The law may support songwriters and bandleaders who say...

'Give me my copyright back!'

LEGAL CORNER
HARVEY MARS, ESQ.

Harvey Mars is counsel to Local 802. Legal questions from members are welcome. E-mail them to **HsmLaborLaw@HarveyMarsAttorney.com**. Harvey Mars's previous articles in this series are archived at **www.HarveyMarsAttorney.com**. (Click on "Publications & Articles" from the top menu.) Nothing here or in previous articles should be construed as formal legal advice given in the context of an attorney-client relationship.

Unlike most countries, the United States has a copyright law that provides musicians and songwriters an opportunity to **regain ownership of works that they transferred** to outside entities, such as record labels and music publishers. Congress established this "second bite at the apple" for authors of creative works after a period of 35 years. "Termination of transfer" is not automatic, however, and there are certain steps creators must take to regain the rights to their works...

It is important to keep in mind that **there are two copyrights in a piece of music**: the composition copyright (think notes on paper) and the sound recording copyright (think sounds captured on tape or hard drive). **Authors of both copyrighted works can reclaim the copyrights to their original creations after a period of 35 years...**

...If the work is considered a work made for hire, the creator cannot terminate the transfer of the work. **There is currently disagreement over whether most sound recordings can be works made for hire.**

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IT APPEARS THAT 2013 may be a watershed year for recording artists. Under a little known provision of the U.S. Copyright Act of 1976, recording artists will have the right to reclaim ownership of sound recordings they licensed to record labels or others. Section 203 of the Copyright Act gives recording artists a five-year window (from 2013 to 2018) to reclaim rights to their works made on or after 1978, starting 35 years after the transfer. That means that 2013 is the first year that requests can be made under this law.

This may provide substantial leverage to recording artists who want to renegotiate recording contracts they signed 35 years ago. In fact, such artists could stand to profit tremendously.

Many in the recording industry claim that this is a potential game changer, since record companies stand to lose huge amounts of revenue. On the other hand, skeptics say that only a few recording artists will be able to take advantage of this law, since many recording contracts grant the record label the right to use the recording in perpetuity. Whether or not such contractual provisions will trump the Copyright Act is anyone's guess at this point. As with many issues where there is no consensus among affected parties, this matter will likely be resolved in the courts.

In fact, one recent opinion that may impact this controversy has come down in favor of the record labels. That suit, which was litigated in District Court here in New York, involved a claim brought by Bob Marley's estate against UMG Recordings to assert ownership rights to Mr. Marley's music. *Fifty-Six Hope Road Music, et al. v. UMG Recordings, 2010 WL 3564258 (SDNY, 2010)*.

In its decision, the court held that the estate had no entitlement to the recordings because they were prepared as "works for hire." A work for hire is made at the hiring party's instance and expense where the employer induces the creation of the work and has the right to direct and supervise the manner in which the work is performed. See *Martha Graham Sch. And Dance Foundation, Inc. v. Martha Graham, 380 F. 3d 624,632 (2nd Cir. 2004)*. If a recording is created on a work-for-hire basis, the recording artist has sold her ownership rights to the record label. She would thus have no ownership interest to reclaim. (For more detail on work for hire, see my Allegro column from June 2004, which you can read at **www.bitly.com/work-for-hire**).

The court further found that Marley's ownership rights had terminated because the recording contract he entered into provided the record company with the right to use the recordings in perpetuity and that the recordings were its absolute property.

It should be noted that so far this is the only reported decision that pertains to reclamation of ownership rights. Also, the recording at issue is before 1978, which is the effective date of the provision of the Copyright Act discussed in this article.

Typically, whether or not the work-for-hire concept applies is a factual issue requiring litigation. Furthermore, many recordings require the recording artist to front part of the costs by permitting the recording company to recoup them from initial profits. This factor may render the work-for-hire concept inapplicable to reclamation.

Finally, there are certain gaps in the law that will have to wait for either the legislature or the courts to clarify them. For instance, one such issue that should interest any studio musician is whether session musicians have any rights to royalties once the recordings revert back to the original recording artist. However, when I asked the Electronic Media Services Division of the AFM regarding their position on this, Director Dick Gabriel and Assistant Executive Director Pat Variale both cautioned that session musicians essentially do not have any rights except as provided for in the Sound Recording Labor Agreement. Hopefully, issues involving reclamation rights will be clarified in the future.

In the meantime, if you're a recording artist who wants to assert your copyright ownership as discussed in this article, you may need to contact a private attorney. For more information, see the Web site of the Future of Music Coalition. (Start at **www.bitly.com/give-me-my-copyright**)