

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

---

**In the Matter of**

**Distribution of the 2009, 2010 and 2011  
Digital Audio Recording Technology  
Musical Works Royalty Funds**

---

**MOTION FOR PARTIAL DISTRIBUTION OF THE MUSICAL WORKS FUND TO  
BROADCAST MUSIC, INC., AMERICAN SOCIETY OF COMPOSERS, AUTHORS  
AND PUBLISHERS, SESAC, INC., AND THE HARRY FOX AGENCY, INC.,  
AS SETTLING CLAIMANTS**

Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors and Publishers (“ASCAP”), SESAC, Inc. (“SESAC”) (collectively, the “Performing Rights Organizations” or “PROs”) and The Harry Fox Agency, Inc. (“HFA”) submit the following motion for partial distribution of ninety-five percent (95%) of the Writers and Publishers Subfunds of the 2009, 2010 and 2011 Digital Audio Recording Technology (“DART”) Musical Works royalty funds. As in past DART royalty distribution proceedings, the Settling Claimants have reached confidential settlements concerning their respective distribution shares for these years and collectively submit this motion as the “Settling Claimants.”<sup>1</sup> The Settling Claimants respectfully

---

<sup>1</sup> The PROs, together, represent hundreds of thousands of composer, lyricist, songwriter, and publisher members and affiliates with combined repertoires of millions of copyrighted musical works. On behalf of their members and affiliates, BMI, ASCAP, and SESAC license the public performance rights granted to their respective members and affiliates as copyright owners under Section 106(4) of the Copyright Act (17 U.S.C. § 106(4)). The PROs are also affiliated with about ninety foreign performing rights societies around the world and license the repertoires of those societies in the United States. HFA acts as a licensing agent for thousands of music publishers, who in turn represent the interests of hundreds of thousands of songwriters. HFA also represents multiple foreign societies that represent foreign songwriters and music publishers through agreements with such foreign mechanical rights organizations. Lists of the individual songwriters and music publishers and affiliated foreign performing rights and mechanical rights organizations

request that the Copyright Royalty Judges (“Judges”) publish a Federal Register notice (“Notice”) requesting comments for the proposed partial distribution of 95% of the 2009, 2010 and 2011 DART Musical Works Funds to the Settling Claimants. As of June 30, 2013, the royalties available for distribution from the DART Musical Works Funds were approximately \$492,847.70 for 2009, \$784,332.49 for 2010, and \$697,171.54 for 2011 (the “Available Funds”).

**I. Partial Distribution of 95% of the 2009, 2010, and 2011 Musical Works Funds Is Warranted.**

Pursuant to Section 801(b)(3)(C), the Settling Claimants respectfully request that the Judges order distribution of 95% of the 2009, 2010 and 2011 DART royalties. As in the past, the allocation of these funds among the Settling Claimants is subject to a number of confidential settlement agreements. Accordingly, the Settling Claimants move to have these funds transferred in bulk to a common distribution agent.

Failure to distribute 95% of the 2009, 2010 and 2011 funds or distribution of less than 95% of the funds would deprive the Settling Claimants of a substantial amount of royalties that belong to their songwriter, composer and publisher affiliates or members, collectively, during a period that may be several years since the payment of those funds under the Audio Home Recording Act. Moreover, all Settling Claimants have agreed as to the percentage of the partial distribution.

The Settling Claimants believe that a sufficient amount of royalties would remain in the DART Musical Works Funds for the relevant years to satisfy any future claims or proceedings. Since the vast majority of claimants to DART royalties for the years 2009-2011 have settled their claims, and only a relatively small number of individual and joint writer and publisher claimants

---

represented by each of the Settling Claimants in this proceeding were submitted with their respective claims and are incorporated herein by reference.

remains, the Judges have the discretion, within a zone of reasonableness, to find that 95% of the royalties are not in controversy. In all final DART Musical Works Funds distribution proceedings since 1997, non-settling individual writer and publisher claimants collectively have either received less than one tenth of one percent (0.1%) of the royalty funds or have been dismissed altogether.<sup>2</sup> Furthermore, the Settling Claimants were granted a partial distribution of 95% of the Musical Works Funds in the ongoing 2005-2008 DART distribution proceeding as well as the remaining 5% of the 2005, 2007 and 2008 funds, while only a single claim to the 2006 Musical Works Fund remains open. See Order Granting Claimants' Request for Partial Distribution of 2005 through 2008 DART Musical Works Funds Royalties, In the Matter of Distribution of 2005-2008 DART Musical Works Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW) (April 14, 2011); Order Regarding Distribution of Royalties and Announcing Voluntary Negotiation Period, Docket No. CRB DD 2005-2008 (MW) (April 12, 2013).

Accordingly, a partial distribution of 95% of the 2009, 2010 and 2011 Musical Works Funds to the Settling Claimants is appropriate and warranted at this time.

## **II. The Settling Claimants Are Willing to Make the Representations Required for Partial Distribution.**

The Settling Claimants are ready, willing and able to comply with the requirements for a partial distribution set forth in Section 801(b)(3)(C), which provides:

---

<sup>2</sup> See Order, In the Matter of Distribution of 2002, 2003 and 2004 Digital Audio Recording Funds, Docket No. 2006-5 CRB DD 2002-2004 (June 24, 2009) (dismissing the case of the lone unsettling individual claimant for failure to file a written direct case, and ordering a complete distribution of the remaining 5% of the Musical Works Funds for 2002-2004 to the Settling Claimants); Order, In the Matter of Distribution of 1999, 2000 and 2001 Digital Audio Recording Funds, Docket No. 2002-6 CARP DD 99-01 (January 31, 2003) (dismissing the case of an individual claimant for failure to file a written direct case); Librarian's Decision in Docket No. 99-3 CARP DD 95-98, 66 Fed. Reg. 9,360 (February 7, 2001) (awarding the Settling Claimants more than 99.9% of DART royalties, and awarding the remaining individual claimants a *de minimis* amount); Librarian's Decision in Docket No. 95-1 CARP DD 92-94, 62 Fed. Reg. 6,558 (February 12, 1997) (awarding the Settling Claimants more than 99.9% of the DART royalties, and awarding the remaining individual claimants a *de minimis* amount).

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

The Settling Claimants (1) agree to the partial distribution; (2) will sign a separate agreement as contemplated by subparagraph (ii) of Section 801(b)(3)(C); (3) will file that agreement with the Judges; and (4) agree that the requested funds are available for distribution. Consequently, under Section 801(b)(3)(C), the Judges may distribute the royalty fees sought by this motion.

### **Conclusion**

For the reasons set forth above, the Settling Claimants respectfully request that the Judges publish for comment in the Federal Register the proposed partial distribution of 95% percent of the 2009, 2010 and 2011 DART Musical Works Funds. Thereafter, the Settling Claimants request that the Judges order a prompt 95% partial distribution of the Writers and Publishers Subfunds of the 2009, 2010 and 2011 DART Musical Works Funds to the Settling Claimants.

Date: September 6, 2013

Respectfully submitted,

**BROADCAST MUSIC, INC.**

  
Joseph J. DiMona – DC Bar No. 413159  
Hope Lloyd – NY Bar No. 3903754  
Broadcast Music, Inc.  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
(212) 220-3149 (Phone)  
(212) 220-4456 (Fax)  
jdimona@bmi.com  
hlloyd@bmi.com

**AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS**

  
Samuel Mosenkis – NY Bar No. 2628915  
ASCAP  
One Lincoln Plaza, Sixth Floor  
New York, NY 10023  
(212) 621-6204 (Phone)  
(212) 787-1381 (Fax)  
smosenkis@ascap.com

**THE HARRY FOX AGENCY, INC.**

  
Stephen H. Block – SDNY Bar No. SB4280  
The Harry Fox Agency, Inc.  
40 Wall Street, 6<sup>th</sup> Floor  
New York, New York 10005  
(212) 370-5330 (Phone)  
(212) 922-3299 (Fax)  
sblock@harryfox.com

  
Michael J. Remington – DC Bar No. 344127  
Philip J. Cardinale – DC Bar No. 979949  
Drinker Biddle & Reath LLP  
1500 K Street, NW, Suite 1100  
Washington, DC 20005  
(202) 842-8839 (Phone)  
(202) 842-8465 (Fax)  
michael.remington@dbr.com  
philip.cardinale@dbr.com

**SESAC, INC.**

  
John C. Beiter – TN Bar No. 012564  
Shackelford, Zumwalt & Hayes  
1014 16<sup>th</sup> Avenue South  
Nashville, TN 37212  
(615) 256-7200 (Phone)  
(615) 256-7106 (Fax)  
jbeiter@shacklaw.net