

Copyright Termination of Transfer, a Hot Topic to Come

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For anyone interested in ownership of content – whether in the form of literary works, motion pictures, art or music – copyright terminations of transfer are likely to be a subject of increasing importance and legal dispute. These termination rights permit authors, composers and artists (collectively, “authors”) and their successors to reclaim certain previously granted copyright interests.

The termination of transfer provisions in the 1976 Copyright Act offer nonwaivable rights to terminate copyright grants after the lapse of statutorily prescribed periods. These provisions allow authors to share in the true value of their works as manifest over time, even where they might not have been adequately compensated initially. Termination is not automatic; to terminate, an author or his heirs must give a prescribed form of written notice to the copyright holder within a certain window of time. Termination provisions are found in Sections 304(c) and 203 of the Copyright Act, and are distinguished by the date of transfer or license.

For grants executed before January 1, 1978, Section 304(c) gives authors the right to terminate a grant any time during a five year period that begins on January 1, 1978, or 56 years after the date statutory copyright was secured, whichever is later. All terminations to date have proceeded under Section 304(c) and there have been a number of high profile lawsuits about those terminations. For example, a little more than a year ago, the heirs of Superman co-creators Jerome Siegel and Joseph Shuster, won back certain valuable rights related to the comic book character. Other high profile lawsuits have rejected efforts to terminate pre-1978 transfers.

For grants executed on or after January 1, 1978, content creators have the right to terminate the grant anytime during a five year period that begins to run thirty-five years after the grant’s execution and to recapture the copyright interest. Thus, for example, a composer who assigned his copyright to a record label in 1978 will be able to take advantage of the termination of transfer provisions beginning in 2013. This may result in a flood of terminations by those seeking to regain rights previously granted to publishers, record labels, advertising agencies, motion picture studios and others.

Termination of copyright transfer is an arcane and largely ignored subject with many complexities and uncertainties. However, it is also a commodity likely to demand the attention of an increasing number of stakeholders. Thus, the Copyright Office has recently concluded that it would be beneficial for Congress to clarify the termination provisions to ensure greater certainty about copyright ownership. In the meantime, the Copyright Office recently gave notice

of its intention to amend its regulations to clarify recordation practices concerning notices of termination. (The comment period has been extended to January 24, 2011.) Any audit of content inventory should take into account the likely activity and uncertainty.

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