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Lexis Practice Advisor Intellectual Property & Technology

Notice & Duration

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Overview

While a copyright notice is beneficial in that it informs others that a work is copyright protected, it is not required, as it once was, to obtain or retain copyright protection. An actual notice, e.g., "© [Year of First Publication] [Name of Author]," when properly placed serves to notify others of the copyright holder's copyright and is required for works first published prior to March 1, 1989 but after January 1, 1978 (unless an exception applies) and for all works first published prior to January 1, 1978. Orphan works are works whose author or rightsholder cannot be found. Therefore, those who use orphan works are at risk for copyright infringement if the rightsholder later discovers the unauthorized use and brings a lawsuit. If a work is in the public domain, it can be used without limitation as it is not protected by copyright. The length of copyright protection depends, in part, on which law was in effect at the time it was created, The Copyright Act of 1909 or The Copyright Act of 1976, which is the current Act. All original works of authorship created and fixed in a tangible medium of expression beginning on or after January 1, 1978 (the effective date of the 1976 Act) are automatically protected by copyright law and the duration for such works is dependent upon the nature of the work. Most post-1978 works endure for the life of the author plus 70 years. At the time copyright protection begins, there is no way to determine how long it will actually last. Under certain circumstances, a copyright that has been transferred, either by assignment or license or otherwise, may be "recaptured" if an author exercises his or her termination right.

Notice of Copyright

Prior to March 1, 1989, the Copyright Act required that a "copyright notice" be affixed to a work in order for that work to obtain or retain copyright protection. The notice requirement was eliminated from the Copyright Act when the United States joined the Berne Convention on March 1, 1989. Since that date, copyright notices became unnecessary as a condition for copyright protection; indeed, requiring any such notice would constitute a breach of the Berne Convention.
Although no longer necessary to protect a copyright, affixing a copyright notice to a work still carries several benefits, including:

- informing the public that the work is protected by copyright;
- providing information identifying the copyright owner so that he or she may be contacted by a party wishing to use the work; and

- overcoming an infringer's claim that his or her use of the work was an "innocent infringement" within the meaning of Section 401(d) of the Copyright Act.

In light of these benefits, as well as longstanding practice in the industry, copyright holders would be well advised to include a copyright notice whenever practical to do so.

Form of Notice

A proper notice identifies the copyright owner and the date upon which copyright protection in the work commenced.
For works other than those contained in phonorecords, such as books, films, websites, and art, the notice should appear in the following format:

© [Year of First Publication][Name of Author]

Notice should be placed where it can be easily found by those using the work. See 17 U.S.C. § 401(c). For example, copyright notices for books often appear on the title page or the page before or after the title page, or on either side of the front or back cover. Copyright notices for websites commonly appear at the bottom of each web page containing protected content. The Copyright Act does not specify where notice must be placed; however, the Copyright Office provides examples by regulation. *See* 37 C.F.R. § 201.20.

Phonorecords – While most works will use the © as designation for notice, works embodied in phonorecords, such as sound recordings, should affix the (P) (or "P" in a circle) symbol. Notice may be placed either on the surface of the phonorecord itself, a label on the phonorecord, or the container in which the phonorecord is packaged, and shall appear in the following format:

(P) [Year of First Publication][Name of Copyright Owner]

This "P in a circle" designation relates only to the sound recording (the phonorecord), and not to the underlying musical, literary or dramatic work embodied in the phonorecord. Those works would be protected with the more common © symbol, if published; such as in sheet music or in book form.

Collective Works - Only a single copyright notice is required for collective works, but each individual contribution may designate its own separate notice of copyright. See 17 U.S.C. § 404(a). This is beneficial for the author of an individual contribution because it informs the public of his or her identity and ownership interest in the individual work. Notice of an individual work usually appears under the title of the contribution, on the first page of the contribution, or at the end of the contribution.

Effect of Omitted Notice

Although no longer required, it is recommended that all copyrighted works contain notice. The effect of omitting notice on a copyrighted work is dependent upon the date of its first publication.
Works published on or after March 1, 1989 - The absence of a copyright notice has no impact on the copyright protection afforded to the work. Works with or without notice are afforded the same copyright protection. As noted above, there remain certain legal benefits to affixing notice, including defeating an infringer's attempted reliance on the "innocent infringer" defense to a copyright claim.

Works published prior to March 1, 1989, but after January 1, 1978 - Under the 1976 Act, omitting a copyright notice from a work that does *not* fall within one of the following three exceptions results in the forfeiture of federal copyright protection and the placement of the work in the public domain:

1. notice was omitted from only a small number of copies or phonorecords that were distributed to the public;
2. the work was registered within five years of initial publication without notice and the owner made an effort to have an appropriate notice added to all copies or phonorecords distributed after discovery of the omission of notice; or
3. the omission of notice violated an express requirement that the published copies or phonorecords contain a notice.

If a copyright holder can establish that the unnoticed work falls within one or more of the foregoing exceptions, the absence of the notice will be excused.

Works that were published prior to January 1, 1978 - Works published prior to January 1, 1978 are governed by the 1909 Copyright Act, which provided that omission of notice – even from a single published copy, if published with the authorization of the author – results in the author's permanent loss of all copyright protection and the work enters the public domain. Thus, all works published prior to 1978 without notice are now within the public domain.

Omission of owner name or date of publication - Works published prior to March 1, 1989 that had a notice but omitted either the name of the copyright owner or the date of publication were treated as though they were published without any notice. Thus, for pre-1978 works, this would result in a forfeiture of all rights under copyright and the placement of the work in the public domain. For works first published between January 1, 1978 and March 1, 1989, copyright protection would have been lost unless the omission fell within one of the three exceptions described above.

The Copyright Office does not take a position on the impact to works that were published with notice prior to March 1, 1989 that have been subsequently reprinted without notice.

Effect of Errors in Notice

An erroneous copyright notice may affect the copyright protection afforded to a work. The extent of the effect depends on the nature of the erroneous information provided.

Error in owner information

If the notice identifies the wrong person as owner, the copyright remains valid and the owner's rights are protected. Nevertheless, a party misled by the misinformation in the notice who obtained a license to the work from the erroneously-identified party has a complete defense in an infringement action brought by the actual owner. The error may be corrected by registering the work in the name of the actual owner, or by recording a document executed by the person who was erroneously identified as the owner in the notice identifying the actual owner and that the copyright had been recorded. *See* 17 U.S.C. § 406(a).

Error in date of publication

If the notice identifies the wrong year of publication, the duration of the copyright protection afforded to the work may be affected. For instance, where the notice identifies a year earlier than the date of actual publication, duration of copyright will be calculated using the erroneous date, thereby cutting short the duration of copyright protection in and to the work. *See* 17 U.S.C. § 406(c).

At first glance, it would appear that this only impacts pre-1978 works, since the term of copyright for most post-1978 works extends for the life of the author plus seventy years; however, the term of copyright for anonymous and pseudonymous works as well as works made for hire extends either ninety-five years from the date of publication or one-hundred-and-twenty years from the date of creation. Thus, an incorrect copyright notice could affect the term of a post-1978 work as well. The Copyright Act is silent as to how this affects works first published after March 1, 1989; nevertheless, if a copyright holder elects to include notice

on a post-1978 work, it is imperative to properly format the notice and ensure the accuracy of the information.
If, alternatively, the notice indicates a date that is more than one year after the date of initial publication, the work may be considered to have been published without notice. As discussed, the effect of publication without notice depends upon the initial date of publication of the work.

Orphan Works

An "orphan work" is a work that is still protected by copyright but whose author or rightsholder cannot readily be located. Common examples of orphan works are photographs that do not identify the photographer, folk music recordings, and older, out-of-print literary works whose publishers are no longer in business. Orphan works present a problem because people wishing to use orphan works have no means of obtaining a license to use the work, yet they run the risk of incurring liability for copyright infringement if the rightsholder later discovers the unauthorized use and decides to bring a lawsuit.

People deciding whether to use an orphan work without an express license may wish to consider:

- Conducting a thorough search to locate the work's author, the author's heirs, publisher and/or rightsholder;
- Carefully documenting the steps that were taken as part of the search;
- The risk that the rightsholder will become aware of the unauthorized use, which may be function of the anticipated audience and distribution of the use;
- The risk that the rightsholder will or will not be motivated to bring a lawsuit in the event he or she becomes aware of the use, which may be a function of the commercial or non-commercial nature of the exploitation; and
- The ease with which the project may proceed without the use of the orphan work.

Within the copyright community, opinions differ over the optimal way to resolve the orphan works issue. On the one hand, many people believe that it is bad policy to protect a copyright where the copyright owner has not made him or herself available and is not commercially exploiting the work. Others have argued that copyright is not an "opt out" system, meaning that copyright holders do not, and should not, have an affirmative duty to make themselves known to the world or to exploit their rights if they do not wish to do so. *See, e.g.*, The Authors Guild v. Google (Judge Chin discussing problem with orphan works). In 2013, the Copyright Office renewed efforts to mobilize the copyright community to lobby Congress to enact orphan works legislation that, if passed, would offer a level of protection to users of orphan works who are able to demonstrate that they made a good faith effort to locate the copyright owner prior to using the work.

Duration of Copyright

The U.S. Constitution, which lays the foundation for copyright protection, provides that the monopoly afforded to authors may subsist only for a "limited time." Const., Art. 8, Sec. 8. Over the years, Congress has passed legislation extending the term of copyright protection, with the latest extension passed pursuant to the Copyright Term Extension Act of 1998. Although opponents of the extension challenged the act as unconstitutional, the Supreme Court upheld the law. *See* *Eldred v. Ashcroft*, 537 U.S. 186 (U.S. 2003).

U.S. copyright law provides a complex series of rules for how copyright duration is to be calculated and whether a work is subject to renewal or extensions.

Post-1978 Works

All original works of authorship created and fixed in a tangible medium of expression beginning on or after January 1, 1978 (the effective date of the 1976 Act) are automatically protected by copyright law and the duration for such works is dependent upon the nature of the work. Most post-1978 works endure for the life of the author plus 70 years. For a joint work, it is the life of the surviving author plus 70 years. Thus, at the

time copyright protection begins, there is no way to determine how long it will actually last. See Duration Chart .

Works made for hire (including works claimed by a corporation) and anonymous and pseudonymous works endure for 95 years from the date of first publication, or 120 years from creation, whichever is shorter.

The Copyright Act of 1976 (the current Act) provides a unified term of copyright. Thus, works created on or after January 1, 1978 do not need to be renewed in order to be protected for a full term of copyright protection, and no renewal term is available to further extend the duration of the term.

Under the current Copyright Act, a copyright's end-date is the end of the calendar year in which the copyright term expires.

Pre-1978 Works

Whereas the duration of copyright for post-1978 works is dependent upon the nature of the work and offers a unified term without renewal, pre-1978 copyright terms are the same for all types of works and were eligible for renewal. See Duration Chart .

Under the 1909 Copyright Act, pre-1978 works were afforded protection for an initial term of 28 years, commencing upon publication or registration, with a renewal term of an additional 28 years. Subsequent acts and extensions later extended the available renewal term to 67 years in duration, for a total potential duration of 95 years (assuming the proper renewal formalities were followed), and ended the requirement that works be formally renewed in order to obtain protection for a second term. The copyright renewal term for pre-1978 works has evolved as follows:

- Under the 1909 Act – Copyright registrations could be renewed for an additional 28 years (bringing the total duration to 56 years). Failure to renew resulted in termination of copyright protection upon the end of the initial 28 year term, and non-renewed works fell into the public domain. For more information on public domain works, see Works in the Public Domain.

- Under the 1976 Act – All pre-1978 works subject to copyright protection (those not within the public domain at that time) received a "bonus" 19 years added on to the available renewal term, extending the duration of the renewal term to 47 years and the total duration to 75 years.

  Under the 1976 Act, pre-1978 copyrighted works had to be renewed in order to be protected for a second, now longer, term. Failure to renew a copyright that was secured between January 1, 1950 and December 31, 1963 resulted in expiration of that copyright on December 31st of its 28th year.

  Due to an amendment to the Copyright Act enacted in 1992, however, works initially copyrighted between January 1, 1964 and December 31, 1977 did not need to be renewed, and became automatically subject to a second term. While renewal became optional for these works, many copyright owners chose to register their renewals in order to demonstrate any changes in ownership from the original registration and maintain a clear chain of title.

- Copyright Term Extension Act of 1998 – An additional 20 years was added to the renewal term, resulting in a 67 year renewal term, and making the total duration of copyright protection for most pre-1978 works 95 years from the date upon which copyright protection in the work first began.

Duration Chart

Works First Published on or After January 1, 1978

For all such works, copyright protection commences upon fixation of the work in a tangible medium of expression. The current Copyright Act provides for a unified term of copyright for such works, and thus no renewal is required or available.

Type of Work	Term of Copyright
Works of an individual author	Life of the author plus 70 years
Works of joint authorship	Life of the surviving author plus 70 years
Works made for hire	95 years from the date of publication, or 120 years from the date of creation, whichever is shorter
Anonymous or pseudonymous works	95 years from the date of publication, or 120 years from the date of creation, whichever is shorter

Works First Published Prior to January 1, 1978

Works first published prior to January 1, 1978 were subject to copyright protection under the 1909 Act. Copyright protection in such works commenced upon publication with notice, or registration (in the case of unpublished works). Publication without notice resulted in a forfeit of copyright protection, and the work fell in to the public domain. The 1909 Act also provided an initial term of 28 years with the option to renew for an additional 28 years. The 1976 Act and the Copyright Term Extension Act subsequently extended the duration of the renewal term, for a total term of 95 years.

Date of Publication	Term of Copyright	Whether Renewal is Required or Available
Between 1/1/1964 and 12/31/1977	95 years from date copyright protection commenced (initial term of 28 years plus a second term of 67 years including all applicable extensions)	Renewal term applies, but renewal registration is not required
Between 1/1/1923 and 12/31/1963	95 years from date copyright protection commenced (initial term of 28 years plus a second term of 67 years including all applicable extensions), if copyright was properly renewed	Renewal term applies, if properly renewed Failure to renew resulted in work falling in to the public domain at the end of the 28 year initial term
Prior to 1/1/1923	Expired. These works are in the public domain.	Renewal term would have commenced and ended prior to the effective date of the 1976 Act

Works in the Public Domain

Works within the public domain are not protected by copyright – either because the copyright term expired or the work was never protected by copyright.

If a work is within the public domain, it may be used without limitation. The work may be reproduced, distributed, sold and adapted without compensation or authorization from anyone. Public domain works may even be included in derivative works, though an author registering a claim to a derivative work must disclaim all portions of the public domain work used. For a more detailed discussion on disclaiming preexisting content that is within the public domain, see Drafting and Filing a Copyright Application. However, it is important to note that the U.S. Copyright Office does not maintain a register of public domain works, nor does the mere fact that a work is available on the Internet mean that it is within the public domain.

Often, it is difficult or even impossible to determine with absolute certainty whether a particular work has fallen into the public domain. With respect to works that were once subject to copyright protection, the only certainty is that all pre-1923 works are now in the public domain. In all other cases, works may have fallen into the public domain due to failure to comply with copyright formalities (such as publishing with improper notice or failing to register or renew the work) or because it is the intention of the author that the work not be subject to copyright protection – and there is no definitive way to assess that. Moreover, there are no specified guidelines for how to proceed when in doubt as to whether a work is in the public domain. Accordingly, whenever practical, it is advisable to seek out the author of the work to confirm permission, rather than making an erroneous assumption that a work is within the public domain.

The following works are always within the public domain:

- Works whose protection has expired (such as all works published in the U.S. prior to 1923);
- Works whose protection has lapsed (due to an author's failure to comply with formalities under the Copyright Act, including notice, registration, or renewal);
- Works that were never copyrightable (such as facts, ideas, U.S. government works, laws, regulations, legislative materials and judicial opinions and scientific or mathematic formulae or principles); and
- Works for which the author has made clear that he or she is disclaiming copyright in the work.

Termination of Transfers

Under the Copyright Act, authors of copyrighted works (or their heirs) may "recapture" ownership of a copyright in a work the author previously transferred (such as by assignment or license). (For a more detailed discussion on assigning and transferring copyright ownership, seeTransfer of Ownership.) Exercise of this "termination right" gives authors a second opportunity to realize the fruits of their labor, which is especially appealing where a work has increased in value.

Different provisions in the Copyright Act govern when authors are permitted to terminate transfers that were made prior to January 1, 1978 ("Pre-1978 Transfers") and transfers that were made on or after January 1, 1978 ("Post-1978 Transfers").

Section 203 of the Copyright Act grants authors the right to terminate Post-1978 Transfers during the five-year period commencing 35 years from the date of the transfer. Thus, 2013 – which is 35 years from 1978 – is the first year that authors became able to begin terminating their Post-1978 Transfers.

In contrast, Section 304 of the Copyright grants authors the right to terminate Pre-1978 Transfers during the five-year period commencing in the 56th year of the work's copyright term. Thus, for Pre-1978 Transfers, the relevant starting point for determining the termination period is the year in which the copyright term commenced, rather than the year of the transfer. If the right to terminate a Pre-1978 Transfer is not exercised during the initial termination window beginning in the 56th year of the copyright term, the author is granted

a second opportunity to terminate during the five-year period commencing on the 75th anniversary of the work's copyright.

Although there are timing and other minor differences between the rules governing Pre-1978 and Post-1978 Transfers, the same general parameters apply to termination rights, including:

- The right applies solely to transfers made by the author or the author's heirs;
- The right does not apply to works made for hire or transfers made by will;
- All rights in a derivative work created by the grantee within the scope of the grant are retained by the grantee even after termination, though no new derivative works may be made by the grantee following termination;
- The notice of termination must be served no less than two, and no more than ten, years before the effective date of termination identified in the notice;
- The notice of termination must be recorded with the Copyright Office;
- The author or his or her heirs retain the ability to re-grant rights after exercising the termination right; and
- The right applies only to the exclusive rights granted under the Copyright Act; termination rights do not affect any other rights to the work that may have been granted by contract (such as ownership of the material object or trademark rights).
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For step-by-step instructions on how to exercise the termination right, please see theChecklist: How to Terminate Transfers.

Who May Exercise the Termination Right

Depending on the circumstances, authors of a copyrighted work, or their heirs, may terminate a transfer previously granted to a third party. If the author is living upon the commencement of the five-year termination period, he or she may terminate the transfer.

If the author is deceased, the right to terminate the transfer passes to his or her heirs. As the right to terminate cannot pass via will, this right is distributed by operation of law in the following manner (see 17 U.S.C. §§ 203(a)(2)(A)-(D); 304(c)(2)(A)-(D); and 304(d)(1)):

- If the author has no surviving children or grandchildren, his or her surviving spouse owns the entire termination interest;
- If the author dies leaving a spouse and children, the surviving spouse owns half of the interest and the children collectively own the other half;
- If the author dies with no surviving spouse, the surviving children and surviving children of any deceased child owns the entire termination interest;
- The division of the termination interest among surviving children and grandchildren is *per stirpes* (each *branch* of the family receives an equal share); and
- If the author dies leaving no spouse, children, or grandchildren, the termination interest is owned entirely by the author's "executor, administrator, personal representative, or trustee."
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Suppose, for example, that an author died leaving a spouse, one child and two grandchildren who are the children of a predeceased child. The termination interest would be distributed as follows: surviving spouse would have 50%; the surviving child would have 25%; and each of the grandchildren would have 12.5%. A person or a group of persons who collectively own more than one-half of the termination interest may exercise the author's termination right.

The allocation of the termination interest is more complex in the case of joint authors. With respect to Post-1978 Transfers, in the event that two or more authors executed the transfer, the majority of such joint authors must act together to exercise the termination right. *See* 17 U.S.C. § 203(a)(1). With respect to Post-1978 Transfers, any one author who executed the transfer may exercise the termination right, even if

multiple joint authors executed the transfer. *See* 17 U.S.C. § 304(c)(1) and 17 U.S.C. § 304 (d)(1). Under all circumstances, if any of the transferor joint authors is deceased, the decedent's termination interest may be exercised by his or her heirs, as described above, who, alone or collectively, own more than one half of the decedent's termination interest.

When the Right May be Exercised

Post-1978 Transfers

Section 203 of the Copyright Act provides that transfers of ownership in a copyright made after January 1, 1978 may be terminated during the five-year period commencing 35 years from the date of the transfer and ending 40 years from the date of the transfer. 17 U.S.C. § 203.

The date that the work was created or registered is irrelevant to the timing of termination of transfers under 17 U.S.C. § 203. The significant date is the date of the transfer.

For example, suppose that on August 5, 1982, the author of a screenplay assigned her copyright in the screenplay to a film studio. The five-year period in which the author may exercise her termination right would commence on August 5, 2017 (35 years from the date of the transfer) and end on August 5, 2022 (40 years from the date of execution of the agreement).

Note, however, that a different timing scheme applies where the grant included a publication right. In that case, the five-year termination period commences upon the earlier of 35 years from the date of first publication or 40 years from the date of the transfer.

For example, suppose that on January 5, 1991, the author of a novel assigned to a publisher the exclusive right to publish the novel, which was first published on September 1, 1997. Because the license assigned publishing rights, the five-year period would commence on January 5, 2031 (40 years from the date of execution of the agreement) rather than September 1, 2032 (35 years from the date of publication). If, however, the novel had initially been published on August 5, 1992, the five-year termination period would commence on August 5, 2027 (35 years from the date of publication).

Pre-1978 Transfers

In contrast to Post-1978 Transfers, the relevant date for calculating the commencement of the five-year termination period for Pre-1978 Transfers is the date upon which the subject work obtained copyright protection, not the date of the transfer.

Post-1978 Transfers may be terminated during one of two potential periods:

1. For copyrights in their first or renewal term as of January 1, 1978, the five-year termination period commences 56 years from the date of copyright protection, or on January 1, 1978, whichever date is later (See 17 U.S.C. § 304(c)); and
2. For copyrights (a) that were in their renewal term as of October 27, 1998 (the effective date of the Copyright Term Extension Act), (b) whose termination right under Section 304(c) had already expired as of that date, and (c) whose author or termination right owner did not previously exercise the termination right, the five-year termination period commences 75 years from the date of copyright protection (See 17 U.S.C. § 304(d)).

For a more detailed discussion of copyright renewal terms and applicable extensions, seeDuration of Copyright.

How the Right May be Exercised

Copyright owners only have a five-year period in which to effectuate termination. In order to terminate a transfer, the author or his or her heirs must serve upon the current copyright owner a notice of his or her intention to terminate.

The notice must specify the effective date of termination, which can be any date selected by the author, but must be:

- At least two years from the date of the notice;
- No more than ten years from the date of the notice; and
- Within the five-year termination period.

To maximize the length of time that will remain on the copyright term after termination, notice should be served exactly two years prior to the commencement of the five-year termination period. However, the notice may be served as many as ten years in advance of the effective date of termination, provided, of course, that the effective date of termination is within the five-year window.

If less than two years remain before the commencement of the five-year termination period, remember to select an effective date for termination that is at least two years from the date of the notice and within the five-year window.

It is also important to remember that if there are fewer than two years remaining in the five-year termination period and no notice has been sent, the right to terminate will have expired. For example, if the termination period is January 1, 2015 through December 31, 2019, the latest that a termination notice may be provided is December 31, 2017.

A notice of termination served upon the grantee(s) of a transfer of an interest in a copyright must contain the following information:

- A statement that the termination is being made under 17 U.S.C. § 203, 304(c), or 304(d);
- The name of each grantee and/or successor grantee whose rights are being terminated, as well as the grantee addresses to which notice is being sent;
- In the case of terminations made under 17 U.S.C. § 203, the date of execution of the grant to be terminated, and if the grant is related to publication rights, the date of publication of the work under the grant;
- In the case of terminations made under 17 U.S.C. § 304(d), the notice must include a statement that termination of renewal term rights under 17 U.S.C. § 304(c) had not been previously exercised;
- The title of each work and the name of the author of each work with respect to the grant that is being terminated (in the case of joint works, naming all authors);
- A statement identifying the grant to be terminated; and
- The effective date of termination.

Where the termination right is being exercised by the heirs of a deceased author, the notice must also include a list of any of the surviving relatives of the author who have inherited the author's termination right and indicate the person or persons executing the notice whose interest represents more than one-half of the author's termination interest. Alternatively, the notice may contain the following two statements:

- A statement of as much information as is available to the person(s) executing the notice of termination with an explanation of why they may not have all of the information; and
- A statement that to the knowledge of the person(s) executing the notice of termination, that the notice has been executed by all persons whose signature is necessary to effect the termination under the appropriate provision of the Act.

See 37 C.F.R § 201.10(b)(1)-(2).

The notice of termination must be signed by the author(s) terminating the grant, or by his or her authorized agent. If the author is deceased, the notice should be signed by the number of the owners of the author's termination interest whose combined interests represent more than one-half of the termination interest, or by their authorized agents, and should include an explanation of their relationship(s) to the author.

Once notice is properly served, after the date of termination all future rights in the work vest in the author or heirs who have exercised the termination right. In addition, upon receipt of notice, the parties may reach an agreement for a future transfer back to the current copyright owner (the owner at the time that termination occurs).

Notice of termination must be recorded with the Copyright Office prior to the effective date of termination. For a more detailed discussion on recording a notice of termination, see Other Copyright Office Filings — Recording Documents .

Checklist: How to Terminate Transfers

This checklist sets forth the necessary considerations when attempting to terminate a previously granted transfer of copyright. For a more detailed discussion on how to terminate transfers, see Termination of Transfers.

When terminating a transfer, you may confirm that you have properly exercised the termination right by following these steps:

1. Determine which provision of the Copyright Act applies to the grant to be terminated (17 U.S.C. § 203, 304(c), or 304(d));
2. Identify all parties with an ownership interest in the termination right;
3. Calculate when the termination window begins;
4. Choose the date upon which termination should become effective within the five-year window for termination;
5. Serve notice to the grantee(s) of the transfer being terminated (or their successor(s), as the case may be) no less than two nor more than ten years prior to the effective date of termination; and
6. Record the termination notice with the Copyright Office prior to the effective date of termination.

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