additional response from the participant.” Notice

AARC hereby supports the CRB’s decision. Section 803(b)(5), which addresses paper proceedings, was implemented to provide “access to the adjudicative process to persons with relatively small copyright royalty claims while, at the same time, not allowing small claimants to unfairly exploit settlement leverage by unreasonably prolonging proceedings.” 70 Fed. Reg. 30901, 30903 (May 31, 2005). 17 U.S.C. § 803(b)(5). Moreover, the CRB has broad discretion to impose paper proceedings. 17 U.S.C. § 803(b)(5)(B).

Copyright Arbitration Royalty Panel (“CARP”) precedent is relevant in determining the need for evidentiary hearings. Section 803 of the Copyright Act states that prior CARP decisions shall be considered by the CRB for their precedential value. 17 U.S.C. § 803(a)(1) (2011) (“The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels...”). The CARP has waived formal

hearings for paper proceedings when it serves a public interest by “minimiz[ing] the costs to all claimants while still allowing complete consideration of all of the evidence already submitted by the parties in their direct cases.” CARP Order in Docket No. 95-1 CARP DD 92-94 (October 4, 1996). Paper proceedings have been authorized by the CARP on the grounds that they avoid the high administrative costs of a formal hearing in proceedings where, as in this case, there are small amounts of royalties in controversy. *See* Scheduling Order, In the Matter of Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Funds, No. 99-3 CARP DD 95-98 (June 19, 2000) (granting the Motion to Decide the Controversy on the Basis on Written Pleadings “[b]ased upon the record in this case and the full arguments of the parties, and upon due deliberation by the Panel”).

Here we have a relatively small sum of money with few non-settling parties. Therefore, it is clear that in this case, “live hearings would not aid the Judges in their deliberations and any legal requirements could be met with paper proceedings.” 70 Fed. Reg. 30901, 30903 (May 31, 2005). *C.f.*, Mathews v. Eldridge, 424 U.S. 319, 348 (1976) (asserting that an evidentiary hearing is not always the most effective method of decision making); United States v. Florida E. Coast Ry. Co., 410 U.S. 224, 239-42 (1973) (holding that the opportunity to present written submissions of their case satisfied the “hearing requirement” of the Administrative Procedure Act without the need for oral arguments, cross-examination or oral testimony); U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 652 (D.C. Cir. 1994) (holding that a paper proceeding was sufficient to satisfy the “hearing” requirement).

III. FILING FEE

In the Notice, the CRB directed each party with a claim exceeding \$1,000 to file a \$150 filing fee payment with its petition. The amount in controversy is approximately \$4,744 (Copyright Owners Subfund) and \$3,183 (Featured Recording Artists Subfund). AARC will seek

distribution in excess of one thousand dollars (\$1,000). Therefore, in accordance with 17 U.S.C. § 803(b)(2)(D)(ii)(I) and 37 C.F.R. § 351.1(b)(4), a check made out to the CRB for one hundred and fifty dollars (\$150) is enclosed.

IV. CONCLUSION

AARC has provided all the information required by 37 C.F.R. §351.1(b)(2) and hereby files this Petition to Participate in the royalty distribution of the 2013 DART Sound Recordings Fund along with the filing fee. AARC also supports the CRB's decision to conduct a paper proceeding.

Respectfully submitted,
On Behalf of AARC



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