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Intellectual Heirs Property: Why Certain Musical Copyrights Should be Included in the Heirs Property Reform Movement

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Intellectual Heirs Property: Why Certain Musical Copyrights Should be Included in the Heirs Property Reform Movement

Cover Page Footnote

* J.D. Candidate, 2023, University of Georgia School of Law. B.A. Independent Study, 2016, Gallatin School of Individualized Study at New York University. I would like to dedicate this Note to my soon-to-be wife. Kelsey, thank for knowing that I would drop out of law school to be with you and not making me do so. I love you dearly.

**INTELLECTUAL HEIRS PROPERTY: WHY
CERTAIN MUSICAL COPYRIGHTS SHOULD BE
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MOVEMENT**

*Austin Weatherly**

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I. INTRODUCTION

When a property owner dies without a will, their property is inherited according to the procedure outlined in the governing intestacy statute.¹ This post-death property-allocating process creates heirs property, a type of property ownership where “multiple owners obtain undivided, fractional interests in real property.”²

Most intestacy statutes stipulate that the inherited property is held via a tenancy-in-common,³ meaning each tenant holds an undivided interest in the property that does not terminate at death.⁴ Tenancy-in-common ownership has been characterized as one of the most unstable and vulnerable forms of property ownership.⁵ This instability is a large part of the reason that scholars and citizens believe that heirs property reform is necessary.⁶

The heirs property reform movement advocates for amending the statutory schemes that create heirs property.⁷ This reform movement has been promoted as a means of mitigating the racially disproportionate effects of heirs property in the real property context.⁸ One of the primary motivations for reform is the fact that heirs property issues can interfere with a property’s wealth-generating potential.⁹ Given the racially disproportionate impact of heirs property issues,¹⁰

¹ B. James Deaton, *A Review Assessment of the Heirs’ Property Issue in the United States*, 46 J. ECON. ISSUES 615, 618 (2012) (“When a person dies intestate in the United States, statutory laws allocate the deceased’s property.”).

² Joan Flocks et al., *The Disproportionate Impact of Heirs’ Property in Florida’s Low-Income Communities of Color*, 92 FLA. BAR J. 57, 57 (2018).

³ Deaton, *supra* note 1, at 618 (“When the deceased is survived by heirs, . . . the partial ownership to the whole property is distributed to relations who become cotenants in property held as tenancy in common.”).

⁴ *Id.*

⁵ Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 33 (2014).

⁶ See *id.* at 60 (discussing the Uniform Partition of Heirs Property Act as a means to combat the unstable nature of tenancy-in-common ownership).

⁷ See generally Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, 40 STATE & LOC. L. NEWS 6, 6 (2016) (discussing the statutory reforms proposed by heirs property reform advocates).

⁸ *Id.*

⁹ Mitchell, *supra* note 5, at 60.

¹⁰ *Id.* at 31 (“[F]orced partition sales have been particularly devastating economically for poorer tenancy-in-common owners because these owners typically have much less diversified asset portfolios . . . and their real estate holdings tend to constitute a substantial percentage of their overall asset holdings.”)(citing Rakesh Kochhar et al., *Twenty-to-One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics*, PEW RES. CTR. 1, 17-21 (July 26, 2011), https://www.pewresearch.org/wp-content/uploads/sites/3/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf).

this interference makes heirs property a meaningful contributor to the racial wealth gap in America.¹¹

There are undoubtedly significant differences between real property and intellectual property, but there are also similarities, particularly between real property interests and inheritable musical copyright interests. For example, copyright interests can be inherited pursuant to the same intestacy procedures that create heirs property.¹² The similarities do not end there, both musical copyright interests and real property interests are wealth-generating and wealth-building assets that can affect the racial wealth gap.¹³ Additionally, “[w]hen we think of private property, we think of three characteristics: the right to exclude others, title (ownership), and the right to collect income or rent off the property.”¹⁴ In both the copyright context and the real property context, the conferral of the third characteristic listed is subject to a racial disparity.¹⁵ While heirs property issues in the musical copyright context may have a smaller impact on the racial wealth gap than heirs property issues in the real property context, that impact should not be denied.

II. BACKGROUND

A. WHAT ARE THE PROBLEMS IN THE REAL PROPERTY CONTEXT?

When multiple fractional owners hold their property interests via a tenancy-in-common, “each cotenant enjoys the same right to use and possess the . . . property.”¹⁶ Because each cotenant retains an undivided interest, tenancy-in-common is seen as the most unstable form of property ownership.¹⁷ This instability has led cotenants who sell their fractional interests to receive “substantially discounted sales prices.”¹⁸

¹¹ *Id.* at 31 (“The loss of real estate wealth that minorities have experienced as a result of partition sales is consistent with a disturbing broader trend in which the wealth gap between whites and many minorities . . . has increased substantially in recent years.”).

¹² See 17 U.S.C. § 201(d)(1) (“The ownership of a copyright may be transferred . . . may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.”).

¹³ K.J. Greene, *Copyright, Culture & Black Music: A Legacy of Unequal Protection*, 21 HASTINGS COMM’N & ENT. L.J. 339, 387 (1999) (“[C]opyright is a form of wealth . . .”).

¹⁴ Greene, *supra* note 13, at 375.

¹⁵ *Id.*; Mitchell, *supra* note 5, at 31.

¹⁶ Deaton, *supra* note 1, at 618; see also Mitchell, *supra* note 5, at 8 (“A tenant in common owns an undivided, fractional interest in a parcel of property and may use and possess the entire property[.]”).

¹⁷ Mitchell, *supra* note 5, at 33.

¹⁸ *Id.* at 52; see, e.g., *Ainsworth v. Ainsworth*, 860 So. 2d 104, 117 (La. Ct. App. 2003) (rejecting Plaintiff’s contention that the minimum bid at a partition sale was below the property’s appraised value, noting that “there is no requirement that there be a minimum bid at all in a partition by a licitation[.]”).

Additional issues arise from a tenant in common's unilateral right to file a partition action "requesting courts to order the entire properties forcibly sold."¹⁹ This right allows speculators outside of the family to acquire a fractional property interest and force a partition sale.²⁰ Speculator intervention is a particularly strong risk because many families who own heirs property do not fully understand the legal rules governing tenancy-in-common ownership.²¹ Further compounding the issue, partition sales often depress the value of the auctioned land, which can allow speculators to "acquire the property for a price well below even the property's forced sale value."²²

In many cases, it is not plausible or possible for familial fractional owners to pool their money together and purchase their land at the partition sale. "[M]any heirs property owners are 'land rich but cash poor,' in that they do not have other substantial liquid assets (or tangible assets for that matter) that they can use . . . to bid effectively at a partition sale."²³ This same reality makes forced partition sales especially devastating for poorer heirs, because the fractional property interests they lose often constitute a substantial percentage of their overall wealth.²⁴ Additionally, it is worth noting that for many familial heirs, the effects of land loss are not purely economic—often, heirs must also confront the loss of ancestral lands.²⁵

The results of heirs property cut at the very heart of property ownership; that is, the ability to leverage property and the power to sell it — both of which are fundamental to building wealth.²⁶ Given the racial disparity in the existence of heirs property, it follows that heirs property issues are a contributing factor to the growing racial wealth gap in the United States.²⁷

B. WHAT IS THE UNIFORM PARTITION OF HEIRS PROPERTY ACT?

The Uniform Partition of Heirs Property Act ("UPHPA") has emerged as a substantial source of heirs property reform. This piece of uniform legislation was

¹⁹ Mitchell, *supra* note 5, at 5; see *Ainsworth*, 860 So. 2d at 109 (affirming the trial court's ordering of a partition sale against the will of a cotenant).

²⁰ Mitchell, *supra* note 5, at 5 (discussing the implications of heirs property speculation and subsequent forced partition sales).

²¹ *Id.* at 30.

²² *Id.* at 31.

²³ *Id.* at 30-31.

²⁴ *Id.* at 31.

²⁵ *Id.* at 55.

²⁶ See Greene, *supra* note 13, at 375.

²⁷ Mitchell, *supra* note 5, at 31 ("The loss of real estate wealth that minorities have experienced as a result of partition sales is consistent with a disturbing broader trend in which the wealth gap between whites and many minorities . . . has increased substantially in recent years.").

approved by the Uniform Law Commission in 2010 and subsequently approved by the American Bar Association for adoption by the states in 2011.²⁸

The [UPHPA] establishes a hierarchy of remedies that both reinforces the property rights of certain tenancy-in-common property owners who traditionally have been most at risk of losing their property at a forced partition sale and significantly improves the ability of these tenancy-in-common property owners to maintain their real-estate-based wealth should a court order such a forced partition sale.²⁹

C. WHAT IS AN INTELLECTUAL PROPERTY ESTATE?

Intellectual property estates are aggregations of inheritable intellectual property interests. In the copyright context, estates are possible because The Copyright Act of 1976 (“Copyright Act”) grants copyright protection for the life of the author and the 70 years that follow.³⁰

The United States follows the utilitarian justification of intellectual property rights.³¹

Under the utilitarian approach, . . . copyright law provides an economic incentive for authors to invest time and energy into the creation of original works of authorship; by prohibiting the unauthorized copying and distribution of an author’s work, copyright allows authors to recoup the costs of creation and grow the stock of creative works available for public consumption.³²

This underlying author-driven policy begs the question of whether the same policy can be used to support the ownership claims of intellectual property

²⁸ Caitlin Henderson, Note, *Heirs Property in Georgia: Common Issues, Current State of the Law, and Further Solutions*, 55 GA. L. REV. 875, 892 (2021).

²⁹ Mitchell, *supra* note 5, at 6.

³⁰ 17 U.S.C. § 302(a).

³¹ See Andrew Gilden, *Ip, R.I.P.*, 95 WASH. U.L. REV. 639, 647-48 (2017).

³² *Id.*

heirs.³³ Despite reservations about the propriety of intellectual property estates, they have continued to grow overtime.³⁴

D. THE COPYRIGHT ACT AND INHERITANCE

Section 201 of the Copyright Act provides that, “ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.”³⁵ This would seem to make the inheritance of copyright interests an open and shut case, but two other provisions of the Copyright Act of 1976 tell a different story.

First, regardless of whether the copyright author dies intestate or with a will, Section 304 of the Copyright Act expressly limits the inheritance of the renewal right to “those falling within the author’s statutory successor class.”³⁶ In effect, Section 304 “mandate[s] that upon certain conditions, copyright, a species of intangible personal property, must stay in the family.”³⁷

Second, Section 203 of the Copyright Act similarly interferes with the copyright author’s testamentary freedom. Under Section 203, in certain circumstances, copyright owners can terminate a past agreement to license or sell their copyright interest.³⁸ Congress created this termination right “because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work’s value until it has been exploited.”³⁹ This termination right can only be inherited and exercised if the copyright author dies during the statutory period that creates the termination right, and it can only be inherited by the copyright author’s widow, widower, children or grandchildren.⁴⁰ The statutory period where termination is permitted varies based on when the copyright was authored.⁴¹ The right of termination outlined in Section 203 shares

³³ *Id.* at 648 (“If copyright is meant to incentivize *creation*, postmortem protections would seem to provide a valuable property right to individuals who are not engaging in creative pursuits”) (emphasis in original).

³⁴ LYDIA PALLAS LOREN & JOSEPH SCOTT MILLER, *INTELLECTUAL PROPERTY LAW: CASES & MATERIALS* 389 (7th ed. 2021) (discussing the ways in which the term of a copyright has grown over time).

³⁵ 17 U.S.C. § 201(d)(1).

³⁶ Michael Rosenbloum, Note, *Give Me Liberty and Give Me Death: The Conflict Between Copyright Law and Estates Law*, 4 J. INTELL. PROP. L. 163, 171-72 (1996).

³⁷ *Id.* at 165.

³⁸ *Id.* at 173-74 (“Section 203 of the 1976 Act grants copyright owners a right to terminate transfers.”).

³⁹ H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. 124 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5740.

⁴⁰ Rosenbloum, *supra* note 36, at 174.

⁴¹ *Id.* at 173-74 (stating that under Section 203, the transfer of a copyright authored “on or after January 1, 1978 [can be terminated] at any time during [the] five-year period beginning at

an underlying policy with Section 304 — "keep[ing] the creativity of the author in [the] family."⁴²

E. HISTORICAL RACIAL DISPARITY IN COPYRIGHT LAW

Though "copyright law exists [] to foster cultural productivity by providing economic incentives to individual artists/creators[.]"⁴³ Black musicians have not always received them.⁴⁴ There are many ways that copyright law has failed to equally protect the creations of all races.⁴⁵ Historically, Black artists have been particularly vulnerable to suffering from facially neutral copyright laws,⁴⁶ and this "[d]isparate treatment occurred despite the ostensible race neutrality of the copyright regime."⁴⁷ This disparate treatment is in part due to the fact that copyright law is owner-centered and not creator-centered;⁴⁸ meaning, Black authors have not always gained the legal or social benefits of their authorship.⁴⁹ The gap between authorship and ownership for Black authors was driven by the traditional symptoms of historical race-based discrimination, including but not limited to "educational deprivation" and a "lack of access to legal resources."⁵⁰

The historical racial disparity of copyright protection for Black musical artists was partially influenced by the Copyright Act of 1909's requirement that the copyrightable work be reduced to a "tangible form."⁵¹ In the musical context, this requirement meant that a song had to be reduced to sheet music with accompanying lyrics to qualify for copyright protection;⁵² a singer's live performance alone was not eligible for federal copyright protection under the 1909 version of the Copyright Act.⁵³ These technical requirements allowed

the end of the thirty-fifth year after the execution of the transfer . . . [and the transfer of a copyright authored] prior to 1978 [can be terminated] during the five-year period beginning at the end of the fifty-sixth year from the date the copyright was originally secured or beginning on January 1, 1978 if the end of the fifty-sixth year has passed.").

⁴² *Id.* at 174.

⁴³ Greene, *supra* note 13, at 355.

⁴⁴ *Id.* at 372.

⁴⁵ *See id.* at 372-73 (discussing four ways in which Black artists were deprived of intellectual property rights or interests that were rightfully theirs).

⁴⁶ *Id.* at 391-92.

⁴⁷ *Id.* at 359.

⁴⁸ *Id.* at 356.

⁴⁹ *See id.* at 341 ("Black artists as a class consistently received inadequate compensation, credit, and recognition for original works.").

⁵⁰ *Id.* at 391-92.

⁵¹ *Id.* at 372.

⁵² *See id.* at 378-80 ("The copyright law will not protect works which are not 'fixed' in some tangible form. In practice, this means that the work must be reduced to writing.").

⁵³ *See id.* at 380 ("[A] a singer's performance is not copyrightable under the federal law.").

cultural works authored by Black musicians, often derived from an oral tradition, to be exploited by those with the tact to reduce them to a tangible form.⁵⁴

III. ANALYSIS

A. LOGICAL BASIS FOR HEIRS PROPERTY REFORM IN THE REAL PROPERTY CONTEXT

Heirs property is created when a property owner dies intestate, and their property is inherited by their survivors via the applicable state intestacy statute.⁵⁵ Heirs property reform is needed for many reasons, chief among them, “heirs property often prevent[s] the realization of [a] property’s full potential.”⁵⁶ Historically, this same issue has affected the copyrights authored by Black musicians, even before their interests became heirs property.⁵⁷

In the real property context, the impact of a failure to fully realize the potential of heirs property is not only felt by fractional heirs, but also, by the public. If heirs property was held in a more stable form of ownership, more funds would be invested into it potentially leading to a higher tax revenue for the state to the public’s benefit.⁵⁸ A study of heirs property in Georgia alone estimated that “[the] total tax appraised value of probable heirs property undermining Georgia’s economy is over \$34 Billion.”⁵⁹

B. RHETORICAL BASIS FOR HEIRS PROPERTY REFORM IN THE REAL PROPERTY CONTEXT

The rhetorical thrust supporting heirs property reform is heirs property’s disproportionate impact on racial minorities and citizens of a lower economic class.⁶⁰ For reasons already discussed, Black Americans are significantly more likely to be negatively impacted by the creation of heirs property.⁶¹ This disparate

⁵⁴ See Greene, *supra* note 13, at 355-61 (discussing the historic racial inequity of the copyright regime).

⁵⁵ See Deaton, *supra* note 1, at 618 (“When a person dies intestate in the United States, statutory laws allocate the deceased’s property.”).

⁵⁶ Henderson, *supra* note 28, at 883-84.

⁵⁷ See Greene, *supra* note 13, at 375 (discussing the relationship between appropriation of Black music and U.S. copyright law).

⁵⁸ *Cf.* Henderson, *supra* note 28, at 879-80 (discussing the tax-appraised value of probable heirs property in Georgia).

⁵⁹ *Id.* at 880 (quoting GA. HEIRS PROP. L. CTR., ANNUAL REPORT: FISCAL YEAR 2018, at 4 (2018), <https://static1.squarespace.com/static/5994bdde197aea0c96b51664/t/5c5876daa4222fd9c243546a/1549301486788/GAHeirsAnnualReport18.pdf>).

⁶⁰ See Mitchell, *supra* note 5, at 31 (outlining the reasons why heirs property reform is necessary).

⁶¹ *Id.* at 31-32.

impact has served as the rhetorical thrust of the heirs property reform movement,⁶² and in many ways it has become synonymous with it.

C. APPLYING THE PURPORTED BASES FOR REFORM TO THE COPYRIGHT CONTEXT

Both the logical and rhetorical bases for heirs property reform in the real property context support the inclusion of copyright interests into the reform movement. For example, under the Copyright Act, intestate copyright interests pass pursuant to state intestacy statute,⁶³ the same procedure that creates heirs property in the real property context.⁶⁴

Not only are the two forms of heirs property created by the same process, they also share other key characteristics. As discussed above, copyright interests—like real property interests—are a form of wealth and share a history of racial disparity contributing to the racial wealth gap.⁶⁵ For example, in the musical copyright context, “the pattern of creation by Blacks and appropriation . . . by the dominant group—whites in America—comprised a wealth transfer away from the Black community.”⁶⁶

In both contexts, even though a fractional heir could sell their property interest or attempt to force a partition sale of the entire property,⁶⁷ either sale would be likely to result in a price below market value.⁶⁸ These resulting below-market sales could even be the result of speculation.⁶⁹ In addition to below-market sales, lenders are generally hesitant to accept fractional heirs property interests as collateral for a loan.⁷⁰ Finally, neither copyright interests nor real property interests are solely an economic tool, but both hold significant emotional value as heirlooms.⁷¹ If the heirs property reform movement seeks to address the racial wealth gap, the movement should include inheritable musical

⁶² See, e.g., Mitchell, *supra* note 7 (advocating for the passage of the UHPHA).

⁶³ 17 U.S.C. § 201(d)(1).

⁶⁴ See Deaton, *supra* note 1, at 618 (“When a person dies intestate in the United States, statutory laws allocate the deceased’s property.”).

⁶⁵ Greene, *supra* note 13, at 387.

⁶⁶ *Id.* at 387.

⁶⁷ Mitchell, *supra* note 5, at 5.

⁶⁸ *Id.* at 52.

⁶⁹ *Id.* at 31 (“Because so many heirs property owners lack the financial ability to make competitive bids at partition sales, the winning bidders at these sales—bidders who sometimes are [speculators] who recently had acquired a small interest in the property—are often able to acquire the property for a price well below even the property’s forced sale value.”).

⁷⁰ Henderson, *supra* note 28, at 884 (“[M]any lenders refuse to accept [heirs] property as sufficient collateral given the lack of clear title associated with heirs property.”).

⁷¹ Mitchell, *supra* note 5, at 55 (discussing the UHPHA’s inclusion of heir’s sentimental attachment to the inherited property); Laura S. Underkuffer, *On Property: An Essay*, 100 YALE L.J. 127 (1990) (“[Property] is not incidental to our lives or to our legal system; it is of central, almost emotional importance.”).

copyright interests passed via the same procedures that create heirs property in the real property context.

D. REVIEW OF THE UNIFORM PARTITION OF HEIRS PROPERTY ACT

Real property is generally a function of state law,⁷² and like many things governed by state law, there is a glaring lack of uniformity. The differences in laws from state to state create various problems that require different solutions. Though far from uniform, most states' heirs property solutions involve either a partition sale or a partition in kind.⁷³ The UPHPA largely employs these tools in new ways in its attempt to resolve heirs property issues.⁷⁴

First, the UPHPA seeks to reform the partition sale process by limiting property loss that is against the will of the majority of the property's fractional interest holders.⁷⁵ Under the UPHPA, when a cotenant petitions for a partition sale, that petition cannot be granted until the remaining cotenants are given the chance to buy out the petitioning cotenant "at a price that represents the value of the petitioning cotenant's fractional ownership interest."⁷⁶

Second, the UPHPA seeks to add teeth to many state laws' supposed preference for the partition in kind remedy.⁷⁷ Though many states have incorporated a preference for partition in kind into their statutory provisions,⁷⁸ it is often disregarded or overlooked.⁷⁹ In its attempt to bolster the preference for partition in kind, the UPHPA requires the courts to consider a mix of economic and non-economic factors before determining whether to order a partition sale.⁸⁰ These factors include "whether the property that is the subject of a partition action has sentimental, cultural, or historic value" and "whether

⁷² 63C AM. JUR. 2D *Property* § 4 (2022) ("Generally speaking, state law creates and defines property rights or interests.").

⁷³ UNIF. PARTITION OF HEIRS PROP. ACT PREFATORY NOTE (UNIF. L. COMM'N 2010), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=6c504330-bbb6-f0e5-ec79-c32057701c8c&forceDialog=0>.

⁷⁴ *Id.*

⁷⁵ *See id.* ("The purpose of of this Act is to ameliorate, to the extent feasible, the adverse consequences of a partition action when there are some cotenants who, for various reasons, desire to retain possession of some or all of the land, and other cotenants who would like the property to be sold.").

⁷⁶ Mitchell, *supra* note 7, at 9.

⁷⁷ *Id.* ("[T]he UPHPA provides real substance to the preference for partition in kind[.]").

⁷⁸ *Id.* at 8 ("In the majority of jurisdictions, partition statutes indicate that a court may order a partition sale only if partition in kind would result in 'great prejudice' or 'substantial injury' . . . to the cotenants.").

⁷⁹ *Id.* ("In spite of what appears to be a clear preference for partition in kind, . . . many state courts . . . have developed an actual preference for a partition by sale.").

⁸⁰ *Id.* at 9.

one of more cotenants could be rendered homeless if a court ordered the property sold.”⁸¹

Third, if there is a forced partition sale, the UHPHA seeks to ensure that the sale yields a sum that is in line with market demand.⁸² Under the UHPHA, this would be achieved through an open market sale where a court-appointed real estate broker would “list the property for at least its value as determined by the court.”⁸³ This process is thought to yield a higher sales price than an auction sale ordered through a partition action.⁸⁴

E. APPLYING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT’S SOLUTIONS TO THE INTESTATE INHERITANCE OF COPYRIGHT INTERESTS

The UHPHA attempts to “modify partition law to address the specific problem families with heirs property holdings have experienced with partition law.”⁸⁵ Underlying the UHPHA’s proposed modifications is the policy that a partition in kind is the preferred remedy, and that courts should only resort to a partition sale in extreme circumstances.⁸⁶ The tension between a partition in kind and a partition sale is essential to the UHPHA, and the model statute does not make sense without it.

Of course, a partition in kind is not a valid remedy for an inherited copyright interest because intellectual property cannot be physically partitioned the same way that real property can. This reality makes the UHPHA as it is currently drafted a poor solution for the heirs property issues arising from copyright interests inherited through state intestacy laws.

Intellectual property’s absence from the heirs property scholarship and broader reform movement should not preclude the inclusion of musical copyright interests into the heirs property reform movement. Amendments to the Copyright Act itself signal an appetite for change—specifically Sections 203 and 304. Sections 203 and 304 combine to outline the instances where an author or an author’s survivors can unilaterally terminate an agreement to license a copyright.⁸⁷ These amendments are supported by many of the same policies that underscore the UHPHA. Even after the amendments, the Copyright Act still defers to state intestacy procedures in some instances, leading to many of the same heirs property issues that arise in the real property context. Though the UHPHA is not the ideal solution as currently drafted, the broader heirs property

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 17 U.S.C. § 203; 17 U.S.C. § 304.

reform movement should consider the parallel issues that exist in the copyright context and work towards solving them.

IV. CONCLUSION

The heirs property reform movement should include inheritable music copyright interests that are prone to the same heirs property issues that plague real property. Perhaps these copyright interests are not currently included because intellectual property heirs are less sympathetic than the minority farmers that are promoted as the victims of heirs property issues in the real property context. This, however, says nothing about the fact that many of the policy judgements that underlie the heirs property reform movement should apply equally to all forms of property.

Though the policies that underscore the need for heirs property reform in the real property context do not unanimously apply in the musical copyright context, many of them apply across the board. For example, many of the same historical racial disparities that underpin the heirs property reform movement in the real property context apply in the musical copyright context.

Though the practical differences between the two property interests makes a single solution difficult, there is good reason to include musical copyright interests in the heirs property reform movement.