

meiea[®]

MUSIC & ENTERTAINMENT INDUSTRY
EDUCATORS ASSOCIATION

Journal of the
Music & Entertainment Industry
Educators Association

Volume 10, Number 1
(2010)

Bruce Ronkin, Editor
Northeastern University

Published with Support
from



MIKE CURB COLLEGE of
ENTERTAINMENT and MUSIC BUSINESS

BELMONT
UNIVERSITY

Termination of Copyright Transfers: Whether Sound Recordings Created On or After 1978 Constitute Works Made for Hire Under the Copyright Act of 1976

Stephanie R. Taylor
Middle Tennessee State University

Introduction

One of the most pressing issues facing record labels today is whether sound recordings constitute works made for hire under the United States copyright law. As early as the year 2013, courts will make a decision on this issue. If courts determine that sound recordings are not works made for hire under the law, labels could lose many of their most valuable assets: sound recording copyrights. This is a complicated issue, and as a result, it is difficult to predict what the courts will ultimately decide.

Copyright law has a unique provision that allows a copyright author to terminate or revoke his or her transfer of copyright after a specified period of time. Unlike tangible items, such as land or automobiles, it is difficult to assess the full value of a copyright prior to exploitation of the work. Despite this difficulty, it is often necessary for copyright creators to sell or transfer their copyrighted works prior to exploitation. In an effort to allow copyright creators to more fully assess the value of their copyrights and have a second chance to market those copyrights, Congress enacted section 203 of the 1976 copyright act, which allows termination of copyright transfers and licenses, thereby enabling copyright authors to get back their copyrights.

Works made for hire were specifically excluded from the termination of transfer provision. As a result, owners of works made for hire will not be forced to give those copyrights back to the original authors. The public policy underlying the works made for hire provision takes an economic perspective, granting ownership to the person or entity paying for the copyright, rather than granting ownership to the author who created the copyright. Works made for hire take two forms: either works created by an employee within the scope of his or her employment, or commissioned works created by independent contractors. The law takes a narrow perspective as to which types of works can constitute works made for hire

created by independent contractors. Section 101 of the copyright act, specifically enumerates nine types of copyrightable works that can constitute works made for hire created by independent contractors. Noticeably missing from this list are sound recordings.¹

The primary asset of any record label is its catalog of sound recording copyrights. For decades, record labels have acquired copyright ownership in sound recordings through exclusive recording agreements with artists. Labels and artists have generally assumed that the labels own the copyrights in these sound recordings as works made for hire. Unfortunately, the law of works made for hire is not entirely clear. If courts determine that sound recordings are not works made for hire under the act, the authors of sound recordings would have the right to get back their copyrights through the termination of transfer provisions of section 203. As a result, labels could lose many of their copyrights as early as 2013. This could have a devastating impact on the already diminishing value of record labels. This paper addresses the law of termination of transfers and works made for hire as applied to sound recordings created under typical exclusive recording agreements with record labels on or after 1978.

The 1909 Act

The U.S. Copyright Act of 1909 was quite different from the current system of copyright. It provided a bifurcated durational system with an initial term of 28 years and a second 28-year renewal term.² The public policy underlying this bifurcated system was to allow authors and their heirs the opportunity to more fully assess the value of those copyrights in the renewal term.³ It was presumed that at the time of the initial transfer of copyright, authors lacked knowledge of a work's potential value and as a result, the transferees (such as music publishers or record labels) held the upper hand in financial negotiations for a copyrighted work.⁴ The renewal term allowed authors (or their heirs), who may have been stuck with a bad deal during the first term of copyright, the opportunity to fully assess the value of copyrighted works and negotiate new deals with transferees in order to reap the full financial benefits of copyrighted works during their renewal terms.

The 1976 Act

With the passage of the 1976 copyright act (the act) came the elimination of the bifurcated system. As a result, there was no renewal term and

no renegotiation opportunity for authors who had entered into unremunerative transfers. The United States Congress recognized that at the time of transfer, prior to exploitation of the work, authors had an unequal bargaining position.⁵ To remedy this inequity, the 1976 act included section 203 which allowed authors to terminate transfers and licenses (termination of transfer).⁶ Termination of transfer, akin to the renewal right of the 1909 act, allows authors and their statutory successors the right to rescind copyright grants after a specified period of years, provided that certain formalities are observed.⁷ Termination of transfer also applies to works created prior to 1978. However, that termination right could only be exercised after the first 56 years of copyright. Because there were no federal sound recording copyrights prior to 1972, the earliest possible termination of a transfer of a pre-1978 sound recording copyright would be 2028. Because post-1978 sound recording terminations are a more pressing issue, analysis of termination of transfer as it applies to pre-1978 sound recordings is outside the scope of this article. Section 203 of the copyright act of 1976 provides that:

(a) ...In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright...executed by the author on or after January 1, 1978, ...is subject to termination... (a) (3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.⁸

Figures 1 and 2 clarify the statute. As shown below, an author will be allowed to get back his or her copyright during the five-year window at the end of thirty-five years from the date of execution of the grant or forty years after publication, whichever ends earlier. In the example below, forty years after execution of the grant is the earlier date. As a result, the five-year window for the effective date of termination will begin in 2018, allowing the author to get back his or her copyright as early as 2018, but

no later than 2023.

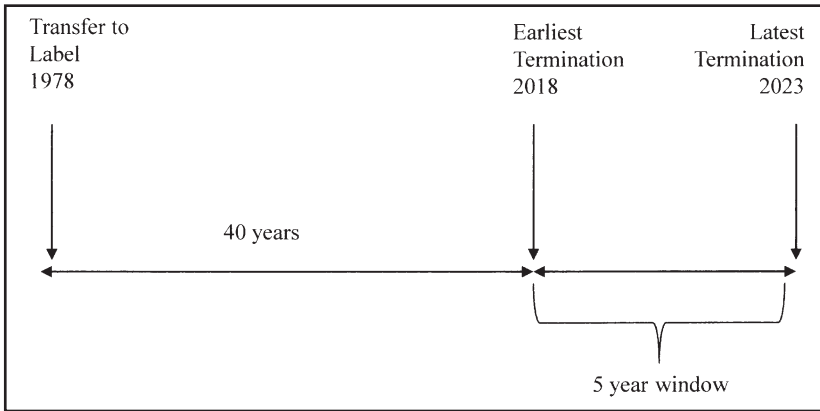


Figure 1. Termination from date of transfer.

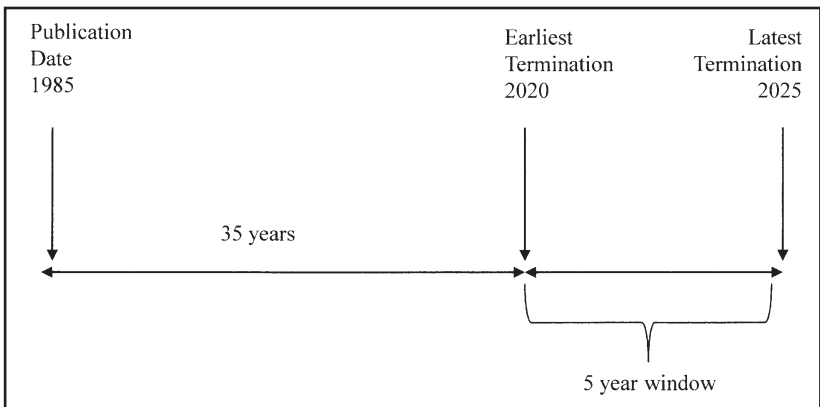


Figure 2. Termination from date of publication

Authorship and Ownership of Copyright in Sound Recordings

In every recording of music, there are two separate and distinct copyrights. The first is the “musical work” copyright. While musical work is not defined by the U.S. Copyright Act, it is understood to be the musical composition or song, including the words and instrumental components of the song.⁹ The authors of musical works are the songwriters or composers. In many instances, the songwriters or composers transfer their copyrights in musical works to music publishers. Those transfers are not within the

scope of this article.

The second type of copyright is the “sound recording” copyright. Sound recordings are defined in section 101 as the “work(s) that result from the fixation of a series of musical, spoken, or other sounds...” Most sound recordings are audio recordings of the separate and distinct “musical work” copyright. This article will focus on the rights of authors and owners of sound recording copyrights.

It is important to distinguish between authorship and ownership of copyrighted works. The United States Constitution limits copyright protection to the “writings of authors.” This is echoed in section 102 of the act, which states, “copyright protection subsists...in original works of authorship fixed in any tangible medium of expression...” An author’s work will be protected by federal copyright if it passes a three-part test. First, the work must be fixed in a tangible medium of expression. Second, the author must create the work independently. Third, the work must contain at least a minimal amount of creativity.¹⁰ A work that passes this three-part test will receive federal copyright protection and the author of a copyrighted work will also be the owner of the copyright in the work.¹¹ It should be noted that section 201(b) defines the “author” of a work made for hire as the employer or hiring party, not the creator.¹² Authorship and ownership are easy to assess when there is a single author. However, authorship in a sound recording can belong to a multitude of contributors so long as each individual’s contribution passes the three-part test for copyright protection.

When a work of authorship is created by several people, it is called a “joint work.” Section 101 of the act defines a “joint work” as “a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” An author will be considered a joint author of the copyrighted work if there was an intention that the author’s contribution be merged into the work, and if the author’s contribution to the joint work passes the three-part test of copyright eligibility set forth above.¹³ Joint authors are also joint owners of the copyrighted work.

When considering authorship and ownership of a sound recording, there are potentially dozens of joint authors and owners. From the moment the musicians, producer, and engineer step foot in the studio, there is the intention that each person’s contribution be merged into the sound recording. Furthermore, the contributions of those individuals usually pass the

three-part test of copyright eligibility. The required originality of authorship exists in “the performers whose performance is captured” and “the record producer responsible for setting up the recording session, capturing and electronically processing the sounds, and compiling and editing them to make the final sound recording.”¹⁴ In addition, it is likely that the sound engineer who “actually performs the task of capturing and electronically processing the sounds” is an author who has made a copyrightable contribution to the sound recording.¹⁵ As a result, a single sound recording may have dozens of joint authors and owners including featured artists, session musicians, background vocalists, the producer, and the sound engineer.

To resolve the complication of multiple owners of a single sound recording, it has long been a tradition in the music industry for artists, producers, and engineers to sign contracts stating that their contributions to the sound recording constitute works made for hire for the record label that is paying for the project. The following is a provision typically found in an exclusive recording agreement entered into between a recording artist and a record label.

Each Recording made by Artist during the Term and each Recording furnished to Company by Grantor or Artist under this agreement or during the Term (excluding the underlying Composition), from the inception of recording, shall be considered a work made for hire for Company; if any such Recording is determined not to be a work made for hire for Company it shall be deemed transferred to Company by this agreement, together with all rights in it, throughout the Territory...

Similar provisions can be found in contracts signed by producers and engineers. The primary objective of these provisions is to make the sound recording a work made for hire for the record label. The problem is that a sound recording is not necessarily a work for hire simply because a written contract makes that declaration. A copyrighted work can only be a work for hire if it is factually a work made for hire under the applicable statute.¹⁶

It should be noted that the time cards signed by union musicians working for the American Federation of Musicians (AFM) Local 257 in Nashville lack the aforementioned work for hire language. These factors could complicate the work for hire issue. However, an analysis of the is-

sues surrounding union musicians and their work for hire status is outside the scope of this article.

Works Made for Hire

The work for hire provision of the U.S. Copyright Act defines a “work made for hire” as:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire...¹⁷

This two-pronged approach sets forth two situations in which works made for hire can be created. First, by employees within the scope of their employment. Second, as commissioned works if there is a written instrument signed by both parties, and, if the work is one of the nine types specifically enumerated in the statute.

It can be presumed that most artists signed to typical exclusive recording agreements with record labels are not employees of the record labels. Furthermore, few labels claim ownership of sound recordings under the employee prong of the statute.¹⁸ As a result, it is a rare situation that a record label would own an artist’s sound recordings as employee works made for hire. Therefore, a discussion of the first prong of the statute will not be part of this analysis. Rather, an analysis of the second prong of the statute related to commissioned works will be conducted.

In order for a commissioned work to constitute a work made for hire, the statute sets forth two requirements. First, the parties must “expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.”¹⁹ An exclusive recording agreement, entered into between a recording artist and record label, will contain a provision similar to the example provision set forth above. If that agreement is signed by the artist and an authorized agent of the record label, the writing requirement will be met. For purposes of this analysis, it will

be presumed that the record label is a party to similar agreements with the producer, engineers, session musicians, and background vocalists. If that is the case, then the writing requirement of the second prong of the work made for hire statute will be satisfied.

The second requirement is that the commissioned work must be in one of nine categories enumerated in the statute. These include works commissioned for use:

1. as a contribution to a collective work,
2. as a part of a motion picture or other audiovisual work,
3. as a translation,
4. as a supplementary work,
5. as a compilation,
6. as an instructional text,
7. as a test,
8. as answer material for a test, or
9. as an atlas.²⁰

Sound recordings are not included in this list. As a result, it appears that sound recordings created for record labels as commissioned works cannot be works made for hire under the statute, regardless of how the works are defined by contract. However, this matter is more complicated than it appears on its face. It can be argued that sound recordings constitute “contributions to a collective work” under the statute. A collective work is defined by the act to be “a work, such as a(n)...anthology...in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.”²¹ Since each recording of an individual musical work constitutes a separate sound recording copyright, it can be argued that compiling several individual tracks (independent works) on an album (a collective whole) constitutes the creation of a collective work.

Sound recordings as collective works take two forms and require separate analysis. When an album is a compilation of different performers commissioned to separately perform and record tracks for subsequent collection on one album, such as a tribute album, there is clearly an argument that the work is a collective work.²² On the other hand, courts have not yet addressed whether the collection of several recordings performed by one band or artist and compiled on a single album constitute a col-

lective work.²³ To further complicate this matter, the recording industry recognizes that the digital era is pushing record companies to record and sell singles rather than albums. As the economic model for labels shifts to the production and distribution of singles, albums may become a thing of the past. As a result, the “collective work” argument will not serve to the benefit of record labels doing business in the digital era.

Legislative History

It should be noted that sound recordings specifically created for motion pictures are specifically enumerated as works made for hire under the statute. This was a direct result of lobbying efforts by the motion picture industry prior to passage of the act. During the drafting of the 1976 Copyright Act, sound recordings were frequently compared to motion pictures, both of which were initially denied work for hire status under the act.²⁴ As the act was revised, nine specific categories of commissioned works were added, including motion pictures. Although legislative history reveals that consideration was given to treatment of sound recordings under the commissioned prong of works made for hire, Congress ultimately declined to include sound recordings on the list.²⁵ Labels were aware of this exclusion and in 1999, the law changed, if only for a moment.

On November 29, 1999 President Clinton signed Public Law 106-113, an enormous 1,740 page appropriations bill that included the Intellectual Property and Communications Omnibus Reform Act of 1999 (IPCORA).²⁶ IPCORA for the first time included sound recordings as an enumerated category of specifically ordered or commissioned works for hire.²⁷ A House staffer at the request of the Recording Industry Association of America (RIAA) added the “technical amendment” to the bill.²⁸ The RIAA asserted that this amendment was an attempt to address problems related to cybersquatting.²⁹ Unfortunately, the addition came too late in the session to allow for either debate or withdrawal.³⁰

Performers, scholars, and some members of Congress complained that this amendment was a substantive change to the law, not merely a technical amendment.³¹ After only eleven months, the amendment was repealed. The repeal deleted the language added to section 101 and requested that courts give no legal significance to the fact that the amendment or deletion of the amendment ever took place.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the IP-CORA of 1999...nor the deletion of the words added by that amendment – (A) shall be considered or otherwise given any legal significance, or (B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination, by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section(s)...were never enacted, and without regard to any inaction or awareness by the congress at any time of any judicial determinations.³²

Whether this repeal will have legal significance for future judicial determinations can be debated. Despite Congress' attempt to implore courts to give this amendment and subsequent appeal no legal significance, case law indicates the opposite is likely. The United States Supreme Court, in *American Auto Assoc. v. U.S.* addressed a similar situation.³³ In that case, *American Auto* challenged whether a certain accounting practice was permissible under the Internal Revenue Code.³⁴ The code did not expressly address the particular accounting practice, but the tax Commissioner and courts had taken the position that the particular practice was not allowed under the code.³⁵ Congress decided to address the issue by expressly permitting the practice in an amendment to the code in 1954.³⁶ After protests from the treasury, Congress retroactively reversed its own action through repeal of the amendment to the code.³⁷ Congress asserted that it did not "intend to disturb prior law" through its amendment and subsequent reversal.³⁸ However, the Supreme Court made note of the fact that Congress "repealed the only law incontestably permitting the practice."³⁹ As a result, the Supreme Court held that the accounting practice was always impermissible under the code.⁴⁰

The holding in *American Auto* will likely provide precedence to courts when faced with the issue of whether sound recordings are one of the permissible categories of works made for hire under the statute. Sound recordings created in 1978 under exclusive recording agreements will be eligible for termination of transfer in 2013. As a result, determination of whether sound recordings constitute works made for hire will be in the hands of the courts as early as 2013. At that time, sound recording authors

will attempt to terminate their transfer of copyright. As a defense, record labels will assert that the sound recordings constitute works made for hire and are therefore exempt from termination of transfer. It seems likely that courts will hold that, based on the precedence set forth in *American Auto*, sound recordings were always an impermissible category of works made for hire under the act. The courts will likely determine that Congress' 1999 amendment and repeal of the copyright act is not unlike the amendment and repeal of the tax code in *American Auto*, thereby supporting the court's conclusion that sound recordings cannot be considered a class of works made for hire under the act.

If the courts determine that sound recordings do not constitute works made for hire, sound recording authors will be able to terminate the transfer of copyright. While this result would likely benefit the authors, effecting termination may not always be an easy task. Three hurdles stand in the way of a terminating author. First, when can termination take place? Second, how can termination be effected? Finally, who are the authors of a sound recording for purposes of termination of transfer?

When Can an Author Terminate a Transfer?

According to the termination of transfer provision, section 203, an author will be able to terminate a transfer of copyright thirty-five years from the date of publication or forty years from the date of execution of the grant, whichever term ends earlier. Suppose that Andrea Artist records an album that is protected by U.S. federal copyright law.⁴¹ To simplify this scenario, let's assume that Artist played all instruments and sang all of the vocals on the album. Let's also assume that the album was entirely produced and engineered by Artist. As a result, Artist is the owner of all copyright in this album and it is clearly not a work made for hire. Now assume that Record Label calls Artist and wants to purchase the copyright in this album so that Label can market and distribute Artist's album. If Artist agrees to the transfer, Artist and Label will enter into a written agreement transferring all copyright in the album to Label. Presumably, Artist will be paid a specified sum of money for this transfer. Regardless of their attempt to determine a fair price, there is always a risk that the sum will not be an accurate assessment of the true value of the album. As a result of the termination of transfer provision, Artist will be able to terminate her grant to Label and get her copyright back thirty-five years from the date of publication or forty years from the date of execution of the grant, whichever

term ends earlier. Section 203(a)(5) states that the termination right exists regardless of any agreement containing language to the contrary. As a result, Artist will get her copyright back and can either keep it for herself or negotiate a new transfer with this label or some other label. Presumably, after thirty-five years, a more accurate assessment of the work's value can be made.

Assume that Artist transferred her work to Label on February 1, 2002, and that Label published the work on June 1, 2002. In this scenario, Artist will be able to terminate her transfer thirty-five years from June 1, 2002 or forty years from February 1, 2002, whichever term ends earlier. As the illustrations below clarify, the earliest termination date for this example is June 1, 2037, thirty-five years after publication. As a result, Artist will be able to get her copyright back from Label during a five-year win-

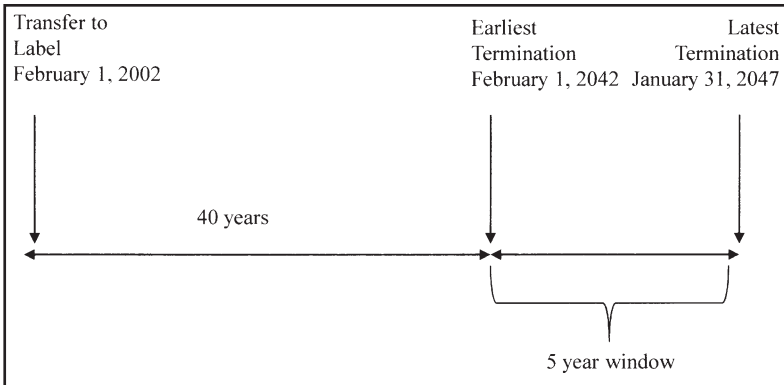


Figure 3. Termination from date of transfer.

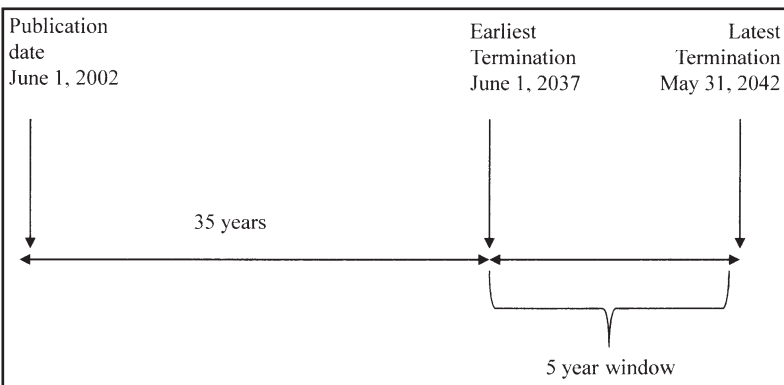


Figure 4. Termination from date of publication.

dow beginning on June 1, 2037 and ending on May 31, 2042 (see Figures 3 and 4).

In order to effect termination of the transfer, section 203 first requires that the owners of the termination interest serve written notice upon the grantee or grantee’s successors and record a copy of that notice with the U.S. Copyright Office before the effective date of termination.⁴² In this example, Artist would have to serve notice on the grantee, Label, and record that notice with the Copyright Office. Second, section 203 requires that the notice of termination specify the effective date of termination. The effective date of termination can be any date within the five-year termination window beginning June 1, 2037 and ending May 31, 2042. This notice must be served on the grantee or grantee’s successors no less than two and no more than ten years before the effective date of termination. Assuming Artist wants to terminate her grant to label at the earliest possible date, she would choose an effective date of June 1, 2037, the first day in the five-year window. This means that Artist can serve notice of termination on Label as early as June 1, 2027 to get her copyright back on June 1, 2037, but that she must serve notice no later than June 1, 2035 (see Figure 5).

If Artist misses the June 1, 2035 notice of termination date, she is not precluded from terminating her transfer; rather, Artist will have to pick

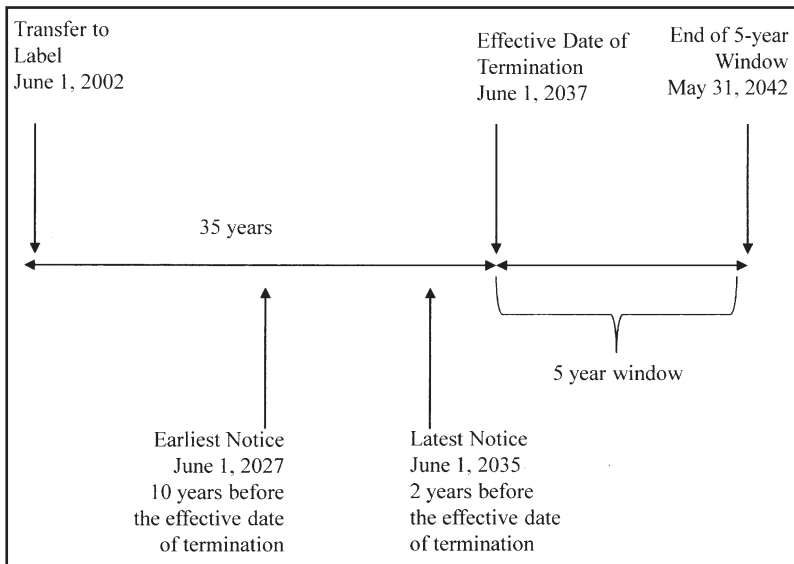


Figure 5. Notice to label for termination of transfer.

a later date in the five-year window as her effective date of termination. Nonetheless, Artist must provide notice of termination on Label no later than May 31, 2040 for an effective date of termination on the last possible date of May 31, 2042. It is important to note that June 1, 2042 is one day beyond the five-year window (see Figure 6).

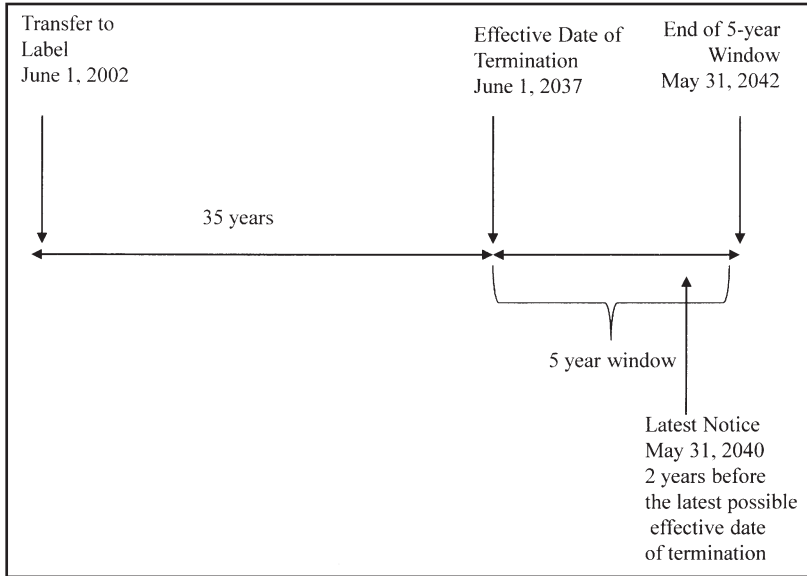


Figure 6. Notice to label for termination of transfer on latest possible termination date.

These examples have simplified this issue to a great extent. Many factors can complicate determination of these dates. For example, if Artist is under an exclusive recording agreement and had not yet created the recording, what is the date of transfer? It could be the date of the deal memorandum, the date of the final recording agreement, the date the label accepts the master, or the date the album is released. These factors make it nearly impossible for an artist to determine the effective date of termination.

Who Can Terminate a Transfer?

In this example, the owner of the termination interest is Andrea Artist because she is the sole author and is alive at the time of termination of the

transfer. Termination of transfers becomes more complicated when there was a grant by more than one author. Section 203 provides that, “In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed (the grant).” As a result, we can assume that if Andrea Artist was not a soloist with sole ownership of the copyright, but was, instead, part of a duo, then Artist and her partner would both have to agree to terminate the transfer. If Artist were part of a trio, the termination would require agreement by any two of the three members of the trio.

Termination is also complicated when an author is deceased. If an author dies before serving notice of termination on the grantee, then the right to exercise that interest passes to the author’s heirs *per stirpes* as defined in section 203. In other words, an author cannot transfer his or her termination right by will or contract (unless there are no surviving heirs), rather, that right passes to the author’s heirs, regardless of the author’s wishes or intentions. Termination of the transfer requires agreement of the majority of the author’s heirs *per stirpes*.⁴³ An author’s heirs *per stirpes* are defined as follows.

If there is a surviving spouse and the author has no children, the surviving spouse will own 100% of the termination interest and be able to effectively exercise the author’s termination right alone.⁴⁴ However, if the author had children, the children will, as a class, share 50% of the transfer right and the surviving spouse will own the other 50%. Because termination requires a majority to agree to exercise the right, the surviving spouse will not be able to terminate the transfer unless at least one of the children also agrees to terminate the transfer as illustrated Figure 7.⁴⁵

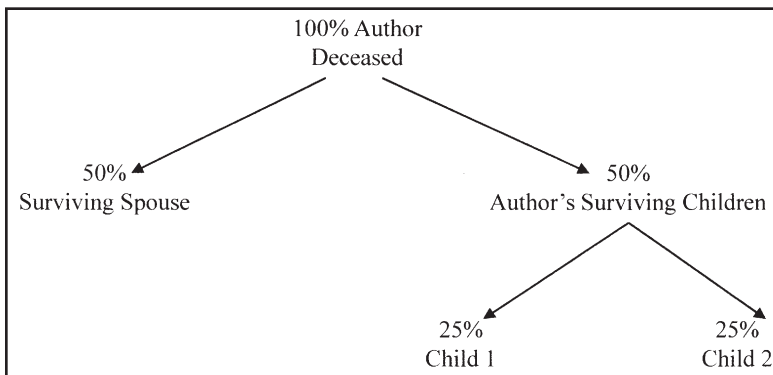


Figure 7. Heirs *per stirpes* explained.

Additionally, if any child of the author is deceased, the child's interest will be divided equally among the surviving children of the deceased child of the author. In the following example, the surviving spouse needs at least one surviving child to agree. Child 2's right can only be exercised if at least three grandchildren agree to exercise that right (see Figure 8).

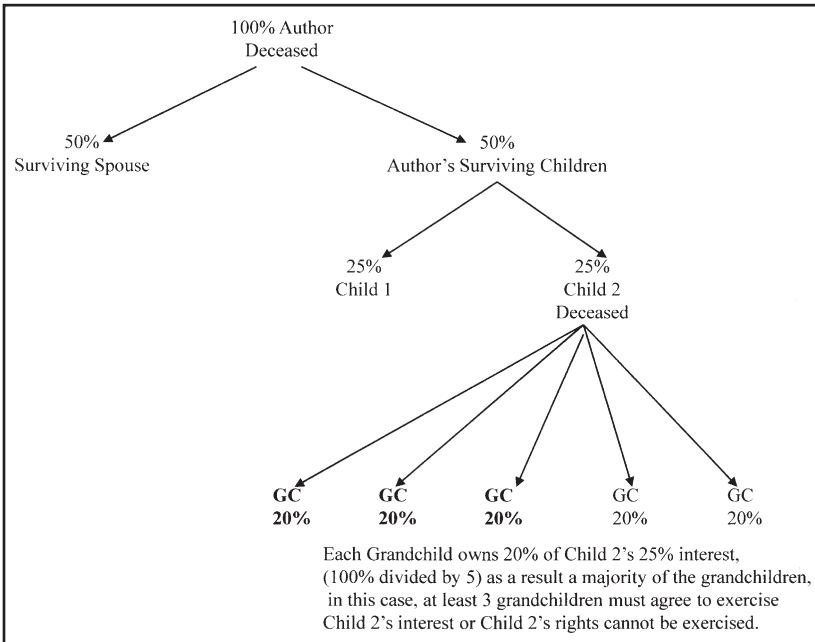


Figure 8. A deceased child's interest is divided equally among his or her surviving children.

The rules related to heirs *per stirpes* apply if an author predeceases the exercise of his or her right of notice of termination. However, if the author survives to serve notice of termination on the grantee, then the termination right immediately “vests” with the author. As a result, if the author survives until the effective date, the author will own the reversion of copyright. However, if the author dies after serving notice, but before the effective date, the reversion will go to the author's estate rather than to the statutory heirs *per stirpes*. In other words, if we refer back to Andrea Artist and assume that she survives until June 1, 2027 and effectively serves notice of termination of transfer on Label with an effective date of June 1,

2037, then that right has vested in Artist on June 1, 2027, even though Label will continue to own the copyright until June 1, 2037. If Artist survives until the effective date of June 1, 2037, then the copyright will revert to Artist. However, if Artist dies after serving notice but before the effective date of June 1, 2037, the copyright will go to Artist’s estate rather than to her statutory heirs *per stirpes*.⁴⁶

Termination of a Sound Recording Copyright

If the courts determine that sound recordings are not works made for hire under the code, the joint authors of the sound recording will own the termination right. As discussed above, authorship is a fact-specific determination, not a contractual determination. As a result, the authors who own the termination right could include the featured artist, session musicians, background vocalists, producer, and engineer, regardless of what their contracts state. Termination rights would then be allocated equally among each of the joint authors.

In order to effect termination of transfer, a majority of the sound recording authors would need to agree to exercise the right of termination. It may be difficult to identify and locate all of the authors of the sound recording copyright thirty-five years after its creation and publication. In addition, it may be difficult to get a majority of the authors to agree to

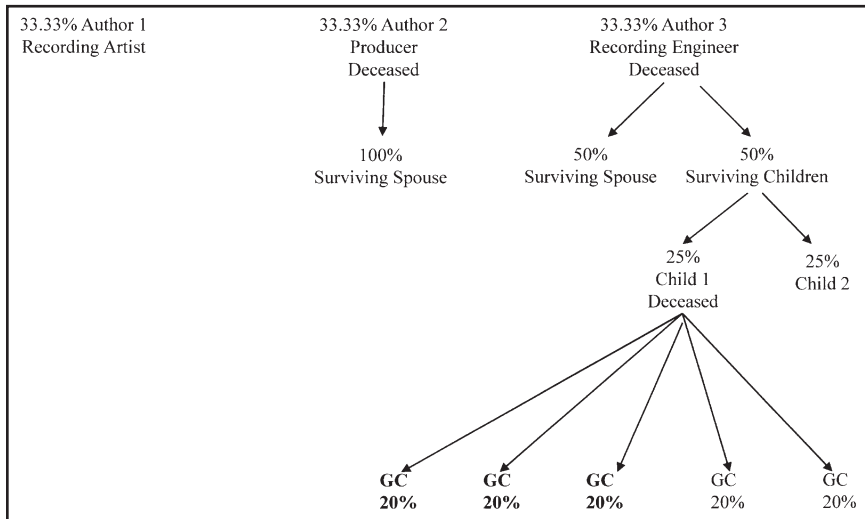


Figure 9. Sound recording with three joint authors, each with a one-third ownership interest.

terminate the transfer. Finally, if any author is deceased, the author's heirs *per stirpes* will have to execute that right, further complicating matters. Figure 9 illustrates just how complicated this issue can become with only three authors. The legal challenges created by this provision of the law will undoubtedly create interesting legal debate for years to come.

Conclusion

The year 2013 will be a defining year for the recording industry. If U.S. courts determine that sound recording copyrights are not works for hire, the result would be devastating for record labels. On the other hand, that decision could benefit artists who could more fully exploit the financial value of their sound recording copyrights. Change is coming, and whatever the result, this issue remains yet another thorn in the side of an industry struggling to find its identity in an environment of changing business models and a changing economy.

Endnotes

1. 17 U.S.C. §101 “work made for hire.”
2. 17 U.S.C. §4 (1909 Act).
3. Marshall Leaffer, *Understanding Copyright Law* (4th Ed.) (2005) at §6.06[A].
4. *Ibid.*
5. Melville B. Nimmer, *Nimmer on Copyright* (1976) at §11.01[A].
6. 17 U.S.C. §203, §304.
7. *Ibid.*
8. 17 U.S.C. §203.
9. Marshall Leaffer, *Understanding Copyright Law* (4th Ed.) (2005) at §3.18.
10. *Ibid* at §2.07.
11. *Ibid* at §5.01.
12. 17 U.S.C. §201(b).
13. *Ibid* at §5.06[C].
14. H. Rep. p. 56 H.R. Rep 92-487, 92d Cong. 1st Sess. 5 (1971); Sen. Rep. No. 92-72, 92d Cong. 1st Sess. 4 (1971). Melville B. Nimmer, *Nimmer on Copyright* (1976) at §2.10[A][2].
15. Melville B. Nimmer, *Nimmer on Copyright* (1976) at §2.10[A][2] [b].
16. *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).
17. 17 U.S.C. §101.
18. William F. Patry, *Patry on Copyright* (2010) at 5:87.
19. 17 U.S.C. §101.
20. *Ibid.*
21. *Ibid.*
22. William F. Patry, *Patry on Copyright* (2010) at 5:90.
23. *Ibid.*
24. *Ibid.* at 5:89.
25. *Ibid.*
26. Bill Holland, “Work-for-hire provision sparks artist furor, demand for change,” *Billboard*, January 22, 2000, 5,122.
27. Pub. L. No 106-113, §1011(d), 106th Cong., 1st Sess. Nov. 29, 1999); *Billboard*.
28. Bill Holland, “Work-for-hire provision sparks artist furor, demand

- for change,” *Billboard*, January 22, 2000, 5,122.
29. *Ibid.*
 30. *Ibid.*
 31. 2004 WL 1781009 at 1640; Patry on Copyright 5:92.
 32. Repeal: Act of Oct. 27, 2000 Pub. L. No. 106-379, 106th Cong., 2nd Sess. 114 Stat. 1444; William F. Patry, *Patry on Copyright* (2010) at 5:93.
 33. *American Auto Assoc. v. U.S.*, 367 U.S. 687 (1961).
 34. *Ibid.*
 35. *Ibid.*
 36. *Ibid.*
 37. *Ibid.*
 38. *Ibid.*
 39. *Ibid.*
 40. *Ibid.*; H.R.Rep. No. 293, 84th Cong., 1st Sess. 4-5.
 41. 17 U.S.C. §203.
 42. 17 U.S.C. §203(a)(4)(A).
 43. 17 U.S.C. §203(a)(1).
 44. *Ibid.*
 45. 17 U.S.C. §203(a)(2).
 46. 17 U.S.C. §203(b)(2); Melville B. Nimmer, *Nimmer on Copyright* (1976) at §11.03[A][1].



STEPHANIE TAYLOR, is an Assistant Professor of Music Business in the Department of Recording Industry at Middle Tennessee State University in Murfreesboro, Tennessee. Taylor specializes in entertainment law and teaches courses in entertainment law and music publishing. She earned her law degree and undergraduate degree in music from the University of Nebraska-Lincoln. After graduating from law school, Taylor served as a law clerk for the First Circuit Court of South Dakota and worked as an attorney. Taylor's love of country music inspired her to move to Nashville where she earned a masters degree in business administration with an emphasis in music business from Belmont University.

Taylor spent several years as a professional violinist with the Lincoln Symphony Orchestra in Lincoln, Nebraska. After law school, Taylor's musical focus moved back to her first love, country music. A lifelong fiddle player, she has toured with several Nashville artists including Academy of Country Music "Top New Vocal Duo" Joey + Rory, RCA recording artist Chris Young, and accomplished, singer-songwriter Billy Yates. Taylor is also an active member of the International Bluegrass Music Association and a graduate of Leadership Bluegrass. She was recently honored to be inducted into the South Dakota Old Time Fiddlers Hall of Fame.