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# Termination Rights and the 'Ninja' Turtles

**Stephen B. Rodner**
**Chair**
**Entertainment, Arts & Sports Law Section**

Back in the old days (and I remember them), the only sources of recorded music were vinyl records and tape cassettes. That, of course, has radically changed. The copyright owners of the recordings (usually the record companies) relied solely on income from sales. There was no performance right in the recordings as there was for the musical compositions contained on them. The record companies received no royalties from broadcast of the recordings on the radio or TV. The artists who performed on the recordings received income mainly from royalties generated by sales of the physical recordings as calculated by their record contracts, and they almost always assigned the copyrights in the records to the record company.

All of that is changing. Performing rights in pre-1972 sound recordings is presently the subject of several court cases. Copyright ownership is likely to be the subject of litigation in the future as a result of copyright termination rights. Both of these issues should occupy upcoming discussions and many CLE programs for the Entertainment, Arts and Sports Law Section.

U.S. Copyright Act §304(c) gives an "author" the right to terminate any grant of copyright (including, presumably, copyrights in sound recordings) entered into prior to Jan. 1, 1978 effective starting 56 years after the securing of copyright in the recording. Recording artists are now beginning to serve termination notices on record companies for recordings made in the 50s and 60s, some of which are still generating significant income. While termination of copyright grants have been occurring for some time for books, musical compositions and other works, it is only beginning for sound recordings.

The record companies are not likely to take the termination notices lying down. There are several issues relating to sound recordings that don't apply to other works, such as whether the artist's services are a work for hire as it states in most contracts (termination rights do not apply to works for hire), whether the artists are "authors" for purposes of termination, and, if so, which artists in a group or singers or musicians so qualify. I wouldn't be surprised if one or more cases on termination rights in sound recordings, eventually reach the U.S. Supreme Court.

Sound recordings were not accorded federal copyright protection until 1972, and never had exclusive performing rights (such as for radio play) until 1995 when the Copyright Act accorded sound recordings performing rights, but only for digital transmission. It was never clear whether performing rights affecting digital providers such as Sirius, Pandora and Spotify, applied to state laws according copyright protection to sound recordings made prior to 1972. Performing rights in pre-1972 recordings is currently occupying the time and case loads of judges in several states.

A class action led by the 60s rock group The Turtles, and separate lawsuits by the major record companies, have launched a full-frontal assault on digital providers demanding payment of performing rights royalties for streaming of pre-'72 recordings under state laws. As of this writing, Sirius has been battered by adverse decisions in at least three states: California, Florida and New York. If the digital providers end up losing on this issue, as appears to be the trend, there are still matters to resolve, such as how to allocate performance royalties on a state-by-state basis. Stay tuned.

*Stephen B. Rodner is senior counsel at Pryor Cashman.*