A SOUR NOTE IN THE SAME OLD SONG: DETERMINING AND PROTECTING OWNERSHIP RIGHTS IN THE DIGITAL AGE

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"One good thing about music, when it hits you feel no pain."[1] When this lyric was wailed by reggae legend Bob Marley in 1971, the music industry was very different than the one in which artists currently find themselves. Today, the music industry is almost synonymous with "pain" as an increase in illegal downloading has resulted in a large amount of financial loss and legal turmoil. From 2004 to 2009 alone, over thirty billion songs were illegally downloaded, resulting in an overall global market decline of approximately thirty one percent.[2] In an effort to thwart digital piracy and protect their works, the recording industry has brought suits against over thirty-five thousand private individuals.[3] Though litigation against individual consumers seems to be subsiding, a more important legal battle looms on the horizon due to a change in copyright law that took place nearly forty years ago.

The Copyright Act of 1976, which actually took effect in 1978, arguably gave many musicians the ability to reclaim copyrights in their original creations, starting thirty-five years after a grant of copyrights was made, effectively terminating any rights that the artists may have granted (e.g. to record companies) when their songs were first recorded.[4] On January 1, 2013, the first songs covered by the 1976 Act became eligible for reclamation.[5] Now, with each subsequent year, a new batch of songs will become available for possible reclamation.[6] Legendary artists such as Bob Dylan, Bruce Springsteen, Tom Petty, and Bryan Adams have reportedly already filed claims at the United States Copyright Office on eligible songs.[7] As one could imagine, these "termination rights" are not uncontested. In an effort to enforce what they believe is their property, as well as attempt to further mitigate the damage that has already resulted from advanced technology in the last decade, major record labels have made it clear that they will not give up these rights without a fight.[8] As a result, 2013 marks the starting point to a string of legal battles, not between private

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[1] BOB MARLEY & THE WAILERS, TRENCHTOWN ROCK (Tuff Gongo 1971).

[2] *For Students Doing Reports*, RECORDING INDUSTRY ASSOCIATION OF AMERICA (RIAA), http://www.riaa.com/faq.php (last visited Feb. 22, 2012).

[3] Sarah McBride & Ethan Smith, *Music Industry to Abandon Mass Suits*, WALL ST. J., Dec. 19, 2008, at B1.

[4] *See* Jacob Moore, *Copyright Law from the '70s Suggests Oncoming Legal Battle Between Labels and Artists*, COMPLEX, (Aug. 15, 2011), http://www.complex.com/music/2011/08/copyright-law-from-the-70s-suggests-oncoming-legal-battle-between-labels-and-artists.

[5] *Id.*

[6] *See id.*

[7] *Id.*

[8] *See id.*

individuals and the music industry, but within the industry itself, as artists and record companies fight to determine who owns some of the most popular music ever written.

This paper will address the forthcoming impact that the termination rights of the Copyright Act of 1976 will have on the music industry. Part I describes the evolution of Copyright law in the United States and the addition of termination rights in 1978. Part II discusses the legal arguments that the artists and record companies have respectively raised in support of their claims. Finally, Part III addresses the difficulties that all copyright holders face in protecting their works in the digital age.

I. THE EVOLUTION OF COPYRIGHT LAW AND THE DEVELOPMENT OF TERMINATION RIGHTS

Copyright laws were developed in an effort to protect an original author's expression of ideas as they are "fixed in any tangible medium,"[9] and thereby to encourage the development of subsequent works by the author. Copyright owners enjoy the exclusive right to, and ability to authorize others to: reproduce the work; prepare derivative works based upon the work; distribute copies of the work; perform the work publicly in a live manner or by means of a digital audio transmission; and display the work publicly.[10] However, these rights are not unlimited. For example, the "first sale doctrine" limits those rights in that the copyright holder may not "restrict subsequent resale or distribution . . . [of a] lawful copy."[11] Under the doctrine, the buyer of the copy does own the physical copy of the work but nonetheless is not granted any copyrights in the underlying works simply by lawful ownership of the copy.[12]

Though copyright law has existed since the 1710 Statute of Anne,[13] the progression of the law has been slow and fitful. In fact, it took nearly 200 years to extend copyright protection to musical compositions and eventually the right in the performance of such compositions.[14] Sound recordings finally received federal copyright protection in 1976.[15] Under the 1909 Act, the author of an eligible work was given a twenty-eight year term of protection from the date of publication, as well as the right to renew copyright protection for another twenty-

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[9] 17 U.S.C. § 102(a) (2012).
[10] 17 U.S.C. § 106 (2012).
[11] ROBERT P. MERGES, PETER S. MENELL, & MARK A. LEMLEY, INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE (Wolters Kluwer eds. 5th ed. 2010) (hereinafter MERGES). *See also* 17 U.S.C. § 109 (2012); *see* 17 U.S.C. § 101 (2012).
[12] 17 U.S.C. § 109 (2012); *see* MERGES, *supra* note 11.
[13] *Copyright Timeline: A History of Copyright in the United States*, ASSOCIATION OF RESEARCH LIBRARIES, http://www.arl.org/pp/ppcopyright/copyresources/copytimeline.shtml (last visited Feb. 22, 2012); *see* MERGES, *supra* note 11.
[14] *See Copyright Timeline*, *supra* note 13.
[15] *Id.*

eight years during the final year of the first term.[16] Congress also provided to the author a right of "reversion" during the renewal term, which allowed authors to recapture all of the work's rights that were previously granted.[17] It was widely thought that Congress included these rights to protect the author from the "unprofitable or improvident disposition of the copyright" and to balance the inferior position that young artists often found themselves in when dealing with the superior and more experienced publishing companies.[18]

With continuing objections from both advocates and proponents of the 1909 Act, the 1950s brought a wave of reform talks with the U.S. Copyright Office and eventually resulted in the development of the 1976 Act approximately twenty years later.[19] Actually enacted in 1978, the 1976 Act not only expanded the rights of protectable subject matter and extended the duration of those rights from fifty-six years to seventy-five years[20] but, with the inclusion of termination rights, the 1976 Act also gave authors and their survivors a much more effective way to reclaim any copyright interests at a later time.[21] The Act specifies that if a work was created and its copyright granted *before* January 1, 1978, the author and his heirs might be able to terminate the grants "during a five-year window beginning at the end of the fifty-sixth year of protection."[22] For copyright grants executed *on or after* January 1, 1978, an author and his heirs may qualify to terminate the grant during a five-year window beginning at the end of the thirty-fifth year of protection.[23]

Both artists and record companies understand the significance that these termination rights will have on the music industry. By terminating the original contractual copyright grants before their natural expiration, artists will be able to reclaim the ownership rights that had previously been legally contracted away to publishing companies; effectively treating them as if they had never existed. A win for either party will be substantial but the potential loss to record companies could prove devastating. With so much on the line, legal teams for interested groups are preparing for the onslaught of legal battles that seem imminent in the coming years. After all, early victories could lead to far-reaching and significant precedents.

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[16] Copyright Act of 1909, 17 U.S.C. § 24 (repealed and amended by Copyright Act of 1976) (*available at* http://www.kasunic.com/1909_act.htm).
[17] *See* Vincent James Scipior, *The Amazing Spider-Man: Trapped in the Tangled Web of the Termination Provisions*, 2011 WIS. L. REV. 67, 75 (2011).
[18] Mills Music, Inc. v. Snyder, 469 U.S. 153, 172 (1985); Scipior, *supra* note 19, at 77.
[19] *See* Scipior, *supra* note 19.
[20] 17 U.S.C. § 304(d)(2) (2002).
[21] *See* 17 U.S.C. § 203(a)(3) (2002).
[22] *See* Scipior, *supra* note 19, at 70; *see* 17 U.S.C. § 304(c)(3) (2012).
[23] § 203(a)(3).

II. THE ARGUMENTS RAISED

The threat of enforcing termination rights under Section 203 will likely encourage countless settlement agreements and extensive contract negotiations as record companies and artists attempt to avoid expensive litigation in the uncertain legal landscape. Nonetheless, 2013 will also undoubtedly mark the starting point to numerous legal battles that have been thirty-five years in the making. It is rare that parties to litigation are afforded such an extensive amount of trial preparation time as the opposing record companies and artists have been given. As a result, it has allowed interested parties to solidify and polish the arguments that they will raise in the coming years, increasing the possibility of a number of early and well-informed decisions on these issues.

A. The Record Companies

Since the enactment of the 1976 Act, record companies have anxiously prepared for 2013. The companies' main contention is that these works were never the artist's property but are, and have always been, "works made for hire."[24] Under the 1976 Act, one type of work made for hire is "a work prepared by an employee within the scope of his or her employment," and, thus, is wholly owned by the employer.[25] Even the work of an outside or independent creator may be classified as a work made for hire if there is an express, written agreement that is signed by each party, designating the work as such.[26] A court's ruling adopting this argument would be significant, as record companies and similar companies would become the statutory author of many works that would otherwise have been subject to the termination rights of Section 203.[27]

In an effort to solidify its position, the Recording Industry Association of America took its argument to Congress in 1999, using an unusual strategy. The RIAA lobbied for a provision to the Satellite Home Viewer Improvement Act[28] that effectively changed musical works into "works made for hire."[29] After President Bill Clinton signed the law into effect, the backlash was immediate as popular artists, including Sheryl Crow and Don Henley, raised objections.[30] Congress quickly backed down and the provision was eventually repealed,

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[24] Leslie Chuang, *Copyright Termination Rights: The Looming Battle for Music Industry*, THE ENTERTAINMENT, ARTS AND SPORTS LAW BLOG (Oct. 4, 2011 1:52 PM), http://nysbar.com/blogs/EASL/2011/10/copyright_termination_rights_t.html.
[25] 17 U.S.C. § 101 (2010) (defining "work made for hire").
[26] *Id.*
[27] 17 U.S.C. §§ 201(b), 304(c) (2002); *see* Anthony Cheng, *Lex Luthor Wins: How the Termination Right Threatens to Tear the Man of Steel in Two*, 34 COLUM. J.L. & ARTS 261, 265 (2011).
[28] *See* S. 1948, 106th Cong. (1999), *available at* http://transition.fcc.gov/mb/shva/shvia.pdf.
[29] *See* Mike Masnick, *Musicians Starting to Assert Copyright Termination Rights Against Record Labels*, TECH DIRT (Oct. 9, 2009, 5:34 PM) http://www.techdirt.com/articles/20091009/0233096474.shtml.
[30] Larry Rohter, *Legislator Calls for Clarifying Copyright Law*, N.Y. TIMES, Aug. 29, 2011, at C1.

forcing courts to decide the arguments at a later time, and reaffirming the 2013 deadline.[31]

B. The Artists

Artists seem to raise the strongest and most sound argument going into 2013 - the statutory language itself. The termination rights provided for by the 1976 Act differ substantially from those of the "recapture" provisions in the Act of 1909. For example, under the 1976 Act, the termination rights are much more difficult to lose and they cannot be contracted away.[32] This distinction, the artists argue, clearly shows the paternal intention of Congress to protect young artists from the superior positions that record companies had in contract dealings. Artists further argue that the U.S. Supreme Court also recognizes that "the termination right was expressly intended to relieve authors of the consequences of ill-advised and unremunerative grants that had been made before the author had a fair opportunity to appreciate the true value of his work product."[33] Backed by this language, the existing statutory language and Congress' clear reluctance to cast an overly broad definition of works made for hire, artists likely feel confident going into the coming years.

In an unusual turn of events, artists will now hold superior bargaining power in contract negotiations, and 2013 will mark a permanent deadline for many record companies and similar holders to adopt a fairer approach to begin dealings with artists if they wish to retain any rights in the works at all. Nonetheless, due to significant developments in technology over the last two decades, it seems that, regardless of which party is awarded ownership rights, the victor may be left with the most daunting task of all: enforcing those rights in a digital age.

III. PROTECTING OWNERSHIP RIGHTS IN THE DIGITAL AGE

The advancement of technology will impact any industry as products are moved faster, more efficiently, and on a greater scale. The music industry is no different. For example, the introduction of blank cassette tapes in the early 1960s had a profound impact on the industry as it allowed consumers the capability, for the first time, to create manual recordings of songs on public radio. This process, known as "time shifting," afforded consumers the ability to listen to recorded songs at any time, rather than being subject to a radio station's playlists.[34] As

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[31] *Id.*

[32] 17 U.S.C §§ 203(a), 304(c)(5) (2002) ("Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant."); *see also* Penguine Grp. (USA) Inc. v. Steinbeck, 537 F.3d 193, 201-02 (2d Cir. 2008).

[33] Mills Music, Inc., v. Snyder, 469 U.S. 153, 172-73 (1985).

[34] *See* Sony Corp. of Am. v. Universal City Studios, Inc, 464 U.S. 417, 421 (1984).

duplication technology improved and became widely available to the public, copyright infringement became a very real concern.

Copyright infringement occurs when a person "violates any of the exclusive rights of the copyright owner…" [35] Further, courts recognize that copyright liability extends not just to those who infringe directly but also to those who contribute to or vicariously profit from the infringing acts of others.[36] Indirect infringement, which encompasses vicarious and contributory infringement, has become a substantial fear in the music industry. In response to industry concerns, Congress elected to further revise the 1976 Act by passing the 1998 Digital Millennium Copyright Act (the "DMCA"); which, among other things, could extend copyright protection to intellectual property and broaden protection in the digital age.[37] However, as time and technology progressed it became increasingly obvious that, even with the added protection of the DMCA, authors and record companies were faced with increased infringement of their rights, and the overwhelming burden of enforcing their rights in an age that has seen the rise and fall of Napster Inc., the unfathomable growth of Apple Inc., and the widespread launch of YouTube, Inc.

A. A New Technology

The advent of peer-to-peer ("P2P") technology, for lack of a better description, *blindsided* the music industry like never before. P2P technology eliminates the need for a central server and allows each user (consumer) to transfer data to one another for free and with ease through a network of computer systems connected over the Internet.[38] Though the back-story has been the subject of much debate, the development of P2P technology is largely credited to Shawn Fanning when he created the file-sharing program Napster™ ("Napster") in his dorm room while a student at Boston's Northeastern University.[39] Napster quickly became the fastest-growing application in the history of the Internet and its effect on the music industry was unprecedented.[40] In essence, Napster is a file-sharing program and through its platform, users were able to download and share studio-quality songs and full-length albums for free. The impact on the

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[35] 17 U.S.C. § 501 (2002) (defining copyright infringement).
[36] William Landes & Douglas Lichtman, *Indirect Liability for Copyright Infringement; Napster and Beyond*, 17 J. ECON. PERSP., no. 2, p. 113–124 at 115-16, *available at* http://pubs.aeaweb.org/doi/pdfplus/10.1257/089533003765888467.
[37] Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).
[38] *P2P*, TECHTERMS, http://www.techterms.com/definition/p2p (last visited Sept. 19, 2012) (defining "P2P").
[39] Don Dodge, *Napster- the inside story and lessons for entrepreneurs*, DON DODGE ON THE NEXT BIG THING – THOUGHTS ON BUSINESS AND TECHNOLOGY (Oct. 5, 2005, 2:50 PM), http://dondodge.typepad.com/the_next_big_thing/2005/10/napster_the_ins.html.
[40] *Id.*

music industry was massive,[41] leaving artists and recording companies with a fraction of the profits and the unsettling reality that the music industry would never be the same.

The courts responded to industry concerns with perhaps the most historic decision of this digital era. In *A&M Records, Inc. v Napster, Inc.*, the United States 9th Circuit Court of Appeals held that A&M Records effectively showed that Napster was in violation of the Copyright Act by knowingly facilitating the ability to illegally upload and transfer copyrighted material for commercial use by its users.[42] Further, the court emphasized that due to Napster's knowledge of the infringing acts and its failure to remove such blatantly infringing content from its system, the "safe harbor" defense under the DMCA was not available.[43] The burden imposed by the court requiring Napster to restrain transfer of infringing files as well as the potentially devastating liability eventually pushed Napster into bankruptcy, ending the file-sharing program's immense influence on the music market.

Napster certainly looked like a win for the music industry, as it was now armed with solid court precedent that could be carried forward to subsequent lawsuits against similar file sharing programs[44] and even individuals.[45] However, the court's warning shot to infringers ultimately proved to be a dud. Despite the fact that the music industry began legal proceedings against approximately thirty-five thousand people since 2003, it "did little to stem the tide of illegally downloaded music, [and in 2008]… [a]fter years of suing thousands of people for allegedly stealing music via the Internet, the recording industry [dropped] its legal assault … [against] online music piracy."[46]

B. A Changing Environment

Even with the *Napster* decision on its side, the music industry remained in upheaval and the future of profitable music sales was in serious jeopardy. Music needed a white knight; a visionary that would revolutionize the industry and re-ignite the riches that music stores once garnered. The industry did not have to wait long, and with the launch of its iTunes™ Music Store ("iTunes") in January 2003, it was clear that Apple, Inc. ("Apple") had firmly embraced the role as the savior of the music industry.

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[41] *See* RIAA, *supra* note 2 ("In the decade since … Napster emerged in 1999, music sales in the U.S. have dropped 47 percent, from $14.6 billion to $7.7 billion.").
[42] A&M Records, Inc. v Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).
[43] *Id.* at 1025; *see also* 17 U.S.C. § 512(d) (2010).
[44] *E.g*, MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).
[45] *See Woman Faces the Music, Loses Download Case*, CBSNEWS (Feb. 11, 2009 4:07 PM), http://www.cbsnews.com/stories/2007/10/04/national/main3330186.shtml.
[46] Sarah McBride & Ethan Smith, *Music Industry to Abandon Mass Suits*, WALL ST. J., Dec. 19, 2008, at B1 ("In 2003, the industry sold 656 million albums. In 2007, the number fell to 500 million CDs and digital albums, plus 844 million paid individual song downloads -- hardly enough to make up the decline in album sales.").

iTunes not only produced profits, it exploded onto the music scene and has yet to falter. Just two years after its launch in 2003, iTunes reported $500 million in sales.[47] By February 2006, sales reached $1 billion; $3 billion by July 2007; and, in February 2010, Apple reported an unbelievable $10 billion in sales.[48] These statistics prove that, "on average, more than 46 songs have been purchased on iTunes every single second, since the store launched on April 28, 2003,"[49] and the online store currently accounts for 28% of all music sales within the United States.[50] Simply put, Apple is massive, and the influence its iTunes platform has on the music industry is mind-boggling.

Based on these numbers, it seems inconceivable that artists would *not* want to license their music on iTunes if just for the exposure alone. Yet, artists argue that Apple's influence on the music marketplace may prove to be more negative than positive. Among the many objections that artists and record companies raise is the concern that Apple has become too powerful, giving the company an unfair advantage in the market place and allowing it to charge higher licensing fees. As a result, record companies contend that they find themselves in a tough position when looking to license to a publisher. Either they can license to iTunes, possibly giving up many of their financial rights, or they can try a less recognized music retailer, an option that is actually not uncommon but frequently results in decreased sales.[51] Artists, on the other hand, are mindful of the risks that accompany snubbing the online retailer, recognizing that "not only is [iTunes] the biggest force in music sales, but keeping songs off the service could prompt listeners to look for illegal downloads instead."[52] As a result, even outspoken opponents of iTunes recognize the influence that Apple holds on the marketplace and admit that licensing on iTunes is essentially unavoidable.[53]

With Apple dominating the music industry, artists and record companies believe they are effectively forced to license on iTunes; a platform that, they argue, uses a technology that unfairly allows consumers to purchase individual songs at minimal cost rather than paying the cost for full albums. Many artists and record companies believe that Apple's platform strips them of their rights to

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[47] Mike Luttrell, *Never-ending iTunes sales tally hits 10 billion*, TG DAILY (Feb. 24, 2010 9:01 PM), http://www.tgdaily.com/consumer-electronics-brief/48578-never-ending-itunes-sales-tally-hits-10-billion.

[48] *Id.*

[49] *Id.*

[50] Chris Brandrick, *iTunes Accounts for 28% of U.S. Music Sales*, GIGAOM (May 26, 2010, 1:10 PM), http://gigaom.com/apple/itunes-accounts-for-28-of-u-s-music-sales/.

[51] Many artists including Kid Rock, Garth Brooks, and groups AC/DC and the Eagles have all decided to snub iTunes. *See* Ian Youngs, *Kid Rock Boycotts iTunes Over Pay*, BBC NEWS (June 18, 2008 10:25 GMT), http://news.bbc.co.uk/2/hi/7459796.stm; *see also* Ethan Smith & Nick Wingfield, *More Artists Steer Clear of iTunes*, WALL ST. J., Aug. 28, 2008, at B1. ("decision to sell [the Eagles] album, 'Long Road Out of Eden,' only through Wal-Mart.").

[52] Smith & Wingfield, *supra* note 51.

[53] Youngs, *supra* note 51.

effectively market the albums efficiently as complete works,[54] turning the "business back into a singles business."[55] The financial effect the platform has on artists and record companies is costly and does not seem to be slowing.[56] In fact, 2011 marked the first time in history that digital music sales exceeded physical sales.[57]

C. A New Threat

As artists and record companies attempted to adapt to Apple's dominance in the marketplace, technology continued to advance and new concerns began to arise. Most notably, 2005 marked the launch of online service provider YouTube™ ("YouTube"), bringing an extraordinary technology that allows "billions of people to discover, watch and share originally-created videos," with ease.[58] Due to the accessibility and simplicity of the website, users are not only able to upload their own, self-created content, but also large amounts of third party copyrighted material without the requisite consent from owners. The sheer volume of the content and the minimal policing of such material by YouTube has resulted in massive amounts of unlicensed and illegal content on the website. As a result of the large database and high-functioning search engine, users are able to search for nearly any song ever recorded and listen to a studio-quality version, without ever having to download the file or pay for the access.

YouTube's advanced technology, enormous database, and seeming lack of regulation form the basis of artist and record company complaints against the online service provider in which they assert that consumers no longer need to purchase music because they can stream any song online for free; making their assertions eerily similar to the winning arguments leveled against Napster. However, YouTube opponents contend that the provider poses a much more serious problem than Napster ever threatened as users are able to enjoy the same benefits that Napster users were afforded, but are now provided with unlimited music libraries. Artists and record companies argue that this creates a significant problem and enormous loss of revenue to the industry, a problem that is exasperated by the considerable size of YouTube's user-base. In fact, YouTube's widespread reach is, by all accounts, staggering. By February 2010, YouTube boasted approximately 48.2 million users worldwide,[59] who

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[54] *Id.*

[55] Ethan Smith & Nick Wingfield, *supra* note 51.

[56] *Id.* ("Pop singer Katy Perry has sold 2.2 million downloads of her hit song 'I Kissed a Girl' in the U.S., nearly 10 times the 282,000 copies she has sold of her 'One of the Boys' album" which contains the song.).

[57] Laurie Segall, *Digital Music Sales Top Physical Sales*, CNN MONEY (Jan. 5, 2012, 5:47 PM), http://money.cnn.com/2012/01/05/technology/digital_music_sales/index.htm.

[58] YOUTUBE, http://www.youtube.com/t/about_youtube (last visited Aug. 23, 2012).

[59] *Number of YouTube Users*, #NUMBEROF.NET, http://www.numberof.net/number-of-youtube-users/ (last visited April 6, 2013).

collectively uploaded over seventy-two hours of video every minute,[60] thus resulting in nearly twelve years of content uploaded every day.

Arguments against YouTube came to a head in 2007 when Viacom International Inc. ("Viacom") brought suit against YouTube for knowingly allowing infringing material to be supplied through its website.[61] Viacom, a global entertainment company, claimed that YouTube knowingly provided a platform where "tens of thousands of videos . . . resulting in hundreds of millions of views, were taken unlawfully from Viacom's copyrighted works without authorization."[62] Viacom's argument was silenced when the court found that YouTube had responded adequately to copyright holder take-down notifications by removing the infringing content and was therefore protected by the Safe Harbor provisions of the DMCA; the very defense that Napster had failed to establish.[63]

The court, mindful of the immense amount of content that is uploaded on YouTube and similar sites every day, emphasized that the "DMCA notification procedures place the burden of policing copyright infringement—identifying the potentially infringing material and adequately documenting infringement—squarely on the owners of the copyright"[64] and declined "to shift a substantial burden from the copyright owner to the provider."[65] Thus, not only had the music industry failed to substantially limit the presence of unlicensed content on YouTube, but the opinion also affirmed that the task of protecting ownership rights lay solely with the work's owners and not the content provider.

IV. CONCLUSION

Starting in 2013, record companies and artists are expected to face off to untangle a web of copyright laws and determine "who owns what." Artists may see the approaching years as a long awaited justification for the unfair dealings that have persisted for far too long, while record companies may see it as yet another obstacle to surviving a digital era that has already devastated them through online piracy. Nevertheless, what is undoubtedly certain is that January 1, 2013 marked the beginning of a flurry of lawsuits, settlement agreements, commentary and lobbying efforts that may threaten to upend the music industry as artists and records companies fight for their respective survival in an industry that changes all too quickly.

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[60] YOUTUBE, http://www.youtube.com/t/press_statistics (last visited April 6, 2013).
[61] Viacom Int'l Inc. v. YouTube Inc., 07 Civ. 2103 (S.D.N.Y. Jun. 23, 2010) *available at* http://i.zdnet.com/blogs/viacom-youtube-ruling.pdf.
[62] *Id* at 6.
[63] *Id.*
[64] Perfect 10, Inc. v. CCBill LLC, 488 F.3d 1102, 1113 (9th Cir. 2007).
[65] *Id.*