

Copyrights Begin Reverting to Reclaiming Authors Beginning in 2013

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Legal Update

The recording industry is already reeling from the effects of the Internet -- illegal downloading of new releases has contributed mightily to a drastic reduction in industry sales in these early years of the Third Millennium.

This in turn has made the recording industry heavily dependent on sales of the older (1970's and 1980's) recordings in their catalogs in order to stay afloat.

But, to coin a phrase in this centennial year of the *Titanic* disaster, the ship of golden oldies is about to hit an iceberg, in the form of section 203 of the U.S. Copyright Act.

In 1978... when Jimmy Carter was president and likely half of our readers had yet to be born... Congress decided to give authors (including musicians) the right to terminate transfers or licenses granted on or after January 1, 1978, after 35 years. In order to do so, the author has to give his or her counter-party at least two years notice. Copyrights will begin reverting to reclaiming authors as early as January 1, 2013.

Talk about a second bite at the proverbial apple! Now there's a cure for (creative) seller's remorse. Bob Dylan always knew his stuff was good; he just didn't know *how* good (and profitable). He is among the gigantic names that have given termination notices to their former labels, according to records at the U.S. Copyright Office where copies of such notices have to be recorded.

The record companies are promising legal battles on the tenuous theory that the musicians were "employees" of the labels and their songs were "works made for hire," which are excluded from the termination right.

Section 203 appears to be Congress' recognition of the time value of *art*. Think of Mozart. He died penniless, owing his tailor the equivalent of \$82. Today his compositions are in the public domain and their use is royalty-free. But would anyone say they are not priceless?

The owners or licensees of copyrighted works created in the late 70's should be prepared for termination notices from the original authors. Likewise, authors should consult their copyright attorney to determine whether they might benefit from submitting termination notices of their own.

This advisory was prepared by Nutter's Intellectual Property practice. For more information, please contact your Nutter attorney at 617-439-2000.

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Intellectual Property