



Client Alerts

Reclaiming Creative Rights: Understanding 17 U.S.C. § 203 and Copyright Termination

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Under U.S. copyright law, the individual or individuals responsible for the creation of a given work, i.e., the “author(s),” immediately retain the exclusive rights under Section 106 of the U.S. Copyright Act to distribute, perform, reproduce, and create derivative works. Authors may then enter into agreements that give others permission to exercise those rights. In an attempt to keep art “in the family,” the United States Supreme Court has noted that the Copyright Act “provides an inalienable termination right” for both authors and their statutory heirs. Section 203 codifies this notion and provides authors and their heirs with a powerful tool: the right to terminate certain copyright transfers and licenses. The provision ensures that authors retain a degree of control over their works and have the opportunity to renegotiate or reclaim rights that may have been undervalued at the time of their initial transfer.

What is Copyright Termination Under Section 203?

Section 203 allows authors (musicians, writers, producers, artists, etc.)—or, in some cases, their heirs—to terminate grants of copyright ownership or licenses after a specified period. These grants often occur early in a creator’s career, when financial pressures or a lack of leverage may lead to agreements that undervalue the potential of the work. By offering a path to reclaim these rights, Section 203 gives creators a second chance to benefit from the fruits of their labor.

The termination right is available to author of the work or, if the author is deceased, their heirs. The specific individuals who can exercise this right are defined as follows: If the author is alive, they hold the exclusive right to terminate. If the author is deceased, the termination right passes to their spouse and children. If no spouse or children survive, it may pass to the executor, administrator, or next of kin.

Section 203 applies to exclusive or non-exclusive grants of rights, such as assignments, licenses, or transfers, made on or after January 1, 1978. Termination can occur 35 years after the execution of the original grant or, if the grant covers publication rights, either 35 years after publication or 40 years after the grant’s execution—whichever is earlier. This timeline reflects the need for a predictable period before the termination right becomes available.

Exercising Termination

Exercising the termination right involves strict procedural requirements. The author or their heirs must serve a written notice of termination to the original grantee or their successor. If there is more than one author of the copyright (typically when the original author has passed away and heirs have split the ownership), the notice must be signed by a majority of the owners of the copyright.

Notice of termination must be served no less than two years and no more than ten years before the effective date of termination. There is no option for “early termination,” and the notice must clearly state the effective date, which must fall within the statutory window outlined above. Failure to adhere to these requirements can render the termination invalid, underscoring the need for careful planning and legal guidance.

Limitations and Exceptions

While Section 203 empowers authors, it also includes important limitations. First and foremost are “works made for hire.” When the creator is considered an employee creating work within the scope of their employment, the employer owns the copyright from the start, and the employee cannot terminate a copyright they never owned. Importantly, the work for hire agreements must be in place before the work is created as 203 includes a prohibition against “agreements to the contrary” of the statutory termination rights. Thus, assignments cannot contract in a way that circumvents the emphasis of the law.

Section 203 only applies to works created after January 1, 1978. Works created before this date are governed by a separate provision not discussed here (Section 304(c)).

Derivative works are not covered by Section 203. Thus, work based on or derived the original grant of the copyright, such as translations, adaptations, sequels, or other modifications that represent original authorship cannot be clawed back under Section 203.

Why is Section 203 Significant?

Section 203 is particularly impactful in industries like publishing, music, and film, where creators often sign contracts early in their careers, giving away significant rights for relatively little compensation. For instance, a songwriter who sold the rights to a hit song in the 1980s might use the termination right to regain ownership, allowing them to renegotiate with a new publisher or benefit directly from modern licensing opportunities.

For heirs, this provision can also represent a means to honor and preserve a deceased author’s legacy by reclaiming control over their works.

Practical Applications

While Section 203 is a powerful tool, its complexity can create challenges for authors and their heirs. The procedural requirements, including the timing of the notice and its content, are strict. A misstep in serving notice can invalidate the termination, potentially leaving the author without recourse. Authors and/or heirs should always consult with legal counsel when considering termination.

Moreover, the determination of whether a work qualifies as “made for hire” can be contentious. In recent years, disputes over this classification have arisen, particularly in the context of comic books, music recordings, and other collaborative works. The recent litigation between 2 Live Crew and Lil’ Joe Records included substantial arguments regarding whether 2 Live Crew created their albums as part of a work-for-hire agreement. 2 Live Crew ultimately prevailed and won the right to terminate the assignment.

Many authors have taken advantage of Section 203 to renegotiate the terms of their works. For example, in the music industry, artists such as Bob Dylan, Paul McCartney, The Village People (Victor Willis), and Bruce Springsteen have invoked termination rights to regain control over iconic songs. Similarly, heirs of Chuck Berry, Hugo Peretti and Irving Berlin have invoked Section 203 to regain control of their family legacies.

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- Brent Lehman