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LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010-8 CRB DD 2005-2008 (MW)]

Distribution of the 2005, 2006, 2007 and 2008 Digital Audio Recording Technology Royalty Funds for the Musical Works Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2005, 2006, 2007 and 2008 Musical Works Funds. The Judges are also announcing the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying \$150 filing fee, if applicable.

DATES: Petitions to Participate and the filing fee, if applicable, are due no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the \$150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the \$150 filing fee, if applicable, may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the \$150 filing fee, if applicable, must be addressed to: Copyright Royalty Board, P.O. 70977, Washington, DC 20024-0977. If hand delivered by a private party, Petitions to Participate, along with the \$150 filing fee, if applicable, must be brought to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE, Washington, DC 20559-6000. If delivered by a commercial courier, Petitions to Participate,

along with the \$150 filing fee, if applicable, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE, Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist.

Telephone: (202) 707-7658. Telefax: (202) 252-3423 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (“AHRA”), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution to eligible claimants. 17 U.S.C. 1005, 1007. Royalties are divided into two funds: the Sound Recordings Fund (66 2/3%) and the Musical Works Fund (33 1/3%). These fees in turn are allocated to specific subfunds. 17 U.S.C. 1006(b). The Musical Works Fund, which is the subject of this notice, is divided equally between the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b)(2).

Distribution of these fees may occur in one of two ways. The interested copyright parties within each subfund may negotiate the terms of a settlement as to the division of royalty funds. If, after any such agreements, funds remain in dispute, the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. 17 U.S.C. 1006(c) & 1007(c).

On April 14, 2011, the Judges issued an order granting certain claimants’ (*i.e.*, Broadcast

Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency, Inc.) request for 95% of Digital Audio Recording Technology (“DART”) musical works royalty funds for 2005 through 2008. *Order Granting Claimants’ Request for Partial Distribution of 2005 through 2008 DART Musical Works Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW)*. In that order the Judges stated that the claimants did not represent that the requested fees were not subject to controversy. Moreover, the Judges have not received any motions for final distribution with respect to the remaining royalties. Therefore, the Judges determine that a controversy exists with respect to some or all of the remaining DART Musical Works Funds Royalties for 2005 through 2008. Today’s notice commences a proceeding to determine the proper distribution of those remaining funds.

Commencement of Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that, for the reasons stated above, a controversy exists with respect to the distribution of the remaining 2005, 2006, 2007 and 2008 DART Musical Works Funds Royalties. The Judges are consolidating the consideration of the distribution of the 2005, 2006, 2007 and 2004 DART Musical Works Funds into a single proceeding because they anticipate that the parties involved and the issues regarding the distribution of the royalty fees will be similar, if not the same, for each year. Moreover, due to the relatively small amount of funds for each year, consolidation provides a cost savings to the parties and promotes administrative efficiencies.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2), which is available at <http://www.loc.gov/cgi-bin/formprocessor/crb/cfr->

crb.pl?&urlmiddle=1.0.3.9.4.0.177.1&part=351§ion=1&prev=&next=2. Participants also must identify **by year** each subfund in the Musical Works Fund to which they are asserting a claim to royalties (*i.e.*, Music Publishers or Writers, or both). Petitions to Participate submitted by interested parties whose claims do not exceed \$1,000¹ must contain a statement that the party will not seek a distribution of more than \$1,000. No filing fee is required for these parties. Interested parties with claims exceeding \$1,000, however, must submit a filing fee of \$150 with their Petition to Participate or it will be rejected. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the “Copyright Royalty Board.” If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed. In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. Any party that is an individual may represent herself or himself. Further procedural matters, including scheduling, will be addressed after Petitions to Participate have been filed.

Dated: July 16, 2012

William J. Roberts, Jr.
Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]

¹ The Copyright Royalty Judge Program Technical Corrections Act, Public Law No. 109-303, changed the amount from \$10,000 to \$1,000.

