



Copyright Reversions

Excerpted from *Terminating transfers/"Recapturing copyrights"*

by Lisa Alter

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Recapturing copyrights

Pre-1978 works:

Under Section 304(c) of the Copyright Act, grants or licenses of pre-1978 copyrights executed before January 1, 1978 by the author or his/her heirs may be terminated during a 5 year period beginning 56 years after the date of copyright. Any exclusive or non-exclusive grant may be terminated, with the exception of works-for-hire or grants made by will. A grant may be terminated even if the original contract stated that the grantee shall be entitled to retain its rights for the entire term of the copyright, including renewals and extended terms, because the statutory termination right supersedes the contract.

If the author dies before exercising the termination right, the termination interest vests in the author's heirs, which may include the author's widow or widower, children, or grandchildren, or, in the event the author's widow or widower, children, or grandchildren are not living, the author's executor, administrator, personal representative or trustee. Termination may be exercised only by following the procedures for notice and recordation outlined by the Copyright Act.

Notice of termination must be served on the grantee or the grantee's successor in title no more than 10 nor less than 2 years before the effective date of termination. That is, notice must be served anytime during the period beginning 46 years after the original copyright date and continuing until 59 years after the original copyright date.

It is important to note that while renewal applications may be filed at any time during the calendar year in which the 28th anniversary of copyright occurs, the date of the commencement of the 5 years termination window must correspond with the original month and day of copyright. (For example, if the original copyright date is April 29, 1944, then the earliest possible date of termination is April 29, 2000. In this case, the earliest possible date for serving notice of termination will be April 29, 1990.) While it is recommended that you serve notices of termination on the earliest date possible, if you fail to give notice on that date, you may do so at any time up until the date 2 years before the end of the 5 year termination window.

Absent proper notice of termination, rights in the works will remain with the grantee. Section 304(d) of the Copyright Act affords the author or the author's heirs another opportunity to terminate pre-1978 grants of works under the following limited circumstances: (i) the work was originally copyrighted on or before October 26, 1939; and (ii) the author or heirs failed to exercise termination rights under Section 304(c). In order to take advantage of this "second chance" at termination, notice must be served by the author or his or her heirs at any time during the period beginning on the date 65 years after the original copyright date and continuing until 78 years after the original copyright date. The termination may be effected at any time during the 5 year period beginning 75 years after the original copyright date (again, notice must be given no more than 10 and no less than 2 years prior to the effective date).

Terminating Grants Under Section 304(c):

	SERVING NOTICE		RECAPTURE DATES	
	You may serve notice of termination as		Termination will be effective as	
If your original copyright date is:	EARLY as TEN years before	LATE as TWO years before	EARLY as original date + 56 years	LATE as original date +61 years
1940	1986	1999	1996	2001
1941	1987	2000	1997	2002
1942	1988	2001	1998	2003
1943	1989	2002	1999	2004
1944	1990	2003	2000	2005
1945	1991	2004	2001	2006
1946	1992	2005	2002	2007
1947	1993	2006	2003	2008
1948	1994	2007	2004	2009
1949	1995	2008	2005	2010

Terminating Grants Under Section 304(d):

	SERVING NOTICE		RECAPTURE DATES	
	You may serve notice of termination as		Termination will be effective as	
If your original copyright date is:	EARLY as TEN years before	LATE as TWO years before	EARLY as original date + 75 years	LATE as original date +80 years
1923	1988	2001	1998	2003
1924	1989	2002	1999	2004
1925	1990	2003	2000	2005
1926	1991	2004	2001	2006
1927	1992	2005	2002	2007
1928	1993	2006	2003	2008
1929	1994	2007	2004	2009
1930	1995	2008	2005	2010
1931	1996	2009	2006	2011
1932	1997	2010	2007	2012
1933	1998	2011	2008	2013
1934	1999	2012	2009	2014
1935	2000	2013	2010	2015
1936	2001	2014	2011	2016
1937	2002	2015	2012	2017
1938	2003	2016	2013	2018
1939*	2004	2017	2014	2019

* Provided that the work was originally copyrighted prior to October 27, 1939.

Post-1978 works:

Grants of works executed on or after January 1, 1978 may be terminated under Section 203 of the Copyright Act under slightly different conditions than those applicable to pre-1978 works. Unlike terminations pursuant to Sections 304(c) and 304(d), Section 203 termination is limited to grants executed by the author. This means that any grants or licenses executed by the authors' successors after January 1, 1978 may not be terminated.

Post-1978 grants may be terminated during a 5 year period beginning 35 years after the date the grant was made. In the case of a grant to publish a work, termination may occur after the 35th year of either publication or the date the grant was executed, whichever date is earlier.

The same requirements of notice and recordation set forth in connection with Section 304(c) and (d) terminations apply to terminations under Section 203. The procedures for determining who may effect termination are also the same.

To Terminate a Transfer or Grant made by the Author on or after 1/1/78:

	SERVING NOTICE		RECAPTURE DATES	
	You may serve notice of termination as		Termination will be effective as	
If your original copyright date is:	EARLY as TEN years before	LATE as TWO years before	EARLY as original date + 35 years	LATE as original date +40 years
1978	2003	2016	2013	2018
1979	2004	2017	2014	2019
1980	2005	2018	2015	2020
1981	2006	2019	2016	2021
1982	2007	2020	2017	2022
1983	2008	2021	2018	2023
1984	2009	2022	2019	2024
1985	2010	2023	2020	2025
1986	2011	2024	2021	2026
1987	2012	2025	2022	2027

The Future Administration of Your Musical Copyrights

Now that you have “recaptured” your rights what do you own?

From a musical publishing perspective, you will own both the entire writer and publisher shares of your interest in the songs. Once you have properly effected termination with respect to your compositions and rights have reverted to you, you will enjoy all of the exclusive rights of ownership guaranteed by the Copyright Act.

While the original music publisher may retain the rights to derivative works created during the period that the publisher controlled the song, you will be entitled to issue licenses and be paid (both the writer and publisher share) for all new uses.

From a practical point of view, the major rights included in the bundle of rights which are recaptured from the music publisher upon termination are non-dramatic or “small” performance rights, dramatic or “grand” rights, synchronization or “synch” rights, mechanical rights, print rights and concert rental rights.

How do you administer your “recaptured” compositions

Upon termination, the songwriter or his/her heirs will identify a publisher for purposes of administering the music publishing rights in the song. At the outset, it is customary for this entity to be the songwriter’s or heirs’ wholly owned publishing entity (be it a corporation, partnership or d/b/a for the writer or heirs.) The long term administration of the compositions is generally handled in one of three ways - the catalogue may continue to be handled by the songwriters or heirs (self-published), the catalogue may be administered by a third party music publisher or the catalogue may be sold to a third party music publisher.

Self Administered Catalogues

In the event the songwriter or heirs decide to personally administer future exploitation of the catalogue, the copyrights in the compositions will be retained by the songwriter or heirs. The self-publisher will handle all requests for uses of the compositions as well as the marketing and pro-active exploitation of the catalogue via promotional CDS, audio tapes, folios, etc.

Administration Agreements

Alternatively, the songwriter or heirs and their publishing entity may enter into an administration agreement for a term of years with an unrelated music publisher (either the original publisher or a third party music publisher.) In this case, the copyrights in the compositions will be retained by the songwriter or heirs. The music publisher will be authorized to administer some or all of the music publishing rights in the compositions, subject to contractually established parameters (such as approval rights for the songwriter or heirs,) deduct agreed upon fees and remit the balance to the songwriter or heirs. The amounts retained by the music publishing administrator, the advance and/or guarantee payable to the songwriter or heirs and the scope of the rights granted to the music publishing administrator will be established in the negotiations between the parties.

Sale of Catalogue/Co-Publishing Agreements

Finally, the songwriter or heirs and their publishing entity may elect to sell all or a portion of the recaptured copyrights (or an interest therein) to an unrelated music publisher (either the original publisher or a third party publisher.) The sale of a 50% interest in the copyrights is known as a “co-publishing” arrangement. While such a sale is usually for the life of copyright, it is possible to negotiate a sale for a limited term of years with a contractually established reversion date. The songwriter or heirs will usually retain the right to receive the writer’s share of the royalties generated from the catalogue, and in the co-publishing situation a portion of the publisher’s share of the royalties.

Remember, if you sell the copyrights in the songs which you own as a result of exercising your Section 304(c) termination right, you will not be entitled to subsequently recapture the rights under Section 304(d.) Bear in mind, also, that a purchase price which seems substantial at the time of sale may prove to be inadequate in hindsight. You should carefully consider the options of self-publishing your catalogue or entering into an administration agreement prior to electing to sell your copyrights.

A final word:

As a copyright holder, it is your duty to ensure that your musical copyrights are protected. Your compositions are not only your legacy to your children and grandchildren, they are an important part of America’s cultural heritage. If you understand the rights and protections afforded to the author and his/her heirs by the copyright laws, you will be able to enhance the economic portfolio of your compositions. Careful safeguarding of musical copyrights helps to prevent the abuse of treasured works and ensures that the compositions receive the honor and appreciation they deserve.

About the Author: Lisa Alter practices copyright and entertainment law. She is admitted to the Bar in New York, California and New Jersey. She represents many composers and musical estates and consults frequently on music publishing matters including issues involving termination of grants and recapture of copyrights. For information regarding the reprinting of all or a portion of this publication, please contact Lisa Alter, P.C., Alter & Rosen, Attorneys at Law, 200 West 57th Street, Suite 404, New York, New York 10019, Tel: 212-707-8377, Fax: 212-707-8317, lisa@alterandrosen.com.