

# **11 Reasons a Federal Copyright does exist in Pre-1972 Sound Recordings.**

## 1) THE LEGISLATIVE INTENT

Have you read the legislative intent? take a close look at all the debates leading up to the passage of that bill? Back in 1925 Congress had intended to create Federal Copyright protection, and just finally got around to it in 1972.

It is very clear in the legislative history that the law was intended to create a Federal Copyright in pre-1972 recordings, and that is exactly who immediately used the new law to shut down bootleg cassette and album recordings being made by 3rd party manufacturers, who were paying the publishers, but not the copyright holders of the material.

## 2) Federal Law Supercedes State Law

IF State copyright laws were meant to be their protection, then why bother passing the Federal protection... The clear intent of the Federal Law and also the Sonny Bono Copyright Termination Act was to give a second crack at the apple to the authors and heirs...

Clearly the copyright was established in pre-1972 sound recordings.

## 3) Pre-1972 Labels and Music holders have been collecting for 14 years now from

Soundexchange as FEDERAL Copyright Holders. The Federal Program clearly indicates that the money goes to Copyright Holders.. and the people that have gotten the money have taken the money willingly and freely as Federal Copyright Holders..

Every major record label has filled out Federal Paperwork under soundexchange and has been collecting funds from Soundexchange under the Federal Program as the Copyright holder. If you were not a Federal Copyright Holder, then give back the money you collected under the Federal law administered by the Federal Agency.

## 4) The Effective Date on the Law is not determinative of when it begins.

Also, the effective date on the 1972 law is not determinative of what the law applies to... For instance, did the 1964 Voting Rights Act only apply to post 1964 voters?? Of course not... it applied to all Voters... To argue that the law only applies to post 1972 Copyright holders is borderline ludicrous.

## 5) Determining that Pre-1972 artists did not have a Federal Copyright law would be

Discriminatory... You would be treating artists differently, because of years and age. And clearly the Government can not discriminate in this fashion. It is tantamount to age discrimination, since it treats citizens differently Different applications of the law to different individuals based on years.

6) Federal Copyright protection has been claimed for pre-1972 label owners in LOTS of sampling cases... Federal Courts have found copyright protection for labels in LOTS of sampling cases that involve music prior to 1972.

## 7) Federalism...

Since Marbury vs. Madison... Federal law trumps state law...

So yes, the pre-1972 labels may have a copyright... No problem.. But the Sony Bono Copyright termination act can terminate either a Federal OR State Copyright.. No problem.. that is basic Federalism established by Marbury vs. Madison.

8) Sony Bono himself a musician... Clearly meant for this law to aid and assist the artists he worked with himself. As a producer and musician of the 1950s and 1960s he clearly crafted this legislation with the intent to aid the artists that he knew were ripped off, including himself.

So to not apply this law to the very class of people that he intended to help and protect is a mere travesty of justice.

9) If no Federal Copyright, then no section 304 termination... Then by default a 203 Termination is possible because when the CDs were registered with the Copyright office, that then established a Federal Copyright... and then that can be terminated 35 years later under 203.

10) If the CD registrations were just derivatives under the State Copyright.. then when they were registered with the Federal Government and given a FEDERAL Copyright registration number, that was the first time that a Federal Copyright had or could be established, hence then 35 years from that date the can be terminated. This in turn would cause a re-distribution of wealth that would allow for more people to benefit from the music economically, socially and culturally. Currently a monopolistic system exists as to pre-1972 music. Conglomerated into the hands of a select few.

11) The Fixed Medium of a 78, 33, 45, 8-track are precisely what is required to establish a Federal Copyright... and that is clearly what is required under the Constitution and subsequent acts creating and defining Federal copyrights... And those rights are enforced repeatedly in Federal Courts... as others are excluded from creating competing or similar works ... To the exclusion of others the labels have exercised their Federal Copyright in Federal courts, in numerous cases.

The catalogue numbers that already exist on these recordings can easily serve as the copyright registration dates, and the date they were released for the first time commercially could be the copyright date. A very simple and cost effective way to easily catalogue the music and assign a copyright registration number. Any Penguins Music Catalogue Guide, or Goldmine Record Collecting guide, or Jerry Osborne record collecting guide could easily and readily supplied the catalogue numbers..

In conclusion,

It is basically just intellectually dishonest to even argue that their isn't a Pre-1972 Federal Copyright.

Why does the white Don Henley and the Eagles deserve to get back the rights to their Masters under a Federal Law, but the poor black doo-wop group doesn't? Is that really an equal application of our Federal Laws...

and flies in the face of what was clearly intended.

The greed of a select few corporations and special interests will invariably try and contort this issue and attempt to create a smokescreen economic argument to protect their interests. However, it is a real no-brainer to see that putting these copyrights back into the hands of he artists would have the greater positive impact on a larger number of people and help the struggling U.S. and World economies.

It would help create new jobs and give greater intellectual property protections and intellectual property capital into the hands of more entrepreneurs and self motivated artistic individuals and those that operate to assist them.

These are my basic arguments... And I think they are pretty persuasive...

I can back them up with formal Caselaw, Legislative History, and Public Policy arguments in a formal mem/brief...if so requested.

But I think this reasoning is pretty strong.

thanks again for your time and consideration on this issue.

Please call or e-mail if you need any further clarifications or require any more documentation.

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