

Gavel to Gavel: Coming storm

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Guest Columnist

Posted: 02:45 PM Wednesday, December 7, 2011



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A scarcely noticed provision passed by Congress 35 years ago is about to take the copyright world by storm.

The Copyright Act of 1976, signed into law during the Ford administration, made a number of changes to U.S. copyright law. One provision was a new Section 203, which provided to authors and their heirs a prospective right of rescission of previously transferred rights. A companion Section 304 in the 1976 act provides similar rights of termination for older copyrights that were already established before the 1976 act. But Section 203 is broader and will have far greater impact.

Section 203 allows rights in a copyrighted work assigned, licensed or otherwise transferred after Jan. 1, 1978, (the date of enactment of the 1976 act) to be automatically restored to the author or their estate after a certain period of time, provided the notice requirements of the statute are followed. If such notice is given, as of the termination date the previous transfer agreement will become void.

Section 203 establishes a recovery window that runs between 35 and 40 years after a copyright was transferred. To terminate the rights held by another party during this window, the author (or heirs) must file a notice of termination from between two years and 10 years before the specified termination date within the window. Works that were transferred in 1978 (immediately after the 1976 act was enacted) will begin to have recovery windows that commence starting in 2013.

Filings of notices of termination under Section 203 have already begun, including filings by the lead singer for the Village People, who wants to recover ownership to the song *YMCA*, and the lead singer for Survivor, who wants to recover ownership to the song *Eye of the Tiger*. The latter was the theme song to the movie *Rocky III* and is featured in the popular video game *Rock Band*.

Congress enacted Section 203 to protect starving artists from “unremunerative transfers” (being taken advantage of by publishers, record companies). Nevertheless, it is apparent that if a transferred copyrighted work has value after 35-40 years, such value will be a direct result of the efforts and investment made by the other party in commercializing the work.

Eye of the Tiger is extremely valuable today because it was made famous by others’ use. If successful, the writer of this song will be allowed to stop further exploitation until a new deal is negotiated, on terms that will be based on the value created by the other party in the interim. Those who license or purchase copyrights should beware.

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