

13 April 2011

Mr. David O. Carson, General Counsel  
U.S. Copyright Office  
Library of Congress  
Washington, DC

**Re: Response to RIAA comment to U.S. Copyright Office's call for testimony concerning the desirability and means of bringing sound recordings fixed before February 15, 1972 under federal jurisdiction**

Our company represents over thirty recording artists (writers, singer-songwriters and musical groups) from the 1950s through the 1980s. Collectively they have sold hundreds of millions of records for the labels. They include the world famous, as well as humble writers with a handful of significant hits who seek to terminate their copyright assignments to various labels and publishers.

Congress, should it decide to recognize a Federal Copyright for pre-1972 sound recordings, can finally provide clarity to a music industry that finds itself in serious disruption both on legal and digital (distribution) fronts, as well as provide direction for claimants and potential claimants in state jurisdictions around the country by acting decisively and with alacrity, affirming the Federal authorship rights for these artists and their pre-1972 recordings. Aging artists and their heirs, labels and publishers, as well as vested third-parties are all negatively impacted by the uncertainty that now exists regarding this issue.

When the RIAA (and others) advocate maintaining the current status quo of state or the common law controlling these pre-1972 copyrights, they do it, of course out of their own self-interest. For decades they have seen to it that they are not recognized as fiduciaries for their artist-clients. This the same group that in the middle of the night influenced sympathetic members of Congress under the Intellectual Property and Omnibus Communications Reform Act of 1999 to pass an amendment so radical (without debate or analysis) that it was repealed retroactively. It follows, therefore, that when these same trade groups lobby Congress and speak publicly about what they believe to be in the best interest of their clients, "the grain of salt" should always be nearby. The Copyright Term Extension Act and the 1976 Copyright Act carve out provisions allowing authors (their clients) to terminate the original assignments made to the labels and/or publishers, a right that every day becomes more of a reality.

As it stands now, if Congress fails to draft legislation that (1) federally recognizes the existence of a pre-1972 copyright on sound recordings, and (2) is facially clear and unambiguous as to what rights are granted and which state laws are superseded, this morass will continue to the detriment of the tens of thousands of recording artists (and their heirs) that deserve the ability and right to presently recapture under the CTEA the full value of their original contracts with the labels and publishers, rather than having to wait until 2067 (or 2047 in California) as some have suggested under a common law purview.

Congress should pass legislation that grants to the pre-1972 artist, *ab initio*, the same rights as those whose sound recordings and copyrights were created post-1978.

Songwriters presently are free to exercise their rights found in the Sonny Bono Act to reclaim their interests, but that same artist who *also performed* his or her “hit,” must wait in legal limbo whilst the label sits on their hands, not supporting the artist’s music catalog, viz., by not marketing it as the artist or their heirs would like. The fairly new termination right, therefore, exists to allow the author and their heirs to reclaim their rights and then to exploit the copyright to its full potential. Many labels, because of economic realities and systemic entropy, are putting the vast majority of their marketing efforts toward the “A” artists of today, not the “catalog” or “remnant” artist of yesteryear. As such, a very real disconnect exists for the pre-1972 recording artists.

Artists like Stevie Wonder, Pat Boone, Jan and Dean, “Fats” Domino and the heirs to Sam Cooke and the “Big Bopper” (JP Richardson) and the thousands of others with pre-1972 sound recordings are all left out of the important and burgeoning discussion regarding copyright termination under federal law, and (if the labels have their way) these artists and heirs will be forced to seek redress under a state-granted cause of action. A schema that if all parties are forced to follow would cause great economic and industry hardship to the artists themselves, but also to the labels having to respond to these disparate and distant filings and proceedings.

Congress can and should pass legislation that not only grants the pre-1972 recordings a sound copyright, but it *must* draft public policy that deals with the inequity that would exist if the performers of these songs were not allowed the same statutory rights and protections as their post-1978 performer brethren. Such an event portends likely Equal Protection claims as well by a class suffering invidious discrimination based upon an age-related claim by a class of thousands of senior citizen artists whose harm is a direct result of a poorly drafted federal statute that grants federal copyrights (and permits copyright terminations) to younger citizens who recorded post-1978. Such chronological discrimination is easy to remedy, and would certainly obviate future litigation and economic harm caused by the under-exploitation of pre-1972 sound copyrights.

Your consideration is greatly appreciated.

Warmest regards,

J. Gregg Gautereaux  
Chief Strategy Officer  
Artist’s Reprieve LLC

