How Record Labels and Music Publishers Deal with Copyright Issues

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Overview

The termination process

Challenges faced by songwriters and artists

How record labels and music publishers deal with termination

Copyright registration

Indemnification provisions in agreements
Overview of the Termination Process

Termination under section 203 – grants executed by the author on or after January 1, 1978

The 5-year period

35 years from execution of the grant, or if the grant includes the right of publication, 35 years from the date of publication under the grant or 40 years from the execution of the grant, whichever comes first

Termination Notice
Challenges for Songwriters and Artists

Does the songwriter or artist have a copy of the grant?

Does the songwriter know the date the song was written?

Does the artist know when the masters were recorded?

These issues are important in calculating when the 5-year period begins. Miscalculating the time period could invalidate the termination notice.
Upon the record label’s receipt of a termination notice...

Step 1 – object to the notice

Step 2 – begin negotiating

Reasons for objecting:

1. The sound recordings are a work made for hire

2. Any flaw in the notice
If a lawsuit is filed, it will likely settle out of court

Dwight Yoakam v. Warner Music Group – settled in February 2022

Waite et al. v. UMG Recordings

Johansen et al. v. Sony Music Entertainment
Music Publishers and Termination of Transfer

Upon the music publisher’s receipt of a termination notice...

Step 1 – examine the notice to determine validity

Step 2 – review income history for the songs in question

Step 3 – when appropriate, negotiate to retain control of the songs
New Trend in Copyright Registration

Some music publishers register only "important" songs.

Why is this happening?

1. In the age of social media and streaming, it is more difficult to track all "releases".
2. Some songs will not earn enough to justify the cost of registration.
Benefits of Registration

Registration required to bring an action

Eligibility for statutory damages and attorney fees

Rebuttable presumption of validity

Entitlement to royalties under compulsory licenses

Effect on recorded documents
Allowing the indemnification liability to attach only to claims that result in a final adverse judgment