THE FUTURE IS NOW: COPYRIGHT TERMINATIONS AND THE LOOMING THREAT TO THE OLD SCHOOL HIP-HOP SONG BOOK

KEVIN J. GREENE[1]

African-American slaves and their descendants gave the world musical gold in the music that came to be known as the blues.[2] The blues also birthed several genres including: doo-wop, soul, R&B, funk, and disco music All Black popular music emanates from the blues, including the most popular music of today — hip-hop.[3]

The blues and its progeny generated colossal wealth in the United States and abroad. Tragically, that wealth often by-passed its creators, who stood on the lowest rung of the social ladder in a society rife with racial and gender inequality. Black innovators and journeymen alike suffered deprivation under the American copyright system and its partner in crime, common law contract doctrine. Many Black creators, such as Jelly Roll Morton, a foundational jazz innovator, died impoverished.[4] Even those who did well often received a pittance compared to their actual value of their contributions.

My scholarship pioneered the field of critical race studies in intellectual property . Way back in 1999, I posited that same dynamics underlying the wholesale expropriation of works by African American artists was

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[1] John J. Schumacher Chair Professor of Law, Southwestern Law School, Los Angeles, CA, J.D. Yale Law School, Recipient, 2016 Vanguard Award for Innovation in Intellectual Property.

[2] Emily Weiler, *8 8* WHITWORTH DIGITAL COMMONS (2017), https://digitalcommons.whitworth.edu/cgi/viewcontent.cgi?article=1001&context=HI241, (noting that arising from African traditions, "many spirituals, work songs and hollers, now more often referred to as slave songs, became the foundations for the blues.").

[3] William F. Danaher & Stephen P. Blackwelder, % *8 8* % %, 17 J. POPULAR MUSIC & SOC'Y 1 (1993) ("Rap music shares its origins with another lower-class music movement: blues music of the 1930's, 1940's and 1950's.").

[4] *8 8 8* , JAZZ J. (annotated by George W. Kay), http://www.doctorjazz.co.uk/page24.html (noting that Jelly Roll Morton's "first months in New York were almost catastrophic for him. Suffering from failing health, he roamed the streets of the city in futile attempts to get bookings, sell his latest sheet music and collect royalties from publishers."). Morton kept a journal of his final years, painting the bleak picture of a man fighting against his music publisher and ASCAP for compensation.

Today, many great American musical works, including seminal hip-hop works from the late 1980's and '90' are entering the window of copyright termination. Unfortunately, for very early hip-hop artists like Sugar Hill Gang who in 1979 released the seminal rap record %8 and Kurtis Blow, who released in 1980, it is already too late to recapture. And as each year ticks by, another hip-hop artist is likely to find the copyright termination windows closed. Once these windows close, recapture becomes impossible.

This article contends the current promise of copyright recapture is severely attenuated by the formalistic and complex labyrinth of copyright termination provisions, as well as music industry practices, customs, and outright resistance to copyright terminations. Furthermore, the copyright recapture provisions as structured are little more than a travesty that dooms recapture for all but the most sophisticated, well-financed and diligent artists. The current system of copyright terminations disadvantages creators of all colors, but most of all African-American artists, who are both highly innovative and poorly resourced as a class.

If artists fail to navigate the labyrinth of the copyright termination provisions, the rights to their works will remain with the entities that control those rights.[14] Section 203(b) makes clear that, unless effectively terminated within the applicable five-year period, all rights covered by an existing grant will continue unchanged, and that rights under other federal, State, or foreign laws are unaffected.[15] The end result is that corporate conglomerates — record labels and music publishing companies— will retain those works and exercise all rights to them for the balance of the copyright term.

The copyright recapture provisions, as structured are little more than a travesty, ensuring that all but the most sophisticated, well-financed and privileged authors will never exercise termination rights. In this sense, the termination provisions act as a kind of reverse redistribution, taking rights from the least advantaged and conveying those rights to hegemonic corporate interests. Black artists, such as hip-hop artists, will bear the brunt of

crimination." [16] Analysts have remarked that intellectual property law and policy works as a type of "rent," which "play[s] a critical role in the increasing concentration of wealth among the already-wealthy few."[17]

As the United States grapples in this moment with the legacy of overt and insidious racial oppression under the banner of the Black Lives Matter movement, the real question is whether the emerging new awareness of racial inequality will reexamine inequality in the copyright regime, and lead to real reform. This is the first article to address the impact of copyright terminations and formalities on Black authors. The only references to race or color in existing legal literature on copyright termination is the "black hole" problem of terminations.17

authors."[19] Given the inequality fostered by copyright doctrine and policy, debates over copyright reform must address the disparate and negative treatment of Black artists, the innovators and architects of the American music recording industry.

In contrast to the rural origins of the blues, hip-hop music emerged in the 1970's in the South Bronx of New York.[20] The innovation of Hip-hop, which emerged from the most marginalized people in America, was built on earlier blues traditions, including spoken words over music. Both blues and hip-hop artists were legally underrepresented and poorly resourced. In the looming battle for copyright recapture, this group of disadvantaged creators now face off against a highly sophisticated music industry apparatus that exist above all to acquire and retain all rights to copyrighted creative work.

Today, hip-hop music, also known as rap music, is by far the most popularly consumed music in American culture. [21] Hip-hop is also an international phenomenon. Hip-hop drives American culture, dominating music, fashion, film, television and advertising.[22] The pioneering rappers of the late 1970s and early 1980s could little have imagined a world where one of their cohort would receive a Pulitzer Prize, as rapper Kendrick Lamar did in 2018, or be feted at Harvard University for contributions to American culture, as rapper Queen Latifah was in 2019.[23]

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[19] John Tehranian, , 24 BERK. TECH. L.J. 1399, 1401 (2009).

[20] The ascent of hip-hop music is often tied to a "'block party' in the West Bronx on Aug. 11, 1973, where a Jamaican-born resident, Clive Campbell — known as DJ Kool Herc — debuted a new style of D.J.-ing. He extended the "breakbeat" of a song by playing copies of the same record on two turntables. The technique had a great effect on dancers at urban parties, who invented breakdancing to go along with the new beats." Laure Fouquet, , NEW YORK TIMES (July 23, 2015). https://www.nytimes.com/2015/07/24/arts/international/tracing/hip-hops/phenomenal-rise.htm.

[21] Elias Leight, , ROLLING STONE MAGAZINE (Jan. 3, 2018), http://www.rollingstone.com/music/music-news/hip=hop-continued-to-dominate-the-music-business-in-2018-774422 (noting thatxxxx rap songs, "like rap albums experienced major growth in popularity, rising to account for 2.7 percent of all album consumption.'

[22] See Max Berlinger, , LOS ANGELES TIMES (Jan. 26, 2018), How hip-hop fashion went from the streets to high fashion (noting that "hip-hop players such as Nicki Minaj, Drake, Cardi B, Pharrell and others now dictate major pop-culture and fashion trends.").

[23] , U.S.A. TODAY

renewal right. It held that artist could sign away the renewal term for copyrighted works.[36] The Supreme Court case of Fred Fisher Music involved the renewal term in the song % In blessing the assignment of renewal terms by contract the court ironically, perhaps comically, endorsed coercive assignment of artist renewal rights. At the same time, the Court commented that coercive assignments of artist renewal terms could make the courts "instruments of injustice by lending their aid to the enforcement of an agreement . . .. under such coercion of circumstances that enforcement would be unconscionable."[37]

The Supreme Court then proceeded to enforce the assignment of renewal terms under the rubric of freedom of contract. The decision was contrary to the congressional policy underlying the 1909 Copyright Act renewal provision. The decision harmed those authors who lacked bargaining authors power because the economic value of their work had yet to be proven, the class of authors the renewal provisions were enacted to protect."[38]

The revisions that led to the Copyright Act of 1976 involved decades of negotiations between various constituents in the copyright industries. These included music and book publishers, record labels, radio stations as well as music composers and writers. Professor Litman's work masterfully analyzed the lengthy negotiations leading up to the 1976 Copyright Act. This task illuminated the legislative history of the 1976 Act. Professor Litman noted that the language of the Act "evolved through a process of negotiation among authors, publishers, and other parties with economic interests in the property rights the statute defines."[39]

As Professor Litman notes, in 1955, the Copyright Office formed advisory panels to decide how to revise the renewal provisions of the 1909 Act. The advisory panels "eventually swelled to include 'more than a hundred persons, representing almost everyone who had any real interest [in the subject of copyright reversion/recapture]."[40] Thus, a relatively small

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copyright registered between 1883 and 1964 were renewed at the end of their twenty-eight-year term, even though the cost of renewal was small.").

[36] Fred Fisher Music Co. v. M. Witmark & Sons, 318 U.S. 643, 657-68 (1943) (holding that authors can assign away their interest in the second 28-year copyright renewal term).

[37] .

[38] Note, , 48 OHIO STATE L.J. 897, 900 (1987).

[39] Jessica D. Litman,

Congress stated that the purpose of the termination provisions was to

owned and operated by African Americans treated artists no better than white-controlled labels and did not advance racial empowerment.[68]

Even more troubling, if an artist cannot locate the contract that trans-

agreement and shall be deemed to be property of the label from the moment of fixation."[77]

Major label record industry contracts routinely and as a matter of custom and practice specify that the artist creative output is a work made for hire, and that alternatively, if found not to be a work made for hire that the able artist transfers and assigns all rights to the record label.[78] Professor Yen points out that there are a number of ways for rightsholders to evade copyright termination through what might be called "creative" contracting methods.[79] Nonetheless, music artists are fighting back and pursuing copyright terminations. For major artists like Sir Paul McCartney and Prince, beginning the termination process is a game that leads, invariably, to a seat at the table to renegotiate a new and better deal.[80] But major labels are vehemently resisting the termination efforts of lesser artists, as illustrated by a pair of class action lawsuits by artists against both Univers-

Copyright provides separate copyrights in compositions and sound recordings. In battleground termination, sound recordings are another matter entirely. As the UMG litigation shows, record labels stand ready, and well-financed, to fight to the death to prevent the recapture of sound recording In Johansen v. Sony Music Ent., Inc., Sony posited numerous and highly technical theories to thwart a class action copyright termination suit.[87] Sony asserted that the sound recordings "are works made for hire," and thus not subject to termination.".".[88] Sony challenged the form as well as the timeliness of the notices. Judge Ramos rejected Sony's arguments on a motion to dismiss on the complaint due to lack of timeliness and form.[89]

Similarly, in the Universal class action suit, Universal asserted a myriad of theories to obstruct termination. It is clear that the major labels have a strategy as they make the exact same arguments in both class action lawsuits. Labels point to contract language conveying rights in perpetuity to the label in sound recording deals. Labels cite the work made for hire language in sound recording contracts, arguing that works made for hire are ineligible for termination. The court rejected Universal Music's arguments that the class of plaintiff's claims were time-barred under the copyright statute of limitations.[90]

Major record labels also endeavor to weaponize the very they encouraged artists to do in the 1970's and '80's against those artists now. Record labels, for tax and other reasons, encouraged sound recording performers to enter into "loan-out deals" to minimize risks to artist assets.[91] Those same labels now assert that since most recording artists in the 1970's and 1980's formed loan-out companies to hold their IP and royalty entitlements, the artists are not entitled to terminate their record label agreements. The labels contend that since those rights were transferred—

(2020). The author notes: "[t]his termination rights saga had a happy ending for Victor Willis but it is not at all clear that other authors will experience similar triumphs over seasoned, well-funded corporate intermediaries anxious to retain control over creative works and even more determined not to cut authors into the revenue streams that these works generate." . at 31.

87 Opinion and Order, Johansen, et al v. Sony Music Ent. Inc,, 19 Civ. 1094 pg. 3, (ER)(S,D,N.Y. 2020), file:///C:/Users/Kevin/Downloads/Johansen%20v%20Sony%20(2).pdf.

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89 .

90 Waite v. Universal Music Grp., 50 F. Supp. 3d 430, 439 (S.D.N.Y. 2020).

91 Tonya M. Evans, , 119 W. VA. L. REV. 297, 322-323 (2016),

ironically at the behest of labels— the labels claim that the individual performers have no right to terminate.[92]

As at least one analyst has noted, these assertions by the labels seem specious at best. An artist who transfers her rights to another entity is ineligible to recapture her copyright. However, "[m]any musicians set up loan-out companies to enter into recording deals on their behalf and these shell entities are simply agents and proxies, mere extensions of the artists themselves. Based on accepted industry practice, [labels] cannot argue in good faith that an artist's loan-out company is anything other than the artist itself."[93]

Record labels also assert other bases for denying terminations of transfer. The statute of limitations is one such basis. The statute of limitation for copyright claims is three years from the time the claim accrues. The labels contend that claims contesting ownership are barred by the statute of limitations.[94] This issue also arose in the Scorpio case. There, Willis contended one of the three copyright claimants in the Village People catalog, "Henri Belolo, was not an author of twenty-four of the thirty-three compositions in dispute and therefore Willis' share is 50% for those compositions."

The racial divide reflects the gulf between whites in America and African-Americans. Academic discourse on copyright terminations has until recent years been bereft of any acknowledgement of the impact of copyright law on African-American artists. Critical analysts have posited that the American music industry has historically functioned as "'a colonial system' a colonial system because of the gross fiscal advantage and explicit racism exacted on [African-American] artists by their record companies and handlers."[96] In fact the copyright termination provisions are just one of what the author terms "the seven deadly sins of copyright law" that devastated African-American creators from the 1909 Act to the present.[97]

According to the American Bar Association's own statistics, the legal profession is the "least diverse of all the professions."[98] The Intellectual Property Section of the Bar is even less diverse vis-à-vis Black lawyers, as is the IP legal academy.[99] There is little doubt that this is a contributing factor as to why IP scholars have not, until recently, analyzed issues without regard to dynamics of race and gender. Indeed, no scholar has undertaken an analysis of copyright terminations as they relate to African-American authors.

Professors Reese and Loren have done impressive and important work in the area of copyright terminations. However, their work does not recognize the unique historical burdens of copyright formalities on Black artists. For example, Professor Loren recognizes the complexity of the copyright termination provisions requires resources and the retention of experienced counsel.[100] She goes off track in this author's view, however,

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[96] Jennifer C. Lena, , 32 POETICS 297, 301 (2004).

[97] The seven deadly sins: 1. Fixation; 2, Originality; 3. Idea-Expression; 4. Copyright formalities; 5. Credit deprivation; 6. False copyright registrations; 7. Hostile judicial interpretations. David M Adler, ,

"[f]rom insurance commercials to ads for Wrigley's gum, more and more

entitled copyright license fees or royalties from the song's performance in the commercial. As non-composers, they also would not receive performance or mechanical royalties for their platinum albums. Salt and Peppa were shocked at how little they were being compensated at the height of their fame.[117]

The rap group seems grateful the commercial ad introduced them to a new generation.[118] *8* was originally released in 1987 and as such, is within the window for copyright termination. However, that right belongs solely to the composer. Hip-hop music is ripe for commercial exploitation in many forms — re-issues, digital streaming, sales of vinyl, synchronization in film and television, advertising, and theatre.

As it stands, the old-school hip-hop music catalogue will create tremendous opportunities for wealth creation going forward. "Where a high-yield legacy recording or song is presumptively [at] issue, the financial stakes are extraordinary. . .. these works function as annuities [and]. . .[t]heir worth, when capitalized using standard accounting and valuation methods, can be tremendous."[119] That wealth, however, is likely to remain in the hands of large corporate interests under the penalizing effects of the copyright termination provisions.

When Congress enacted the copyright termination provisions, the stated purpose was to protect artists from "unremunerative" transfers of copyright made early in their careers and at a time when they had little bargaining leverage. Copyright termination would provide artists "a second bit of the apple."[120] Historically, African-American artists could

yachty-apos-confusion-over-191957991.html https://www.complex.com/music/2017/05/lilyachty-confusion-over-his-record-deal-

[117] The rap duo Salt N-Pepa also fought Herby Luv Bug and their record company, Next Plateau, over money. "The production company was paid millions. Hurby wrote many of the songs. He gets money every time they are on the radio — they never quite grasped that," says Eddie O'Loughlin of Next Plateau, an independent label that [represents] other top groups." Dinita Smith, *8* , INTELLIGENCER (Jan. 14, 1994) (Jan. 17, 1994), https://nymag.com/intelligencer/1994/01/straight-outta-queens.html.

[118] Dan Reilly, *8* *8* *8* *8* , VULTURE.COM (July 29, 2015), https://www.vulture.com/2015/07/salt-n-pepa-nostalgia-geico-90s-fest.html.

[119] David Givens, Esq,, U.S. Copyright Termination: Remonetization's Final Frontier, (2014) https://static1.squarespace.com/static/525ed589e4b07b05fff51e46/t/570d1c6f01dbae1ce3e77c1e/14604770 50080/US+Copyright+Termination+-+Remonitization%27s+Final+Frontier+-+MIDEM+2016.pdf.

[120] Dana Halber,, *%8* *8* *%8* *% 8 8* *8* *88* , PACE INTELL. PROP., SPORTS, & ENT. L. F. (April 21, 2013), https://

records, and many of the early rap labels like Rap-a Lot and Cold Chillin' Records were known for taking advantage of artists. The earliest hip-hop artists, legends such as Cool Herc, DJ Red Alert, and others created a business worth billions of dollars. But unlike the innovative founders of companies like Apple and Microsoft, these pioneering hip-hop artists are mostly forgotten, and often destitute. Not all this misfortune can be laid at the feet of profligate spending by artists.

Copyright formalities like registration and copyright termination play a key role in the fortunes of old-school hip hop artists. Roxanne Shante was a teenager when she was asked to rap on what became the iconic hip-hop record, %. Roxanne claims the label cheated her out of royalties.[137] The termination provisions, if they functioned as intended, would have given Shante the opportunity to terminate the original grant in her record deal However, the label attorney who negotiated the 1984 deal stated in a sworn declaration filed in federal court that the company's copy was destroyed in a flood . . .."[138]

In recent years, prominent scholars in the IP legal academy have contemplated, and in some cases advocated, for bringing back many of the copyright formalities that dominated American copyright law before the 1976 Copyright Act and the 1986 Berne Convention Amendments. Berkeley Law School put on a conference in 2013 entitled "Reformalizing Copyright." The conference attracted "130 participants provided a comprehensive overview of the past, present, and future of formalities and explored an internationally acceptable framework for the reintroduction of copyright formalities."[139] Professor Samuelson noted that "[t]o respond to the overly expansive copyright regime now in place, there emerged a strong interest within the CPP group for "reformalizing" copyright

137 Alex Frank, PITCHFORK (Mar. 19, 2018), https://pitchfork.com/thepitch/rap-pioneer-roxanne-shante-finally-gets-her-moment (noting that while "'Roxanne's Revenge' went on to sell 250,000 copies and made Shanté a trailblazer for women in rap . . . .", Shante claims she has never received a royalty check for the song).

138 Ben Sheffner, %, SLATE (Sept. 2, 2009), https://slate.com/newsand-politics/2009/09/heard-about-how-rap-legend-roxanne-shante-forced-her-label-to-pay-for-her-cornellph-d-it-never.

139 Comments of Pamela Samuelson in Response to the Department of Commerce Internet Policy Task Force's Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy on Incentives for Copyright Registration & Recordation 4, (Jan. 17, 2014). https://www.uspto.gov/sites/default/files/documents/samuelson_post-meeting_comments.pdf.

law."[140] The conference participants recognized that in past times, copyright formalities constituted a "trap for the unwary," but that with technological improvements, new formalities can be deployed without disadvantaging artists. The participants apparently did not consider the experience of African-American artists and formalities. Indeed, it is not apparent that any perspectives from the Black community were present at the conference.

Has copyright law on balance provided distributive justice to African-American creators? In a 2016 law review article, Professor Merges and Hughes tackled this question, and analyzed the fortunes of African-American authors under a Rawlsian lens. These esteemed professors, icons in the legal academy, came to an astonishing conclusion: based Rawlsian principles of distributive justice, copyright law represents the greatest of all of wealth accumulation tool for African-Americans.[145] In other words, "we finally got a piece of the pie."[146]

Professors Hughes and Merges deserve commendation for raising the issue of distributive justice in the context of Black creativity and copyright

example, generates far more income from his branding, merchandising and investment vehicles than from traditional copyright income such as music royalties.[148] Branding and endorsements, the domain of trademark mark law and publicity rights law actually provide more robust streams for the richest entertainers than copyright law does.[149] More importantly, Hughes and Merge's rosy approach to copyright and distribution of the pie does not grapple with wealth-redistributive aspects and impacts of copyright law. This can be found, as outlined in my other scholarship in copyright doctrine, such as the idea-expression dichotomy, which left innovative African-American styles unprotected, and the requirements of fixation and originality, which exposed African-American improvisation and short musical phrases to expropriation.[150]

Copyright formalities, such as terminations and registration have acted to shift creative resources out of the Black community and have functioned as barriers to entry. The perspective of copyright law from the streets looks is starkly different from the high towers of the legal academy. In grappling with copyright, ordinary artists confront an unintelligible set of mechanisms, if they are aware of such mechanisms at all. Even a "simple" one page copyright registration form becomes a frightening obstacle to protection. I agree that copyright law could have been a major vehicle to level the [illegible] today. However, we are far from that point today, and only with restructuring of copyright requiring fair compensation can the [illegible] [151]

148 Rapper Sean Carter, better known as Jay Z, has music revenues that generate $95 million. In contrast, just one of his brands, his champagne company Armand de Brignac, is worth $250 million. Madeline Berg, [illegible], FORBES (Mar. 4, 2021), https://www.forbes.com/sites/maddieberg/2021/03/04/billionaire-rapper-entrepreneur-jay-zs-net-worth-jumps-40-with-sales-of-streaming-service-tidal-champagne-brand/?sh=6484b8c7cc2c.

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150 Greene, [illegible] note 5.

151 PAUL VOICE, THE CAMBRIDGE RAWLS LEXICON, 420-21 (2014 fffffffffffffj6.1Ev6asyD.0ffff0 9 335.dEB1 (2]

Professor Menell has noted that "from its earliest manifestations, copyright law has struggled to deal with the equitable and efficient division of value and control between creators and the enterprises that distribute their works. And for almost as long as copyright has existed, there has been concern about creators getting the short end of the stick in their dealings with distributors."[152] The racial disparity in this connection is a persistent feature of the American music industry. Little Richard, a foundational rock artist, purportedly signed away his rights to for $50 in exchange for a half-cent royalty.[153] Richard Berry, who composed the iconic rock anthem , signed away his rights for $750, to buy a wedding ring.[154] This is not just some old problem from the 1950's. Rapper Cardi B signed an exploitative record contract and management deal before she became a star. Professors Ginsburg and Bentley suggest that the better way to vindicate artist's rights would be through contract regulation of copyright transfers rather than copyright termination.[155] This approach was tried in South Africa's copyright law reform. The legislation proposed, in addition to adding fair use requirements also requiring entertainment industry contracts, which are driven by copyright ownership, to provide fair compensation.[156] The response to South Af-

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[152] Peter S. Menell & David Nimmer, , 57 J. COPYRIGHT SOC'Y 799 (2010).

[153] Carlie Porterfield, , FORBES (May 9, 2020), https://www.forbes.com/sites/carlieporterfield/2020/05/09/how-littlerichard-was-exploited-by-a-bad-record-deal-and-never-fully-cashed-in/?sh=19a104854d96 (noting that "Little Richard's "contract was typical for black musicians of the time—while white artists would enjoy a cut of between 3% and 5%—and Little Richard also reportedly received no royalties when his hits were used in movies or covered by white singers, a common practice in the music industry at the time.").

[154] , BBC (Apr. 30, 2015), https://www.bbc.com/news/magazine-32520921 (noting Berry reacquired his rights to the song in 1980's). "In 1986, an artists' rights group helped him recover royalties worth about $2 million." , WASHINGTON POST (, 5.4414

rica's proposed legislation, which included expansive fair use provisions met a hostile response from the global entertainment industry and the United States and the European Union. There was "unprecedented pressure, with economic implications, from the U.S. Trade Representative and the EU Commission. The USTR and EU Commission were strongly influenced by lobby groups inside South Africa and abroad, and multi-billion-dollar publishing and creative conglomerates that opposed the Bill."[157] The prospects for fair copyright compensation legislation in the U.S. would be subject to the same line of attack.

First and foremost, reform of the copyright termination provisions would begin with the Copyright Office. The Copyright Office at present provides some data on terminations, but the data is insufficient. It provides the number of terminations in its report, but not the parties. Moreover, the office does provide data on the universe of works that are eligible for termination compared to the number of actual terminations. The Copyright Office could do a great service to underserved artists by providing this information and doing a campaign of public service announcements to educate and inform artists about the termination right.

Next, the role of Congress should be utilized. Congress could, if the political will existed, place the burden on rightsholders to keep track of termination dates and send notices to artists regarding the existence of termination rights and termination procedures such as notice. As suggested by the advocacy group Public Knowledge, could also make copyright termination automatic.[158]

Congress could require all contracts where a party transfers copyrights to contain information on copyright termination, including the dates for sending notices and effectuating termination. Congress should also resolve the issue whether sound recordings are subject to termination of sound recordings, rather than leave the issue to the courts, who are by nature less representative of American society.

African-American artists are the engine of the American music business, and past inequities have deprived these creators of untold billions. A radical restructuring of the termination system would indeed constitute a much-fairness for artists presently unable to exercise their rights. Looking

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157 Denise Nicholson, *8 / %8 8 /* , INFOJUSTICE (Aug. 17, 2020), https://infojustice.org/archives/42570.

158 Public Knowledge proposes that Congress should "[r]evise the Copyright Act so that the termination right vests automatically, with an option for artists to delay or opt-out of the automatic reversion to renegotiate more favorable contracts. DYLAN G

forward, an equitable copyright termination regime is consistent with the incentive theory of copyright. As analysts have noted, despite the rhetoric of artist incentives as the basis of copyright protection, "[i]n practice. . .. relatively few of copyright's rewards end up in creators' pockets. Indeed, such a huge proportion of the benefits of increased protection is captured by others in the cultural production chain that authors are sometimes viewed as "stalking horse[s]" to mask other economic interests."[159] These measures would help close the knowledge gap and provide economic rewards to those who most deserve them.

[159] Rebecca Giblin, %8 % % 8 8 8 8 % 8 , 41 COLUM. J. L.&ARTS 369, 382 (2018).