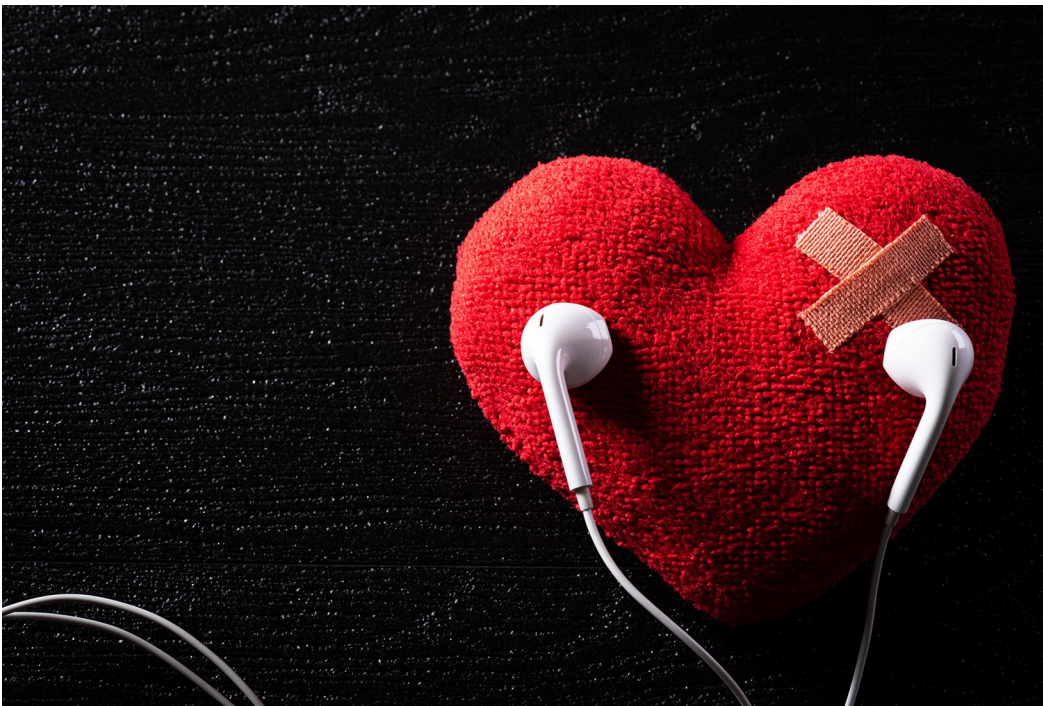


I Don't Get You, Babe – The Curious Copyright Case of Sonny & Cher & Mary

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The 1970s were the heyday of the now-extinct television genre known as the variety show: a weekly extravaganza headlined by a well-known entertainer, generally accompanied by a supporting cast of singers, dancers and comedians, and featuring a weekly guest star to liven things up. Among the longest lasting of these weekly spectacles was *The Sonny & Cher Comedy Hour*, which premiered in 1971 and featured the eponymous 1960s singing duo.

Sonny (born Salvatore Bono) and Cher (nee Cheryllyn Sarkisian) met in 1962, when Cher, then 16 and a recent high school dropout, approached Sonny, then an up-and-coming songwriter, about breaking into the music business. Sonny helped Cher become a

backup singer on many recordings helmed by legendary music producer (and later convicted murderer) Phil Spector, before transitioning to a lead performer with Sonny, performing as Sonny & Cher. The pair, by now dating and sharing a great mutual Love and Understanding, scored multiple hits in the 1960s, including their signature song *I Got You Babe*, and others like *Bang Bang (My Baby Shot Me Down)* and *Baby Don't Go*, mostly written or co-written by Sonny, who had also written hits for a number of other artists. In 1971, the pair agreed to star in a variety show that would also help transition Cher to a successful solo career; she would top the charts in the early 70s with hits like *Gypsies, Tramps and Thieves* and *Half Breed*.

The Sonny & Cher Comedy Hour featured lavish production numbers; bigtime guests like Carol Burnett, George Burns, Ronald Reagan, The Jackson 5, and Burt Reynolds; daring Bob Mackie gowns; and caustic banter between the two stars (mostly about Sonny's short stature). For a time, the show was a hit, and it ran for three successful seasons.

Unfortunately, *The Sonny & Cher Comedy Hour* came to an unfortunate end, coinciding with the end of the Sonny & Cher marriage. The couple had wed in 1969 after the birth of their only child, now known as Chaz Bono; Sonny had a daughter, Christine, by an earlier marriage. But enterprising television executives were not going to let a pesky divorce get in the way of a solid ratings hit. CBS simply rebranded its program as *The Cher Show* and the Beat Went On as if Sonny had never been a part of the program. For his part, Sonny nabbed his own show on ABC, *The Sonny Comedy Revue*, which was a ratings flop. And *The Cher Show* was not all that successful either – the American public wanted Sonny & Cher together, and that is what they got in 1976, when Sonny & Cher reunited for the third iteration of their CBS show, *The Sonny & Cher Show*. Unfortunately, the now divorced couple could not recapture the magic of the original program, for cutting quips about the loving foibles of a happily married couple now came across as (and up to a point, were) bitter putdowns of estranged exes. This third and last iteration of their show marked the end of the Sonny & Cher entertainment partnership. The two never performed again together except for a 1987 appearance on *The David Letterman Show*.

Time went on. Cher Found Someone, remarrying (briefly) the rock star Greg Allman, and she had another child with him. She also rebuilt her successful solo music career, then transitioned to acting and scored multiple Oscar nominations, winning for *Moonstruck* in 1988. Her music career has been even more long-lasting, with one hit song after another running into the 2000s. For his part, Sonny pursued a reasonably successful acting career and likewise remarried, to Mary Whitaker, in 1986. The couple had two children of their own, Chesare and Chianna, while Sonny was transitioning to a most unexpected new career: politician. Sonny was elected Mayor of Palm Springs in 1988, and then was elected to the U.S. House of Representatives in 1994. But, sadly, Sonny was killed in a skiing accident in 1998. At his widow Mary's request, Cher gave one of the principal eulogies at his funeral, delivering one of the most moving, heartfelt tributes you will ever hear. In his honor, the 1998 revision to the US Copyright Act was named the Sonny Bono Copyright Term Extension Act.

It is the events after Sonny's death that give rise to this blog post. For all of his many music, business and political accomplishments, Sonny botched his estate planning: there was none – he died without a will (oy!). Mary, who had succeeded Sonny in Congress, serving until 2013, was appointed administrator of his estate. Among the estate's creditors was Cher, who asserted her rights under an August 10, 1978 Marriage Settlement Agreement (the "MSA"). The MSA was meant to resolve all of the financial aspects of the Sonny & Cher divorce, and consistent with California's community property laws, it granted Cher "an undivided 50% interest" in two revenue sources. The first was record royalties – royalties payable to performers when physical or digital copies of the recordings on which they sang are sold or downloaded – payable to Sonny under various recording contracts he entered into between 1964 (when he started dating Cher) and 1971. The second were composition royalties – royalties payable to songwriters whenever their compositions are recorded, played, performed, streamed, or licensed. Composition royalties tend to be more lucrative (depending on the popularity of the song) than record royalties. Mary, as estate administrator, recognized Cher's rights to these royalties under the MSA, and Cher received her percentages of both royalties for nearly two decades after Sonny's death. Cher and Mary also cooperated, per the MSA, in agreeing to the appointment of an administrator to collect and disburse both types of royalties. That administrator was entitled to receive 10% of both types of royalties under the MSA in consideration for their work.

The apparently harmonious relationship between Cher and Mary began to hit the skids in 2016, when Mary invoked Section 304(c) of the US Copyright Act. That provision of the statute authorizes a copyright owner or grantor (if they are living), or their statutory heirs (if they are not) to terminate prior copyright grants or licenses for works created before January 1, 1978 in certain circumstances, and on particular timetables, by sending a notice of termination to the grantees/licensees. By sending such a notice, the copyright owner or their heirs can recapture their rights and, potentially, monetize their copyrighted works on more favorable terms. Mary sent such termination notices to a number of music publishers, specifying effective termination dates between 2018 and 2026. Cher was not told about the issuance of these termination notices, nor were the MSA and the Sonny & Cher recording contracts mentioned in the notices. But in 2021, Cher learned not only that Mary had ceased paying her composition royalties, as the prior grants from Sonny to various music publishers began to terminate, but that Mary was taking the position that the MSA no longer applied, at least as to composition royalties, and that Cher would also cease to receive Sonny's share of record royalties when/if Mary chose to terminate the 1964-71 recording contracts and renegotiate them.

Cher could not Believe that Mary was taking such a position, accused Mary of being a Dark Lady, and claimed Mary was trying to Turn Back Time to the period before the Sonny & Cher divorce. Cher therefore sued Mary in the U.S. District Court for the Central District of California, accusing Mary of breaching the MSA and seeking a declaratory judgment that the MSA's obligations remained binding, termination notices or not. For her part, Mary lodged counterclaims against Cher for breach of the MSA because Cher had refused to consent to the continued appointment of the royalty administrator, and had objected to Mary's plan to create a new royalty administration entity that she and

Sonny's four children would own. (Mary had Sat Down With the Kids, including Chaz, and apparently worked this out.) Mary also wanted the Court to declare that Mary could negate Cher's interest in the Sonny & Cher recording contracts if Mary chose to terminate and renegotiate them. One added wrinkle to this case: after it was filed, in January 2023, Cher sold all of her rights in her song catalog, including her rights in the MSA, to an unnamed third party for an unknown amount of money.

Last week, after several years of litigation in which both sides were presumably on Needles and Pins, the Court resolved the dispute by largely siding with Cher. It rejected Mary's argument that the termination/recapture provisions of Section 304(c) relieved Mary of her obligations under the MSA, largely for two reasons. First, the MSA was not a copyright grant that could be terminated under the statute, but a contract dividing revenue between Sonny & Cher. In other words, Sonny did not grant Cher an interest in his copyrights, but simply agreed to divide with her the revenue produced by those copyrights. Because there was no grant of any copyright interests to Cher, there was nothing Section 304(c) could terminate. Second, Section 304(c) authorizes termination of "the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978." The MSA was executed on August 10, 1978, and the Court rejected Mary's argument that it was the date of Sonny's prior grants that mattered, as opposed to the MSA's execution date.

Mary did score a partial victory on the royalty-administrator issue, as the Court found that Mary had sole discretion to select the royalty administrator, even one she created, but Cher could object to the terms of the appointment, including on things like fees and the administrator's qualifications.

So is this the final chapter of the Sonny & Cher business partnership? Not yet – Cher's 2023 sale of her interest in the MSA left the Court uncertain about who should be paid certain royalties accruing during the pendency of the lawsuit – Cher or her anonymous buyer. So that issue remains to be resolved, meaning that, for now, Cher & Mary will have to continue Living in a House Divided, until the case is finally resolved.