

**Written
Testimony of
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**In the
“Moral Rights, Termination Rights, Resale
Royalty and Copyright Term ”
Hearing**

**House Subcommittee on Courts, Intellectual
Property and the Internet**

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Members of the committee, it is a privilege to appear before you today to offer my perspectives on copyright issues that impact creators and the public.

My name is Casey Rae, and I am the Vice President for Policy and Education at Future of Music Coalition—a national nonprofit education, research and advocacy organization for musicians. I am also a musician, songwriter, recording engineer, journalist and educator. In addition to my work in artist advocacy, I teach a course in media, technology and policy at Georgetown University. Music is my life, and always has been. One of my earliest memories is drumming on the side of my crib to the Bee Gees. (I wish I could say it was something cooler, but I'm under oath.) Most of my friends and peers are musicians, and those that aren't probably wish they were. It's a colorful crowd that encompasses pretty much every view under the sun—personal, political and otherwise. I feel very privileged that my job here in Washington is to help advance the artist perspective where it's crucial that these voices are heard.

For 14 years, Future of Music Coalition has observed changes to traditional industry business models, helping artists to better understand how policy and marketplace developments affect their livelihoods. Our organization is part of a broad range of conversations, from preserving a level online playing field for musicians to research into artist revenue streams, to our annual Policy Summit here in DC. On matters relating to copyright, we tend to be pragmatic. We believe that musicians and songwriters should have a choice in how they exploit their copyrights, as well the ability to reach audiences and take part in emerging innovations. Musicians are not a monolithic group, but my own experiences as part of this community have given me a sense of what's at stake for artists on the issues before you today.

1. Termination rights under Section 203

First, I would like to address termination rights. There should be no question that recording artists, songwriters and composers are eligible to terminate transferred

copyrights after 35 years under Section 203. Unfortunately, this statutory right is often obfuscated by major labels that want us to believe that sound recordings are somehow not part of the provisions laid out by Congress in the 1976 Act. While it is true that the Act exempts certain categories of works, it is absurd to think that Congress intended to exclude recording artists from this fundamental right. It is my view, and also the view of a great many artist advocates, legal professionals and copyright scholars, that Section 203 applies to all expressive works and authors. Current statute allows creators to file to reclaim their copyrights, and this is important to maintain.

2. Termination rights provide artists with leverage

At Future of Music Coalition, we spend a great deal of time helping musicians and composers understand how things work on a practical level. Our efforts around termination rights have included not only translations of ongoing policy and legal developments, but also basic guidance into how to file an intent to terminate. We believe that artists should be empowered to make informed choices, and to that extent, we try to demystify what can be a pretty confusing process. But the important thing to remember here is that these are fundamental artist rights. And they are crucial rights—not just for yesterday’s artists, also but for those yet to come.

Termination rights allow creators to have another bite at the apple, even if they end up re-granting their rights to a label, publisher or another entity. Artists may have more leverage than they did at the time that they first signed, and using that leverage, they can negotiate more favorable deals or recapture ownership for the purpose of licensing directly.

These rights are especially important given the evolution of the marketplace. For example, we now have console and online video games; a range of synch license opportunities; new modes of advertising and uses that are still on the horizon. One huge development is ability to sell music directly to fans without the high barriers to entry common to earlier eras. As an artist, I want to be able to directly participate in revenue streams generated from the use of my work, and that’s something I hear from other artists

as well. Termination rights are part of our leverage and help to ensure that we receive fair compensation.

I have heard the labels' arguments about sound recordings being ineligible for rights recapture, and they don't pass muster. While it may be true that some sound recordings were created under conditions that *might* not involve a grant, the overwhelming majority are transfers. If an artist is an employee, why aren't they provided a retirement package and health insurance like the executives or even the office assistant?

It is important for those who make a monetary investment in creativity to have an opportunity to get a return on that investment. But a grant of copyright isn't the only way for that to happen. Today's artists aren't under an obligation to transfer their rights as a condition of entering the marketplace. I am encouraged by new partnerships between artists and companies that don't involve copyright transfer, but rather rely on limited licensing or other arrangements. These might be independent labels, publishers or even partners that haven't been a part of the historic music industry. That said, if a full grant of copyright makes sense for an artist to achieve their goals, more power to them. But they must be able to benefit directly at a later point in the life of a copyright. Congress has decided that point is after 35 years.

On the musical works side, there have been many successful terminations, even under the 56-year terms of the previous Act. There will be instances where courts have to make the ultimate call based in a review of the facts, but from a Congressional perspective, this shouldn't change the need to retain termination rights in Section 203.

There are two things Congress can do here. First, make it plain that sound recordings are eligible for termination. Second, ensure that termination rights aren't undermined in international agreements like the Trans Pacific Partnership.

I would now like to quickly touch two other issues before the committee.

3. Copyright term length and re-registration

Copyright terms continue to be controversial. That said, the Supreme Court made its call, and we have life plus 70. One reason for the previous extension may have been because the international community was heading in that direction and we needed to ensure that other countries would follow through with royalty obligations and enforcement. I believe that it's important for statutory heirs to benefit from the creative labors of their loved ones. But I don't feel that terms should be extended any further. Further extending terms would worsen the perception that copyright law primarily serves huge corporations, which diminishes respect for the entire enterprise of copyright, encouraging undesirable behaviors. In actuality, copyright is one of the more important tools that small-scale creators have to protect themselves against unwelcome exploitation.

Given the current life of copyright, it is that much more important that musicians and songwriters have another bite at the apple. Congress may also want to consider new proposals. For example, US Register of Copyrights Maria Pallante recently proposed a possible re-registration requirement after 50 years. Perhaps there could be a provision in which, if the copyright owner doesn't re-register, the author has an opportunity to do so before the work enters the public domain.

Comprehensive ownership registries could lessen many problems we've encountered since the 1976 Act was passed. The tremendous consolidation in the recorded music industry necessitates a better accounting about who owns what. This would aid in artist compensation under existing terms as well as rights recapture and renegotiation.

4. Moral rights

Lastly, we have moral rights. I am aware that we are already under some obligation to observe moral rights due to global treaties. Our own copyright landscape looks a bit different. Artists embrace America's free speech traditions because they enable us to freely and creatively express ourselves. But I can say that attribution is something that is

supported by every artist to whom I've spoken. So if Congress can help with attribution, the creative community would likely respond favorably.

Once again, I thank the committee for the opportunity to share my views and those of Future of Music Coalition and our artist allies. I would be happy to answer any questions you might have to the best of my ability here today, or in a follow-up written response.

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