



September 12, 2017

**A SECOND BITE OF THE COPYRIGHT APPLE:
Copyright Terminations - What you Need to Know to Reclaim Your Copyright**

NEWSLETTER

An Entertainment Industry Organization

LAST CHANCE TO STICK IT TO THE MAN: THE LAW THAT RECORD COMPANIES HATE

By Evan S. Cohen, Esq.

The President's Corner

Join us for an evening where we explore how authors of a work may have a second bite of the apple and either terminate or renegotiate rights they transferred many years before.

Subject to some exceptions and limitations, the concept of "copyright termination" allows an author of a work who entered into an agreement in connection with copyrighted works, to terminate such agreement. Our evening's moderators and panelists discuss the history of and the requirements for termination of such copyrighted works pursuant to the Copyright Act, including discussion of Section 203 (applicable to copyrights created during or after 1978) and Section 304 (applicable to copyrights created before 1978).

J. Charley Londoño, Esq.

President, California Copyright Conference

There is a powerful law that is causing quiet yet uneasy waves in the music industry, and it's something the record companies would rather recording artists not know about. I'm a music lawyer, and I'm trying to change that.

For recordings that were released after 1977, the law is a section of the Copyright Act that allows recording artists to terminate their record contracts after 35 years. It also allows songwriters to terminate their music publishing deals after 35 years. It's usually called copyright termination, but it's not the copyrights that are being terminated, it's the *grant of rights* to the record company that is being terminated. That old, awful record contract from 1980? Gone. That is, at least as the contract applies to the United States. On the first

day of the 36th year, the band owns the recording, free and clear. That is a very powerful position, to say the least.

The law is very particular – it only affects the U.S. copyright, and there are some notice forms that must be drafted carefully, signed by the proper persons, and sent correctly to the current record company or music publisher. Then the notice must be recorded in the U.S. Copyright Office in Washington, D.C. However, the process is not difficult, compared to the vast benefits. If done correctly, it can be a life-changing event for recording artists and songwriters, at least financially.

There is, however, a limited time to act. The recording artist must send a notice for a termination date within a five-year window (starting at the end of the 35 years), or the right to terminate is lost forever. That means that the record company keeps the U.S. copyright in the recording for the artist's life *plus 70 years*! That's a really long time, and really big downside for not paying full attention to this important opportunity. And the same is true of songwriters and music publishers. One chance, but sadly, many miss it. Why? Because the music industry wants this law to be a secret.

But at least some people know. The law has been used thousands of times by major recording artists and songwriters to regain their U.S. copyrights. This is because established artists, for the most part, have good music lawyers who know about this law and are taking full advantage of it. They use the law as strong leverage to get a better deal going forward (and some cash up front, of course!), and eventually the artist grants post-termination rights to the same company. And the record companies are happy to make those deals, because they just can't lose certain artists. But in most every instance, the details of these transactions are not for public knowledge.

But other recording artists (perhaps, a rung or two below "major" artists), and, especially, foreign artists, do not take advantage of this law. No one has told them *anything*, for the most part. They normally do not have music lawyers on call, and most do not have lawyers at all. Some are out of the business, and have moved on to other things. The situation is especially dire for foreign artists. This law is practically unknown in, for instance, the United Kingdom, the home of countless beloved bands from the late 1970s and early 1980s. The right of termination is unknown outside of the U.S., even as a concept. No other country has copyright termination like the U.S. law, and British solicitors are particularly ignorant of this law or its effect. But the law applies equally to *everyone*, worldwide. It doesn't matter if it's a British band and signed a British record deal, or a German band signed to a French deal, or what language is used for the contract, they can still terminate the contract, as it applies to the U.S. copyright. And that is true regardless if the record was released in the U.S. at all.

At my firm, we have been in contact with hundreds of recording artists and songwriters, and our goal is to inform everyone about this important law. The vast majority has never heard anything about it. Some are very interested, do understand how important it is, have sent termination notices, and will get their rights back. Some, however, do not believe it is real, and, remarkably, some even think it is some sort of scam. This can be expected; some artists have been not been treated well by record companies, and many feel powerless to do anything (a problem I have seen countless times in my 31 years as a lawyer). Some have large, un-recouped balances – even after 35 years! – and currently do not receive a penny in royalties, and they never will. Fortunately, terminations wipe out those balances, and post-termination, the artists have the right to do what they want with recordings; they can sell them, license them to a label, or they can put the music out on their own. This is especially valuable with the rise of digital media, and platforms like iTunes, Spotify, and Pandora.

It is fairly obvious *why* the record companies and music publishers want this law to be kept quiet. Quite simply, they hate losing copyrights. But they are not the only ones responsible. ASCAP, BMI, and SESAC, the associations of songwriters and publishers – and to which virtually all songwriters belong – have not done anything to educate their members. In our research, we found one lonely article on the BMI site about the law, posted quite some time ago.

These organizations (that try to project various pro-songwriter positions) should be holding *seminars* in Los Angeles, New York, and Nashville; they should have big warning notices sent with royalty statements. There is no comparable organization for recording artists, unless one counts NARAS (the group that ostensibly has but *one* major function – to put on the Grammy Awards!). These groups say nothing because major labels and music publishers dominate them and, again, they do not want anyone to know. Even many music lawyers, who are beholden to major labels and publishers for future deals, do not want to “rock the boat,” and this law makes some serious waves.

Time is short, for many recordings and songs. Currently, in mid-2017, we are losing the right to terminate for everything prior to mid-1979. On the other hand, we are coming up to some great music from the early 1980s for which termination is still an option. And we are just getting started. For many recording artists, members of a band, or songwriters, from that era, the time to act is now. This is the last chance to stick it to the Man.

Evan S. Cohen is a music and copyright lawyer in Los Angeles. Since 1985, he has represented recording artists, songwriters, heirs of songwriters, music publishers, and independent record labels, in a wide variety of litigation and contractual matters. He currently specializes in copyright terminations. He may be reached at www.copyrightterminationexperts.com.

About the Panelists:

Evan S. Cohen, Esq., Attorney at Copyright Termination Experts

Evan S. Cohen is a music and copyright lawyer in Los Angeles. Since 1985, he has represented recording artists, songwriters, heirs of songwriters, music publishers, and independent record labels, in a wide variety of litigation and contractual matters. He currently specializes in copyright terminations.

Dan Perloff, Head of Research at Copyright Termination Experts

Dan Perloff is a 35-year music industry professional and has worked on practically every side of the industry, including record labels, distribution, and artist management, as well as his own label and label services company. His former employers include Rhino Records, Moonshine Music and the Concord Music Group. He works currently with recording artists and songwriters on termination notices.

Stephen Bishop, Grammy and Oscar nominated songwriter

Stephen Bishop started playing around town singing his songs in person for artists like Barbra Streisand, Bette Midler, and Diana Ross. Shortly thereafter, he was signed to ABC Records who released his first album, *Careless*. His two hits from that album were, "Save It for a Rainy Day" and "On and On." *Careless* was certified gold, as well as his follow up album, *Bish*.

He sang the hit theme, "It Might Be You" from the movie, Tootsie, as well as writing and/or singing for 13 other films including, *Animal House* and *White Nights*, which included the hit song, "Separate Lives." His

songs have been performed by artists such as: Phil Collins, Eric Clapton, Barbra Streisand, Art Garfunkel, Steve Perry, Stephanie Mills, Kenny Loggins, Johnny Mathis, Phoebe Snow, David Crosby, The Four Tops, Aswad, and Pavarotti.

Recently, he performed at the Library of Congress, and at the Waldorf-Astoria in New York City for a United Nations event. Stephen is the proud recipient of two Grammy nominations and an Oscar nomination for his song, "Separate Lives." In Eric Clapton's autobiography, he mentions Stephen as one of his favorite songwriters.

About the Moderators:

Michael R. Morris, Esq., Managing Partner at Valensi Rose PLC and past president of The California Copyright Conference

Michael R. Morris is the managing partner of the Century City law firm Valensi, Rose PLC. He has blended his tax law expertise with his passion for music and entertainment, resulting in a practice that is unique. As a former trial lawyer for the IRS and a Certified Specialist in Taxation Law, Michael provides insightful resolutions to his clients' complicated tax, estate and business transaction issues. In the entertainment industry, Michael has developed a strong reputation of providing valuable and effective business solutions in areas such as copyright and contractual matters.

Although Michael's core competency is within the tax arena and entertainment, he has developed significant expertise covering a wide range of businesses. His diverse client base includes major studio executives, recording artists (including Grammy winners), production companies, film and TV composers, talent agencies and agents, payroll companies, post production houses, software companies and an award-winning winery.

Michael is a past president of the California Copyright Conference and was a co-chair of the CalCPA Education Foundation Entertainment Industry Conference (2013, 2014, 2015), at which he has moderated numerous music industry and entertainment tax panels. Michael has also been named a Southern California Super Lawyer (2006–2016) and one of "L.A.'s Top 100 Lawyers" by the Los Angeles Business Journal.

Erin M. Jacobson, Esq., The Music Industry Lawyer

Erin M. Jacobson is an experienced deal negotiator and a seasoned advisor of intellectual property rights who protects musicians, songwriters, music publishers, record labels, and a wide variety of other music and entertainment professionals. Ms. Jacobson's clients include Grammy and Emmy award winners, legacy artists, and independent artists and companies. Ms. Jacobson regularly handles all types of agreements within the music industry, with an emphasis on music publishing and licensing.

She is a frequent author and speaker, and has been featured in publications including Forbes and Music Connection. She also is on the Board of Directors for both the California Copyright Conference (CCC) and the Association of Independent Music Publishers (AIMP). Outside of her law practice, Ms. Jacobson also owns and operates Indie Artist Resource, the independent musician's resource for legal and business protection.

SAVE THE DATE:

Tuesday, October 10th

Thinking Out of the Box:

Bolstering Revenues of Older Music Catalogs by Non-Traditional Means

Join us at the Sportsmen's Lodge Event Center 12833 Ventura Blvd., Studio City, CA 91604

6:15 PM Check-In | 6:30 PM Cocktails 7:00 PM Dinner

Tuesday, October 24, 2017

CCC Membership/Mixer Event:

Join us at Spice Affair, 50 N. La Cienega Blvd, Beverly Hills, CA 90211

The event is free for attendees, as well as hors d'oeuvres and wine
(with a recommended donation of \$5 for the John Braheny Scholarship Fund at the door)

6:00 PM – 9:00 PM

Tuesday, November 14, 2017:

An Evening With Miles A. Copeland, III

(A Renaissance Man in the Ever Changing Music Business)

Join us at the Sportsmen's Lodge Event Center 12833 Ventura Blvd., Studio City, CA 91604

6:15 PM Check-In | 6:30 PM Cocktails 7:00 PM Dinner

Please visit our website, theccc.org, for more information soon!

