



Expression
Copyright

Copyright Reversions and Terminations

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Kononmark
Most rights sharable

IP PITFALL:

Missing the opportunity
to get back a copyright
assigned in the past

Transfers and licenses:

Review

- Copyright transfers (assignments and exclusive licenses) must be in writing.
- Non-exclusive licenses need not be in writing and can be implied.
- With works made for hire, the employer is the author, and no assignment from worker to hirer is necessary.

Reversions under the 1909 Act:

- The initial term was 28 years.
- Copyrights had to be renewed at 28 years, or the work entered the public domain.
- During the initial term, authors could only transfer rights for the duration of that term.
- Policy was to give authors a second chance to make money from new leverage after works became successful.
- Policy thwarted by *Fred Fisher Music* (1943): Original-term authors could bind themselves ahead of time to renew in favor of grantee. This became standard.
- Dead authors exception: Original-term authors could not bind heirs to renew in favor of grantees.
- Derivative works problems: *Stewart v. Abend* (1990).

Currently, two ways to recapture transferred copyrights:

- 17 U.S.C. § 304(c)
 - for pre-1978 transfers
- 17 U.S.C. § 203
 - for post-1977 transfers

**17 U.S.C. § 304(c)
for pre-1978 transfers**

- Copyright extension legislation tacks years on to the end of existing copyrights
- The idea of § 304(c) is to give the benefit of those extensions to the authors, rather than give a windfall to assignees

17 U.S.C. § 304(c) for pre-1978 transfers

- For pre-1978 works (1909 Act), under extension legislation, there are automatic renewals.
- Pre-1978 transfers
 - There are termination windows beginning at the 56th year (§ 304(c)) and 75th year of the copyright (if not exercised at 56th) (§ 304(d)).
 - Derivative works can continue on.
 - But after termination, there is no right to make further derivative works.

17 U.S.C. § 203 for post-1977 transfers

- The idea of § 203 is to give the artists who signed away copyrights back when they had no bargaining leverage a second chance to get a better deal.

17 U.S.C. § 203 for post-1977 transfers

- The first transfer window opened up on January 1, 2013.
- § 203 may impact many contemporary works.

17 U.S.C. § 203 for post-1977 transfers

- The grant must have been executed by the author to be terminable. (§ 203(a))
- *(Note that this is in accord with the policy premise – to benefit authors who originally sold copyrights with little bargaining leverage.)*

17 U.S.C. § 203 for post-1977 transfers

- Must serve notice between 10 and 2 years in advance of the effective date of the termination
- *(Note the complicated arithmetic, need for complex docketing, and possible malpractice trap.)*

17 U.S.C. § 203 for post-1977 transfers

- Derivative works may continue to be utilized under the terms of their original grants after termination. But this does not apply to the making of new derivative works.
 - So a transferee can sell DVDs, e.g.
 - But the transferee can't make sequels after termination