

Before the
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| In the Matter of |) | |
| |) | |
| Distribution of 2013 |) | Docket No.14-CRB-006 DART SR (2013) |
| Sound Recordings Fund Royalties |) | |
| |) | |

**AARC’S COMMENTS ADDRESSING INFORMAL OBJECTIONS OF
EUGENE CURRY / TAJAI MUSIC, INC. AND GEORGE CLINTON AND
RONALD FORD**

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself, and the Settling Parties, in response to the Copyright Royalty Board’s (“CRB”) Notice soliciting comments on motion for partial distribution, (“CRB Notice”), Notice, In the Matter of Distribution of 2013 DART Sound Recordings Fund Royalties, Docket No.14-CRB-006 DART SR (2013), 79 Fed. Reg. 60,185 (Oct. 6, 2014), submits these comments opposing the informal objections of Eugene Curry/TAJAI Music, Inc.’s (“Curry/TAJAI”) Request for Distribution of the Remaining 2% of the Copyright Owners 2013 Subfund Royalties, on the basis that it is procedurally defective and fails to establish that he is entitled to the remaining 2% of the 2013 DART Sound Recordings Fund/Copyright Owners Subfund royalties (“2013 Copyright Owners Subfund”). These comments also address George Clinton’s (“Clinton”) and Ronald Ford’s (“Ford”) combined Reply Response to Settlement Request from AARC on the basis that it is also procedurally defective and fails to provide any evidence of Clinton’s and Ford’s record sales to justify denying AARC’s request for partial distribution.

I. Curry/TAJAI's Pleading is Procedurally Defective

Curry/TAJAI's response to AARC's Notice of Settlement and Request for Partial Distribution of the 2013 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties ("Request for Partial Distribution") was not timely filed. The CRB's regulations require that oppositions be filed within five business days of the filing of the motion. 37 C.F.R. § 350.4(f) (2014). The Request for Partial Distribution was filed on August 19, 2014. Curry/TAJAI's pleading, therefore, was due on August 26, 2014. This makes the Curry/TAJAI's pleading nearly a month late, if in fact it was filed on September 19, 2014.

Additionally, Curry/TAJAI never served AARC, thus failing to comply with the CRB's regulations, which require that all motions, oppositions, and replies be served on other parties by means no slower than overnight express mail on the same day the pleading is filed. 37 C.F.R. § 350.4(h) (2014). *See* Order, In the Matter of Distribution 2010 Digital Audio Recording Royalty Funds, Docket No. 2011-6 CRB DD 2010 (Jan. 12, 2012) (order denying Write 4 U's request for the remaining 2% of the 2010 Featured Artist and Sound Recording funds for failure to properly serve opposing parties).

Based on these procedural errors, Curry/TAJAI's Request for Distribution of the Remaining 2% of the Copyright Owners 2013 Subfund Royalties should be denied.

II. Curry/TAJAI's Pleading Must Be Denied on its Merits

Even if Curry/TAJAI's pleading survives its procedural defects, it should be dismissed on its merits. Curry/TAJAI's pleading fails to prove that the residual 2% of the 2013 Copyright Owners' Subfund is no longer in controversy and that Curry/TAJAI is entitled to receive it.

Curry/TAJAI does not take issue with the 98% partial distribution request. Instead Curry/TAJAI makes an unsubstantiated request for the remaining 2% of 2013 Copyright Owners Subfund. Section 1007(c) of the AHRA and section 351.2 (b) of the CRB's regulations state that the CRB is authorized to order precontroversy partial distributions of monies that are not in controversy: "During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy." 17 U.S.C. § 1007(c) (emphasis added); *see also* 37 C.F.R. § 351.2(b)(1) (2007). All royalties in controversy require further proceedings in the form of a formal hearing unless an abbreviated proceeding is invoked by the CRB. 37 C.F.R. §§ 351.3(a), 351.8 (2014). A Small Claims abbreviated proceeding may be invoked if the contested amount of the claim is \$10,000 or less. 37 C.F.R. § 351.3(b) (2014). The CRB may invoke a Paper Proceeding, the second of the two abbreviated proceedings, if the case has no genuine issue of material fact, evidentiary hearings are not necessary and all parties in the proceeding agree in writing, or the CRB initiates the proceeding based on a motion or sua sponte. 37 C.F.R. § 351.3(c) (2014). Outside of holding a formal hearing or an abbreviated proceeding, royalties that are in controversy may not be distributed by the CRB. 17 U.S.C. § 1007(c); 37 C.F.R. §§ 351.2(b)(1), 351.3 (2014).

Notably, this is not the first time that Curry/TAJAI has attempted to collect DART monies to which he is not entitled. In the 2008 DART Sound Recordings Fund proceeding, Curry/TAJAI attempted to collect a portion of the monies in controversy in response to AARC's request for partial distribution of the funds no longer in controversy.

As he does in the current proceeding, in the 2008 proceeding, Curry/TAJAI did not expressly oppose AARC's contention that the Settling Parties are entitled to 98% of the funds, but instead, requested a portion of the remaining funds, arguing that AARC's conclusions regarding his record sales were incorrect. After reviewing all the filings, the CRB concluded that Curry/TAJAI did "not expressly oppose AARC's contention that the Settling Parties are entitled to at least 98% of the royalties in the 2008 Copyright Owners Subfund. Therefore, the Judges determine that no controversy exists with respect to 98% of the royalties in the 2008 Copyright Owners Subfund." Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds, Docket No. 2009-3 CRB DD 2008 (Aug. 19, 2009). Thereafter, in the same proceeding, upon the CRB distributing 98% to the 2008 Settling Parties, Curry/TAJAI filed a request for partial distribution of 50% of the remaining 2% of the 2008 Copyright Owners Subfund based on a list of sound recordings he included in his filing. The CRB denied the Curry/TAJAI request stating, "we cannot, in the absence of a proceeding, determine what copyrights if any, Mr. Curry possesses with respect to those sound recordings or how much royalties those rights would entitle him to." Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds, Docket No. 2009-3 CRB DD 2008 (March 30 2010); *See also* Order, In the Matter of Distribution of the Remaining 2% of the 2005 and 2006 Sound Recordings Fund (granting the distribution of subfunds to AARC because the remaining 2% of the funds were no longer in controversy following a settlement) (Oct. 10, 2010). Curry/TAJAI's unsubstantiated request for the remaining 2% of the 2013 Copyright Owners Subfund should also be denied.

III. Clinton and Ford's Claim is Procedurally Defective

On August 25, 2014, Clinton and Ford sent an email to the CRB stating that they did not agree with AARC's Request for Partial Distribution. In this email, Clinton and Ford stated that they would be filing a motion to this effect. No such motion was ever filed. Section 350.4(a) of the CRB's regulations requires that all filings be submitted in paper form. 37 C.F.R. §350.4(a) (2014). Specifically, the CRB's regulations do not permit filing by electronic form. Section 350.4(a) requires that pleadings be filed with the CRB by the submitting party delivering "an original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette to the Copyright Royalty Board in accordance with the provisions set forth in §301.2 of this chapter. In no case shall a party tender any document by facsimile transmission, except with the prior express authorization of the Copyright Royalty Judges." In its Notice, the CRB specifically noted this requirement stating that Clinton and Ford's objections had been received, "by email, which is not an acceptable method of filing". 79 Fed. Reg. 60,185, 60,186 (Oct. 6, 2014).

In addition to improperly filing with the CRB, Clinton and Ford also improperly served AARC. They merely courtesy copied AARC on the email they sent to the CRB. Section 350.4(h) of the CRB's regulations requires that each party serve all motions, oppositions and replies on the other parties by means no slower than overnight express mail on the same day the pleading is filed. The rule provides an exception, in lieu of express mail or other expedited delivery, only if the party to be served "is willing to accept service of a document electronically (*i.e.*, by email), followed by a hard copy,

first-class mail of the hard copy”. 37 C.F.R. § 350.4(h) (2014). AARC was never contacted to request, nor did AARC grant, permission to receive electronic service. Moreover, AARC never received a follow up hard copy in the mail. Since Clinton and Ford never properly filed their objections with the CRB nor served AARC with them, their email submission should be denied as procedurally defective.

IV. Clinton and Ford’s Email Fails to Provide Any Evidence Supporting Their Opposition to AARC’s Request for Partial Distribution

As in the case of Curry/TAJAI’s filing, even if Clinton and Ford’s email survives its procedural defects, it should be denied based on the absence of any evidence of record sales that rebuts AARC’s Request for Partial Distribution. Clinton and Ford make an unsubstantiated claim that they do not agree with the Request for Partial Distribution filed by AARC.¹ They proceed to make bald assertions about the validity of SoundScan sales data upon which AARC bases its request. As AARC has established in detail in its request for partial distribution, SoundScan is the industry-recognized source for sound recording sales in the United States and has been recognized in every DART proceeding as credible evidence of distribution for allocation of royalties. Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 ¶ 61 (Feb. 7, 2001); *see also* Distribution of 1992, 1993 and 1994 Musical Works Funds, 62 Fed. Reg. 6558, 6,562 (“The [Copyright Arbitration Royalty] Panel’s decision to reject the record sales data submitted by Mr. Curry and rely upon the SoundScan data

¹ Clinton and Ford also state in their email that they do not consent to AARC receiving any funds for them. AARC has made no such request. As evidenced in the Request for Partial Distribution, Clinton and Ford are identified as Non-Settling Parties. AARC only requests royalties on its behalf and that of the Settling Parties.

was not arbitrary.”). Not only do Clinton and Ford fail to rebut SoundScan’s reputation, but they also fail to provide any evidence of their own record sales and the percent of the 2013 DART Sound Recordings Fund/Featured Recording Artists and Copyright Owners Subfunds (“2013 Featured Recording Artists and Copyright Owners Subfunds”) to which they believe they are entitled. Clinton and Ford’s bald assertions should not be allowed to impede a settlement and request for partial distribution that the other claimants have worked hard to achieve. Historically, the CRB has found such baseless objections to be unreasonable and not worth causing a settlement and request for partial distribution to be blocked. *See Order, In the Matter of Distribution of 2010 Digital Audio Recording Royalty Funds*, Docket No. 2011-6 CRB DD 2010 (Mar. 6, 2012) (order denying Treasa Fennie's motion for 2% partial distribution of the 2010 DART Sound Recordings Fund because her filings were considered "bald assertions"); *Order, In the Matter of Distribution of 2010 Digital Audio Recording Royalty Funds*, Docket No. 2011-6 CRB DD 2010 (Nov. 17, 2011) (concluding that it could grant AARC’s request for partial distribution, even though one of the Non-Settling Parties had objected because “no claimant entitled to receive a share of the 2010 DART Sound Recordings Fund royalties [had] stated a reasonable objection to AARC’s request”); *Order, In the Matter of Distribution of 2008 DART Sound Recordings Fund*, 2009-3 CRB DD 2008 (Aug. 19, 2009) (rejecting an objection to a request for partial distribution because the objection was baseless and “facially implausible”). *Order, In the Matter of Distribution of 2005-2008 DART Musical Works Funds Royalties*, Docket No. 2010-8 CRB DD 2005-2008 (March 1, 2011) (April 14, 2011) (concluding that 95% of the Musical Works Funds should be distributed because “no claimant entitled to receive the royalties at issue has

stated a reasonable objection to the proposed partial distribution”); Order, In the Matter of Distribution of the 2008 Satellite Royalty Funds, Docket No. 2010-7 CRB SD 2008 (Jan. 11, 2011) (noting that while controversies exist regarding the royalties, no reasonable objection to the distribution was delivered via comment). However, it is well established by regulation and precedent that claims of controversy and oppositions to partial distribution must be “reasonable.” *See* 17 U.S.C. § 801(b)(3)(C) (2011); *see also*, Order, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds, Docket No. 2009-3 CRB DD 2008 (Aug. 19, 2009) (rejecting an objection to AARC’s request for partial distribution because the claim was baseless); Order, In the Matter of Distribution of the 2008 Cable Royalty Funds, Docket No. 2010-6 CRB CD 2008 (Jan. 11, 2011) (granting the motion for partial distribution because no reasonable objections were stated).

Finally, Clinton and Ford request “an audit . . . on the titles that were submitted to the Copyright Royalty Board.” Email from Carlon Thompson to Ronald Ford, Lydia Ford, and Linda R. Bocchi, Esq., (Aug. 25, 2014) (on file with author). There is no provision of the Copyright Act nor the CRB’s regulations that permit one DART claimant to audit another. The only audit provision with regard to DART royalties is found in section 201.30. This regulation allows interested copyright parties to verify the information contained in the statements of account filed by the manufacturer and distributor or importer and distributor of the devices and media that fall within the scope of the Audio Home Recording Act of 1992. *See* 17 U.S.C. § 1001; 37 C.F.R. § 201.30(c) (2014). Clinton and Ford’s request for an audit should be denied. *See generally*, Order, In the Matter of Distribution of 2010 Digital Audio Recording Royalty Funds, Docket No.

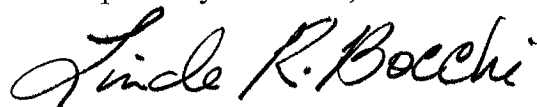
2011-6 CRB DD 2010 (Nov. 17, 2011) (concluding, “we know of no provision of the Copyright Act that requires the filing of such an itemizations and we see no reason to impose one here”).

V. Conclusion

Based upon the procedural and substantive defects of Curry/TAJAI’s and Clinton’s and Ford’s filings, AARC and the other Settling Parties respectfully request that these filings be rejected.

WHEREFORE, for the reasons set forth above, and because no claimant entitled to a share of the 2013 Featured Recording Artists and Copyright Owners Subfunds has stated a reasonable objection to the Settling Parties’ Request for Partial Distribution, AARC and the other Settling Parties respectfully request that the CRB grant their request

Respectfully submitted,

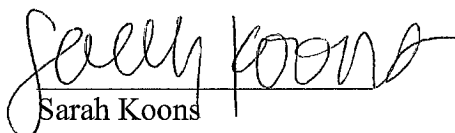
A handwritten signature in black ink that reads "Linda R. Bocchi". The signature is written in a cursive, flowing style.

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November 5, 2014

CERTIFICATE OF SERVICE

I, Sarah Koons, Royalty Administrator of the Alliance of Artists and Recording Companies, certify that on this November, 5, 2014, a copy of the foregoing "AARC's Comments Addressing Informal Objections Of Eugene Curry/TAJAI Music, Inc. and George Clinton and Ronald Ford" was served, by the designated delivery method, on the following parties:


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