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VIRAL VIDEOS: MEDICINE FOR RECORD LABELS IN THE FIGHT AGAINST COPYRIGHT TERMINATION?

*Jay Patel**

As major American record labels continue to tackle online piracy and declining revenues, another potentially devastating battle over some of their most valuable assets is lurking in the very near future. The Copyright Act provides artists with the right to terminate any transfers of copyrights to their works. In order to protect themselves from termination notices in the future, record labels should revamp their business model and commission sound recordings for music videos rather than albums. Doing so is important given current realities in the music industry, and it will allow them to take advantage of the work-for-hire exception to the termination right and thus would allow them to retain ownership of copyrights in sound recordings for the full duration of the term.

I. INTRODUCTION

As major American record labels continue to tackle online piracy and declining revenues, another potentially devastating battle over some of their most valuable assets remains lurking in the near future. Under United States law, copyright initially vests in the author, who may then license or transfer that right to others.[1] However, section 203 of the 1976 Copyright Act, which became effective on January 1, 1978, gives authors an inalienable right to terminate copyright assignments during a five-year window

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1. 17 U.S.C. § 201(a), (d)(1) (2006).

beginning thirty-five years after the date the copyright is granted.[2] Therefore, copyrights in sound recordings created after January 1, 1978 will become eligible for termination in 2013.[3] After termination, these copyrights will revert to the original authors[4]—a group that could include recording artists, producers, and other creative participants.[5]

Because the termination right does not apply to creative works that are deemed to be works made for hire,[6] the Copyright Act provides some hope for record labels wanting to maintain ownership of sound recordings in the future.[7] Whether or not sound recordings fit into the statutory scheme of works made for hire has been the subject of much academic research.[8] Unfortunately for record labels, the current consensus is that the issue is far too unpredictable and requires intensive factual determinations, resulting in costly litigation.[9] Therefore, in order to avoid this uncertainty and costly litigation for future sound recordings, this paper argues that record labels should restructure both their business models and their recording contracts to ensure that they are the legal authors of these future works.

The analysis begins by discussing the current academic consensus on whether sound recordings fit into the statutory works-made-for-hire doctrine. This comment then proposes that, based on current trends, record labels should explore a new business model centered on music videos—allowing them to utilize the works-made-for-hire doctrine and maintain copyright ownership of future recordings. Finally, the Comment evaluates this proposal from the perspective of the recording artists who stand to lose their termination rights under the proposed model and suggests ways of harmonizing the competing interests of both record labels and recording artists.

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2. *Id.* § 203(a)(3).

3. *Id.*

4. *See* Mary LaFrance, *Authorship and Termination Rights in Sound Recordings*, 75 S. CAL. L. REV. 375, 377 (2002).

5. *See id.* at 392.

6. 17 U.S.C. § 203(a) ("In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright . . . is subject to termination . . . .").

7. *See id.*

8. *See, e.g.*, LaFrance, *supra* note 4, at 377. *See generally* Ryan Ashley Rafoth, Note, *Limitations of the 1999 Work-For-Hire Amendment: Courts Should Not Consider Sound Recordings to Be Works-For-Hire When Artists' Termination Rights Begin Vesting in Year 2013*, 53 VAND. L. REV. 1021 (2000); Scott Okamoto, Comment, *Musical Sound Recordings as Works Made for Hire: Money for Nothing and Tracks for Free*, 37 U.S.F. L. REV. 783 (2003).

9. *See, e.g.*, LaFrance, *supra* note 4, at 395; Rafoth, *supra* note 8, at 1052; Okamoto, *supra* note 8, at 795–96 ("Ambiguity remains within the definition of a work for hire . . . .").

II. SOUND RECORDINGS AS WORKS MADE FOR HIRE UNDER THE CURRENT MODEL

Under the Copyright Act, in order for a work to be a work made for hire, it must either be created in an employment context or, alternatively, must fit into one of the Act's enumerated categories of "specially ordered or commissioned" works.[10] The Copyright Act limits these specially ordered or commissioned works to contributions made to collective works, audiovisual works, translations, supplementary works, compilations, instructional works, tests, answer materials to tests, and atlases.[11] In *Community for Creative Non-Violence v. Reid*, the Supreme Court used common law factors, including the degree of control enjoyed by the parties, the hired party's role in hiring assistants, and "the tax treatment of the hired party" to determine the existence of an employment relationship.[12] After applying these factors to the music industry, it is unlikely that courts will find that recording artists are employees of record labels, mainly due to the little control that recording artists have over the final products.[13] Therefore, the only likely strategy for the record labels will be to argue that existing sound recordings fit into one of the enumerated categories.[14]

Unfortunately, however, based on existing case law, it is also unlikely that record labels will succeed in classifying sound recordings into one of the enumerated categories, such as audiovisual works, compilations, collective works, or supplementary works.[15] Thus far, courts have rejected every attempt to fit sound recordings into these enumerated categories.[16] Admittedly, the holdings in many of these cases have been narrow, making it more likely that in future litigation, courts may determine that sound recordings were in fact works made for hire.[17] Indeed, though Congress repealed the 1999 Amendment that added sound recordings to the list of enumerated categories, it never definitively stated that sound recordings could never be deemed works made for hire.[18] Instead, Congress stated

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10. 17 U.S.C. § 101 (2006).

11. *Id.*

12. *See* Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 749–53 (1989).

13. *See* LaFrance, *supra* note 4, at 379; Adam Halston Dunst, Note, *"It's Mine! No, It's Mine! No, It's Mine!" Works-Made-For-Hire, Section 203 of the Copyright Act, and Sound Recordings*, 7 VAND. J. ENT. L. & PRAC. 381, 382 (2005).

14. *See* LaFrance, *supra* note 4, at 379.

15. *See id.* at 383.

16. *Id.* at 381.

17. *Id.* at 382.

18. *Id.* at 379–81.

that courts should decide the issue as if the 1999 Amendment had neither been enacted nor repealed, thus leaving the possibility open.[19]

Despite Congress' stance, the academic consensus remains skeptical as to whether pure sound recordings can be classified into one of the above-mentioned categories for specially commissioned works, as pure sound recordings can only reasonably be categorized as either compilations or collective works.[20] While record labels could argue that the albums are compilations, these record labels would likely receive a copyright solely in the arrangement of songs on albums, rather than in the individual recordings.[21] Additionally, the argument that albums should be classified as collective works is weakened by the legislative history of the Copyright Act, which excluded sound recordings in its definition of collective works.[22] Furthermore, the manner in which albums are put together repudiates the argument that they are collective works or compilations because albums consist of an artist's newest material recorded specifically for the album, rather than a collection of pre-existing works by several artists.[23]

Based on this uncertainty in the work-made-for-hire determination, in addition to preparing for inevitable future litigation, record labels should begin preparing for the very real possibility that they may no longer own the rights to some valuable assets.[24] While some artists might renegotiate with the record labels—once again transferring their copyrights—it is reasonable to assume that many artists may feel empowered by current technology and decide that they no longer require the record label's services.[25] This situation is especially true for those powerful artists who have an

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19. *Id.* at 379–80.

20. The Copyright Act defines a "collective work" as a work "in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." 17 U.S.C. § 101. It defines a "compilation" as a work "formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." *Id.* It further notes that collective works are a subset of compilations. *Id.*; *see* LaFrance, *supra* note 4, at 386–87.

21. *See* LaFrance, *supra* note 4, at 387.

22. *See id.* at 386–87.

23. *See* Rafoth, *supra* note 8, at 1043–44.

24. *See id.* at 1051–53.

25. *See* Eliot Van Buskirk, *Copyright Time Bomb Set to Disrupt Music, Publishing Industries*, WIRED EPICENTER (Nov. 13, 2009, 3:17 PM), http://www.wired.com/epicenter/2009/11/copyright-time-bomb-set-to-disrupt-music-publishing-industries/ ("'[The Eagles] don't need a record company now . . . . You'll be able to go to Eaglesband.com . . . and get all their songs.'" (quoting attorney Greg Eveline of Eveline Davis & Phillips Entertainment Law)).

established fan base that would allow them to utilize social networking tools to sell and promote their content.[26]

Due to the limited role the record labels have typically played in the creative process of individual sound recordings under the existing traditional model, perhaps this outcome is justified.[27] Nevertheless, in order to ensure ownership of future recordings for the entire duration of the copyright, record labels will need to change their business model to become more invested in the creative process, thereby ensuring work-made-for-hire status.[28]

III. INCREASED FOCUS ON MUSIC VIDEOS

In order for future sound recordings to qualify as works-made-for-hire, record labels should explore a new business model that revolves around signing recording artists based on specific music videos, as opposed to entire albums.[29] Record labels can use a "self-help" remedy by creating audiovisual works, rather than only pure sound recordings, in order to eliminate the problem of termination rights.[30] For example, if the initial release of a song is in an audiovisual format, then subsequent pure audio versions could be released without losing the work-made-for-hire nature of the song because the recordings would be derivative works based on the underlying audiovisual work.[31] Doing so would create a system similar to that of film studios, which commission composers to write and record scores for a film's soundtrack that eventually get released separately as audio recordings on albums.[32]

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26. *See, e.g.*, *id.*

27. *See* Rafoth, *supra* note 8, at 1049–50 ("The level of effort required to compile sound recordings pales in comparison to that required for textbooks and encyclopedias, which are compiled by coordinating thousands of scientists, authors, and artists.").

28. Despite these realities, the Copyright Act nevertheless provides record labels the exclusive right to negotiate with artists from the time notice of termination is filed until the date of actual termination. 17 U.S.C. § 203(b)(4). Furthermore, the statute allows assignees to continue to exploit derivative works—defined as a "work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, . . . or any other form in which a work may be recast, transformed, or adapted"—that are created pursuant to the grant, thus allowing them to protect some existing revenue streams. *Id.* §§ 101, 203(b). Therefore, labels, to a degree, may well accept the possibility that they are only given thirty-five years to reap the benefits of transferred copyrights. *Id.* § 203(a)(3).

29. *See generally* DONALD S. PASSMAN, ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS (7th ed. 2009).

30. *See* LaFrance, *supra* note 4, at 398–400.

31. *See id.* at 400.

32. *See* F. J. Dougherty, *Not a Spike Lee Joint? Issues in the Authorship of Motion Pictures Under U.S. Law*, 49 UCLA L. REV. 225, 308–09 (2001).

In today's digital age, record labels can easily follow the release of a music video with audio-only versions. This reality is supported by the fact that there is a near-zero cost of duplication involved in digital files, as well as the fact that videos and digital files can be sold or distributed by the same online outlets, such as iTunes or Amazon.[33] Labels would likely want to sell audio-only versions in order to exploit licensing options and allow fans to listen to the songs through devices and mediums that do not have video capacity. The continued prevalence of audio-only recordings would also protect the public performance royalties of publishers and songwriters, given that only copyright owners of the underlying compositions, and not the owners of sound recordings, are owed royalties when a piece of music is performed publicly by other parties.[34]

Therefore, given the ease with which labels can combine sales of music videos and sound recordings, and based on the current trends in the music industry, the move to a video-centric model is an appropriate way for labels to increase revenues and reach a wider audience.[35] As consumers demand more ways of accessing free music, YouTube has become a medium of choice, even for those seeking audio-only versions of songs.[36]

As major record labels continue to embrace video websites such as YouTube, Vevo, and Guvera,[37] fans now have free access to high-quality, new music videos, while the labels receive revenue through advertising.[38] Furthermore, by tethering revenue from advertisers on these sites, an initial

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33. *See* Mark Harris, *iTunes Review: A Review of the iTunes Music Store*, ABOUT.COM, http://mp3.about.com/od/digitalmusicdelivery/fr/iTunes_store.htm (last visited Feb. 22, 2012) (referencing the ability to purchase both music and videos from the iTunes store); *Help: Amazon MP3 Store: for Web*, AMAZON, http://www.amazon.com/gp/help/customer/display.html/?nodeId=200593950 (last visited Mar. 15, 2012) (referencing instructions on the ability to and process of buying music and video files from the website).

34. *See* LaFrance, *supra* note 4, at 402–03. A public performance royalty is a payment made to the copyright owner whenever the copyrighted work is performed in a public setting. For example, when music is played in restaurants, the restaurant owner must pay the copyright owner a small fee. PASSMAN, *supra* note 29, at 234.

35. *See, e.g.*, Jefferson Graham, *Vevo Music Video Site Turned Free Music Videos into Revenue*, ABC NEWS (Dec. 17, 2010), http://abcnews.go.com/Technology/vevo-music-video-site-turned-free-music-videos/comments?type=story&id=12418313#.TxZZtiNWqAZ; Kristi Bohl, *Crash Course: Vevo*, UNOFFICIAL STAN. BLOG, http://tusb.stanford.edu/2010/12/crash-course-vevo.html (last visited Mar. 15, 2012).

36. Robert Falden, *Listen to Music Online Without the Hassle of Paying or Sacrificing Security*, YAHOO! VOICES (Feb. 25, 2009), http://voices.yahoo.com/listen-music-online-without-hassle-paying-2744469.html; Ernesto, *Is YouTube Killing Music Piracy*, TORRENT FREAK (June 5, 2011), http://torrentfreak.com/is-youtube-killing-music-piracy-110605/.

37. *See* Graham, *supra* note 35.

38. *See id.*; *see also* Bohl, *supra* note 35.

release of a song through one of these websites may generate high returns for the labels.[39] The release of the song would be akin to a box office release of a film. However, here there is an opportunity for an even greater financial impact than a box office release, since fans would be able to watch music videos and listen to songs free of charge, consequently increasing online views and revenues for the labels.[40]

Due to the greater resources that are at their disposal, labels are well positioned to take advantage of rapidly developing technology in order to create exceptionally innovative music videos.[41] While it is certainly possible that an unknown musical act could gain fame by a viral YouTube hit,[42] labels have the resources necessary to produce, distribute, and promote music videos on a global basis and so are more likely to achieve success via viral videos.[43] For instance, the recent success of Arcade Fire's partnership with Google to produce interactive videos using HTML5 technology[44] exemplifies how superior financial resources combined with access to new technologies can give labels an edge in this department.[45] Conversely, newly formed independent artists and smaller labels are unlikely to have the capital or industry connections to partner with technology giants, such as Google, in order to create and promote big-budget, sensational videos that can redefine the music video experience.[46]

Contrary to the fears of some commentators, a move to audiovisual works does not have to be detrimental to songwriters and their publishing rights.[47] In the typical situation where a record label wishes to record a pre-existing composition that belongs to a publisher,[48] the change to audiovisual works would not pose concern. In the alternative scenario, where a

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39. *See* Graham, *supra* note 35; *see also* Bohl, *supra* note 35.

40. *See, e.g.*, James Montgomery, *Katy Perry's "E.T." Video Premieres—Watch It Now! New Clip with Kanye West Is a Big-Budget Spectacle that Takes Perry to the Next Level*, MTV.COM (Mar. 31, 2011, 2:19 PM), http://www.mtv.com/news/articles/1661051/katy-perry-et-music-video-premiere.jhtml.

41. *See, e.g.*, Antony Bruno, *YouTube Stars Don't Always Welcome Record Deals*, REUTERS (Feb. 25, 2007, 7:04 p.m.), http://www.reuters.com/article/2007/02/26/us-youtube-idUSN2518918320070226.

42. *See, e.g.*, *Videos for Music Labels*, BRIGHTCOVE, http://www.brightcove.com/en/solutions/music-labels (last visited Mar. 15, 2012).

43. *See* Joe Osborne, *Arcade Fire, Google Create First HTML5-Powered Music Video*, PCMAG (Aug. 31, 2010, 11:17 AM), http://www.pcmag.com/article2/0,2817,2368525,00.asp.

44. *See id.*

45. *See id.*; *see also* Montgomery, *supra* note 40.

46. *See, e.g.*, LaFrance, *supra* note 4, at 400–01.

47. *See generally* PASSMAN, *supra* note 29.

48. *See id.* at 144–45, 215–20.

songwriter-performer is specifically hired to write compositions for an audiovisual work, the songwriter-performer can diligently retain a repertoire of pre-existing compositions and only agree to record those songs, thus requiring the label to license the underlying compositions. This latter scenario may be the more preferable solution because record labels would be able to avoid the risks involved in providing the necessary capital to sign an artist for a music video.[49] Since a music video is a bigger investment than an individual sound recording,[50] labels are more likely to invest in a pre-existing composition that they can hear, given the uncertainty involved in signing a deal prior to hearing the composition.

Additionally, it is important to note that publishers and songwriters also benefit because using a composition in a music video would not trigger the compulsory licensing scheme.[51] Such a scheme places a maximum on the licensing fee (nine cents per recording sold) that the record label has to pay the publisher and also forbids the publisher from prohibiting record labels from making sound recordings of the publisher's compositions.[52] Therefore, publishers and songwriters would instead be able to favorably negotiate synchronization licenses for their compositions, which could potentially yield significant returns.[53]

IV. EQUITABLE CONCERNS FOR RECORDING ARTISTS

While a move toward audiovisual works could solve the problem of termination rights for the record labels, the impact that this proposal would have on the recording artists themselves should not be overlooked. Accordingly, recording artists must have at least some protection as a part of any proposed solution. For example, commentators have expressed fears that labels would only need to produce an enhanced music file that would play simple computer-generated images in order to create audiovisual

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49. *Id.*

50. Robert G. Martin, *Music Video Copyright Protection: Implications for the Music Industry*, 32 UCLA L. REV. 396, 406–07 (1984).

51. *Id.* at 406–08.

52. *See* PASSMAN, *supra* note 29, 241–44 (explaining that a synchronization license is a fee that the producer of an audiovisual work must pay to the owner of a composition in order to feature the song and synchronize it with a video. Unlike the nine-cent fee that producers of sound recordings have to pay, there is no statutory maximum on the synchronization licensing fee; thus, in contrast to their lack of leverage due to the nine-cent ceiling on licensing fees for sound recordings, publishers or songwriters have more leverage when negotiating synchronization licenses for audiovisual works.).

53. *See* LaFrance, *supra* note 4, at 398–99.

works, rather than producing full music videos.[54] This outcome is indeed troubling, as it would allow labels to gain works-made-for-hire status for sound recordings without making a sizable investment in the final audio-visual product.[55] However, a closer look at the statutory language reveals that in order for music videos to fall under the definition of audiovisual works, they must possess "a series of related images which are intrinsically intended to be shown by the use of machines . . . together with accompanying sounds . . . ."[56] Based on this statutory language, audiovisual designation, for the purposes of a work-made-for-hire determination, should only be given to those music videos that contain related images that are actually intended to be shown visually.[57] A label should not be allowed to make an end run around the statute by adding a string of meaningless images to a sound recording if it does not actually intend for those images to be seen, and if the sound recordings can still be heard on another audio-only device. Thus, it appears that this language is better suited for music videos, which are more akin to motion pictures, because the producer (the label in this case) intends for them to be enjoyed visually as well as aurally.[58]

Economic theories of property rights support a work-made-for-hire determination that favors centralizing ownership of sound recording copyrights in the hands of record labels.[59] Such centralization would lower transaction costs involved in licensing the sound recordings that have multiple potential owners who could each use their termination right.[60] The works-made-for-hire doctrine would also simplify the difficulties courts would face in determining ownership of sound recordings, avoiding the need for extensive factual determinations.[61] Therefore, given the higher costs associated with music videos and the larger number of participants involved in the production process, it would be appropriate to apply the

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54. *See id.* at 399–400.

55. *See id.*

56. 17 U.S.C. § 101 (2006).

57. *See id.*

58. *See* Martin, *supra* note 50, at 427.

59. *See* Deborah Tussey, *What if Employees Owned Their Copyrights?*, 2008 MICH. ST. L. REV. 233, 235–36 (2008).

60. *See id.* at 240–41 (noting that third-party licensees would need to incur transaction costs with multiple parties when trying to negotiate licenses, whereas under the works-made-for-hire system, only one license negotiation is necessary. For example, a television channel would need to secure multiple licenses from multiple parties who all own the copyright to a film and failure to do so would mean that viewers cannot watch the film.).

61. *See id.* at 242–43 (noting that without the works-made-for-hire system, courts will need to judge the creative efforts of many parties to a collaborative work, such as a film, in order to determine who contributed enough original material to warrant copyright ownership).

work-made-for-hire status to those sound recordings that are commissioned in connection with these audiovisual works. However, as the recording artists currently have more creative control over sound recordings, and the cost of individual sound recordings is lower compared to that of films[62] (where producers can claim ownership via the work-made-for-hire doctrine), economic benefits should clearly be balanced against equitable considerations and the rights of the recording artists. For example, given that artists are often more involved in song selection and the arrangement of songs, and are often the lone featured artist on an album (compared to the numerous actors in a film),[63] it is important to take their authorship into account when determining whether sound recordings should be given work-made-for-hire statuses.

While artists may fear that such a move toward works made for hire would relegate them to a situation similar to that of film score composers who do not retain any rights to their compositions, the economics of the music industry make it unlikely that such a situation would occur.[64] Due to the increased unbundling of individual tracks from albums through online retailers such as iTunes, labels and artists can no longer rely solely on sales of complete albums.[65] Therefore, it is the current norm to abstain from negotiating deals on an album basis.[66] Instead, labels could sign artists on a music-video basis, and thus achieve a compromise where the artist would retain termination rights for sound recordings that are not used for music videos. As stated, the costs and risks associated with a music video investment would naturally impose a limit on the number of videos a label would commit to produce.[67] Therefore, in order to maximize profits, labels would incur recording and filming costs only for those compositions that they felt certain would make successful videos. Accordingly, labels would

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62. *Compare* PASSMAN, *supra* note 29, at 91 (noting that most artist funds paid by record labels, which include recording costs and advances for the artist, range from $300,000 to $750,000 for mid-level artists, to $1,000,000 for superstars), *with Movie Budgets*, THE-NUMBERS.COM, http://www.the-numbers.com/movies/records/allbudgets.php (last visited Mar. 15, 2012) (showing approximate movie budgets for most major studio films, which can be as high as $300,000,000).

63. *See United States Copyright Office and Sound Recordings as Work Made For Hire: Hearing Before the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary*, 106th Cong. (2000) (testimony of Sheryl Crow), *available at* http://judiciary.house.gov/legacy/crow0525.htm.

64. *See The Music Industry's Unbundling Blues*, HARV. BUS. REV., http://hbr.org/2010/03/the-music-industrys-unbundling-blues/ar/ (last visited Mar. 15, 2012).

65. *See id.*

66. *See* PASSMAN, *supra* note 29, at 108.

67. *See infra* Part III.

retain ownership rights of those recordings that they commissioned for music videos, and artists would retain termination rights in other sound recordings that were not part of music videos. Limiting compositions in this regard would reward the labels for correctly predicting which compositions would make successful videos, while still providing the recording artist with termination rights in other recordings.

It is also important to remember that the Copyright Act does not automatically designate contributions to an audiovisual work as a work made for hire, as the statute still requires the formality of a written agreement.[68] Hence, recording artists with enough bargaining power could theoretically negotiate deals for music videos that do not automatically make the record labels the authors of the music, because the labels can simply refuse to sign a written agreement that makes the sound recording a work made for hire.[69] Alternatively, these artists could negotiate joint authorship agreements indicating that both parties intended for the video and recorded music to merge into a unitary whole.[70] Recording artists could also try to negotiate royalty payments from music videos calculated by the number of views, or try to carve out a live performance license in order to ensure a revenue stream in exchange for giving up the termination right. In either scenario, giving the work-made-for-hire designation to these music video sound recordings would not contravene the termination right's policy goal of allowing artists to recapture value from works they may have assigned to labels for nominal amounts.[71] Rather, given the expected budget of a cutting-edge sensational video, copyright should vest in the labels, much like copyrights in films vest in motion picture studios. As there is no widespread concern with regard to studios owning copyrights in their film scores via the works-made-for-hire doctrine, there should be no policy concerns about record labels owning copyrights in sound recordings that are commissioned for music videos.

V. CONCLUSION

Despite falling revenues from sales of recorded music,[72] record labels still have a valuable role to play in the music industry and can contribute

68. 17 U.S.C. § 101.

69. *See id.*

70. *See* Dougherty, *supra* note 32, at 309.

71. *See* H.R. REP. NO. 94-1476 (1976).

72. *CD Sales Falling Faster than Digital Music Sales Rise*, N.Y. TIMES, http://www.nytimes.com/2008/06/18/technology/18iht-music.4.13807545.html (last visited Mar. 15, 2012).

value to a recording artist's career due to their financial resources, global distribution networks, and marketing savvy. As the major labels continue to face difficulties from illegal downloading and other copyright infringements,[73] the complete loss of their valuable assets would be extremely detrimental. Unfortunately, due to the existing case law and the current process of recording music, labels face a costly and highly uncertain legal battle to salvage their rights over existing recordings.[74] Therefore, in the event that they lose the litigation battle, record labels should embrace some revolutionary changes and update their business models to ensure that they can retain ownership of sound recordings for the entire duration of their copyright. By moving toward a model centered around music videos, labels will be able to claim the work-made-for-hire status available for audiovisual works, and could potentially fully exploit the current technological trends and consumer demands for free music.[75] Such a move may not be immediately popular with recording artists, but it would comply with economic theories of property rights and would still allow artists to negotiate protections for themselves in their recording contracts.

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73. *See id.*

74. *See* LaFrance, *supra* note 4, at 382–84.

75. *See, e.g.*, Graham, *supra* note 35; Bohl, *supra* note 35.