Soroka Music Ltd.
111 East 14th Street Zeckendorf Towers Suite 195 New York, New York 10003-4103

April 30, 2010

RE: COMMENTS REGARDING GAP IN TERMINATION PROVISIONS

I handle terminations for a number of songwriters and songwriters' estates, including several whose songs fall into the category of being under agreements entered into prior to 1978 but being written on or after January 1, 1978.

To date, I have served several termination notices for these songs. The publisher rejected them, stating, among other things, that Section 203 terminations are only available for grants made on or after January 1, 1978. In addition, The Copyright Office recorded one set of these termination notices, but refused to record another set (filed a year later), stating that termination for these works cannot be made under Section 203.

I believe that the termination right under Section 203 applies to all works created on or after January 1, 1978 not just to those created under agreements signed on or after that date. This is based on both Congress' intent in creating the termination provisions of The Copyright Act and also on the language contained therein.

Based on the legislative history, it was clearly Congress' belief and intent that these termination provisions were created for the benefit of authors. That this benefit was meant to apply to all authors of all works is supported and reaffirmed by the fact that not only did Congress create two different scenarios to cover pre-78 and post-78 works, but that they created a further termination right under 304(d) in the Sonny Bono Term Extension Act to ensure that authors would have a chance to recapture works with newly extended copyright terms. It could not have been a conscious choice by Congress to leave out this very narrow class of songs, but rather an oversight of the fact that the scenario that we're now facing could or would possibly exist.

An issue that needs to be clarified is what exactly constitutes an execution of the grant of rights -- the actual signing of a piece of paper or the creation of the work.

Maybe some direction lies in comparing Section 203 and Section 204 of The Copyright Act. Section 203 states that termination is available for grants "executed by the author on or after January 1, 1978". While the common working interpretation of this is that the grant had to have been signed on or after January 1, 1978, the dictionary definition of "executed" includes:

> "to do what is provided or required by <execute a contract> <execute a search warrant>" (*Merriam-Webster's Dictionary of Law*).

Compare the language in Section 203 to the language is Section 204 (which deals with the execution of transfers of copyright), which states that "[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent".

It would seem that the language of the Copyright Act makes a purposeful distinction between "executed" and "in writing and signed", further supporting the argument that a grant cannot have been made/executed until a work has actually been created (i.e., to do what is required by the contract) and, therefore, that a song created from 1978 onward under a contract signed before 1978 would fall under the provisions of Section 203.

Another issue that needs to be clarified or addressed in some way is which date is the "date of execution of the grant" for the purposes of determining the applicable termination windows -- the date an agreement was signed (the purported meaning per some parties, including the publisher mentioned above who rejected the notices of termination)? the date the song was created? the date the song was delivered? the date the copyright was registered? I'm not sure what the answer would be here, as it would be hard to pin down an exact date of creation, as it would to pin down an exact date of delivery, both in general and given that we're trying to do so over twenty years after the fact and it's not likely that authors have kept records of these dates. But using the date of registration would also be difficult, as registration was not mandatory during this period. This question will apply to many post-78 terminations, not just those that fall into this “gap”.

Authors have been expecting certain rights to revert to them based on what has always been the operating understanding of the termination provisions. In the case of a hit song or catalogue of songs, whether or not a song can be terminated can have major financial implications for a writer and seriously affect their financial planning for their and their family's future. We need to have these questions resolved so that both sides know what to expect and how to carry out terminations for this group of works before the first window for filing termination notices begins to close in 2011 (i.e, two years before the earliest date that the first works can revert in 2013), so as not to let any rights be lost or diminished by a delay.

Sincerely,

Karyn Soroka