Legislator Calls for Clarifying Copyright Law

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Arguing that Congress has an obligation "to preserve fairness and justice for artists," the senior Democrat on the House Judiciary Committee has called for a revision of United States copyright law to remove ambiguities in the current statute about who is eligible to reclaim ownership rights to songs and sound recordings.

"For too long the work of musicians has been used to create enormous profits for record labels, radio stations and others, without fairly distributing these profits to the artists," said Representative John Conyers Jr. of Michigan, who was chairman of the committee until January. Because "copyrights are a tool to be used by creators to earn a living from their work," he added, it is important to ensure "a fair marketplace."

When copyright law was revised in 1976, recording artists and songwriters were granted "termination rights," which enable them to regain control of their work after 35 years. But with musicians and songwriters now moving to assert that control, the provision threatens to leave the four major record companies, which have made billions of dollars from such recordings and songs, out in the cold.

As a result the major record labels — Universal, Sony, EMI and Warner — are now fighting the efforts of recording artists and songwriters to invoke those rights. The Recording Industry Association of America, which represents the interests of the labels, maintains that most sound recordings are not eligible for termination rights because they are "works for hire," collective works or compilations created not by independent performers but by musicians who are, in essence, employees of the labels.

With years of costly litigation looming, groups that represent the interests of recording artists and songwriters said they found Mr. Conyers's remarks encouraging. But given the issue's legislative history any amendment process in Congress is likely to be long and complicated.

The American Federation of Television and Radio Artists, whose more than 70,000 members include many recording artists and composers, said it was "deeply appreciative"
of Mr. Conyers’s “continued focus in working to ensure that our copyright system recognizes the rights of artists for their creative contributions and which fairly compensates artists for the exploitation of their music.” In a statement the group’s national executive director, Kim Roberts Hedgpeth, said it looked “forward to learning more about any recommendations to enhance the rights of artists as they prepared to reclaim their rights in their musical works, and we are working to ensure that there is an effective system by which musical artists fully benefit from their rights under law.”

But the Republicans are the majority party in the House, and some lawyers and artist managers see them as more friendly to the record labels and other big media companies. For that reason the lawyers and managers have expressed doubts that a bipartisan agreement can be reached on the main issues relating to music copyrights, like defining who qualifies as the author of a work and under what circumstances, if any, a song or sound recording should be considered a work for hire.

“Since I’m going to have to be working with them, I don’t want to tell you they are conservative and corporate oriented,” Mr. Conyers said when asked about the Republican position. “That won’t help. I’ll be going to Lamar Smith after Labor Day to talk to him about this, about getting a little fairness into the entertainment industry,” he said, referring to his Republican successor as the committee’s chairman.

Mr. Smith, of Texas, declined a request for an interview. Instead, his staff issued a general statement in his name, saying that legislation that “stimulates U.S. job growth and furthers the interests of creators, innovators and consumers is a top priority of the Judiciary Committee,” and that Mr. Smith was personally committed to legislation that “protects America’s innovators.”

Those creators and innovators could presumably include both recording artists and songwriters. But Mr. Smith’s staff did not respond to a request to clarify his views or to arrange an interview with Republican staff members on the committee who might be able to explain the party’s position on termination rights and related copyright matters.

When Congress passed the copyright bill in 1976, it created an important exception to the general principle that the person who creates a work of art is its author. At the behest of book publishers and other companies that feared their interests would be adversely affected, the law declared that when a work has been “made for hire,” the employer, not an employee, should be considered its author.

The law generally defined a work made for hire as anything “prepared by an employee within the scope of his or her employment,” like a newspaper article. It also stated that “a work specially ordered or commissioned as a contribution to a collective work,” like a motion picture, a translation or an atlas, should be considered a work for hire. Sound recordings, however, were left off of that list.

But in 1999 language that would have explicitly included sound recordings as works for hire was inserted into an omnibus bill and was approved virtually without debate. A few months later the congressional aide reported to be responsible for that action, Mitchell Glazier, then the copyright counsel to the Republican chairman of the Judiciary Committee, moved to the recording industry association to become its chief lobbyist, and he continues to work for the group.

“That amendment was essentially passed in the middle of the night,” said William F. Patry, a former law professor and congressional staffer who is the author of several books on copyright. Congressional procedure allows for such changes, but only if they are merely technical matters, he said, “and clearly this wasn’t technical.”

In response recording artists, led by Don Henley of the Eagles and the singer Sheryl Crow, mobilized to overturn the amendment, which would have given the record labels control over their master recordings in perpetuity. A year later the artists were able to persuade
Congress to undo the work-for-hire language for songs and recordings, and that seemed to have settled the issue.

“We were concerned with a lot of issues in recording contracts that we considered to be unfair, and this was one of the most glaring,” Mr. Henley said in a recent interview. “Work for hire was never intended to apply to sound recordings. That came about because of movies and books,” he continued, and “sound recordings somehow got added to the list and then taken off again.”

But the recording industry group, which declined to make Mr. Glazier available for an interview, does not see it that way. “By its own terms the statutory language makes clear that the law on termination was simply being restored to its previous state, and that Congress’s action was to have no effect on its interpretation,” the group said in a written statement.

Neither the record companies nor the artists seems to be relishing a confrontation in court. For the labels, already reeling from the sharp decline in sales of CDs over the past decade, any definitive judicial ruling that is adverse could be especially costly.

“It’s not in anybody’s interests to have years and years of litigation,” said Lisa A. Alter, a lawyer with the New York City firm of Alter & Rosen who represents numerous artists or artists’ estates on copyright matters. “The intent of Congress was clearly to protect authors who make bad deals in their eagerness to get their work out there.”
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