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Re: Possible Gap in Termination Provisions

As is customary in many exclusive songwriter agreements that capture multiple musical compositions that a songwriter creates, including future musical compositions they create in a certain future time period, the songwriter agrees to transfer copyrights in musical compositions that come into being during the applicable contract term. While the specific contract wording may vary, the commitment in such a contract is for the songwriter (author) to transfer the copyrights to future musical compositions that may apply to the contract. Since a copyrightable work does not exist until the work is in a tangible medium of expression, there are no copyrights to transfer with respect to the future work until the work comes into existence.

My Opinion:

In the case of works created at a future date that are subject to a prior contractual commitment of the author to transfer their applicable copyrights in the future work, the effective date of the transfer should be the creation date of the work.

Additional Perspectives:

In such contracts, there are other possible dates that could be considered an effective date of transfer. I have listed them below along with my opinion as to why they should not be applicable:

- 1) the date of the original contract in which the author commits to transfer copyrights to future applicable works – a) this is inaccurate and b) this is unfairly favorable to authors as it is early,
- 2) the date of separate transfer documents (sometimes referred to as “assignments”) that formally transfer the rights of the future works after they are created – a) sometimes rights owners do not issue such documents and there would be no identifiable date and b) the date of the separate transfer document could be much later than the creation date of the applicable work(s), which is unfairly favorable to rights owners as it is late.

This “Gap” question is also applicable to Post-January 1, 1978 contracts that include the transfer of multiple and future copyrightable works; there is still a question as to the effective date of transfer for the future works. While the termination gap is not as significant as the gap currently under Copyright Office review, a misinterpretation of effective transfer dates could be costly to authors. In such cases, I am of the same opinion – the effective date of the transfer should be the creation date of the work.

If the “creation date” became the definitive transfer date for “works created at a future date that are subject to a prior contractual commitment of the author to transfer their applicable copyrights in the future work”, then both authors and rights owners would implement a new level of diligence in establishing creation dates for works...which would be good for the copyright industry in general.