



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

## NOTICE OF PROPOSED RULEMAKING

### NOTICE OF TERMINATION

The following excerpt is taken from Volume 67, Number 245 of the *Federal Register* of Friday, December 20, 2002 (pp. 77951-77955)

#### LIBRARY OF CONGRESS

Copyright Office  
37 CFR Part 201  
[Docket No. 2002-5]

#### Notice of Termination

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Commencing January 1, 2003, copyright owners or their statutory successors will be entitled, under certain circumstances prescribed by section 203 of the Copyright Act, to terminate transfers or licenses of copyright that were granted on or after January 1, 1978. The Copyright Office is proposing to adopt a regulation governing the form, content, and manner of service of notices of termination. The proposed regulation is based on the existing Copyright Office regulation governing termination of transfers and licenses covering the extended renewal term, and is adapted to meet the requirements for termination of post-1977 transfers and licenses.

**DATES:** Comments should be in writing and received on or before February 3, 2003. Reply comments should be received on or before March 5, 2003.

**ADDRESSES:** If sent by *mail*, 10 copies of written comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If *hand delivered*, 10 copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Prior to the effective date of the Copyright Act of 1976, the term of copyright was 28 years, April 2003-500

subject to renewal by the author or certain other persons described in the statute for an additional 28 years. The second term was considered a new estate, meaning that with certain exceptions such as works made for hire, all rights reverted to the author at the commencement of the second term, and transfers or licenses of copyrights made during the initial 28-year term automatically terminated.<sup>1</sup> The 1976 Copyright Act abandoned the two-term system of copyright duration in favor of a unitary term, but it provided for two circumstances under which authors or their statutory successors could terminate transfers or licenses of rights.

First, because the 1976 Act added 19 years to the terms of existing copyrights, extending the renewal term from 28 years to 47 years, section 304(c) provides that authors or certain statutory successors (such as the surviving spouse, children and

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grandchildren or, if there are no such surviving relatives, the author's executor, administrator, personal representative, or trustee) may terminate pre 1978<sup>2</sup> exclusive or non-exclusive grants of transfers or licenses during the extended renewal term and secure for themselves the benefits of the additional 19 years added to the renewal term. Termination may be effectuated by serving the grantee or the grantee's successor in title with a notice of termination (which may be served only during a period prescribed by the statute) and recording the notice of termination with the Copyright Office prior to the effective date of termination. 17 U.S.C. 304(c). Section 304(c)

<sup>1</sup>In *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643 (1943), the Supreme Court significantly limited this rule by holding that authors could, during the initial term of copyright, assign renewal term rights and that such assignments would be valid during the renewal term if the author was alive at the commencement of the renewal term.

<sup>2</sup>The effective date of the Copyright Act of 1976 was January 1, 1978.

(4)(B) provides, "The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation." In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10. Pursuant to section 304(c) and 37 CFR 201.10, authors and their statutory successors have been serving notices of termination of transfers and licenses, and filing those notices for recordation with the Copyright Office, for almost 25 years.<sup>3</sup>

Second, the 1976 Act provides that authors may terminate grants of transfers or licenses entered into after January 1, 1978. 17 U.S.C. 203. Unlike termination pursuant to section 304(c) and (d), termination pursuant to section 203 is available only when the grant was made by the author, but as with termination pursuant to section 304, certain statutory successors may terminate if the author is no longer alive at the time termination may be made. 17 U.S.C. 203(a)(2). Termination may be made during a five-year period commencing 35 years after the execution of the grant or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant. 17 U.S.C. 203(a)(3). As with section 304 terminations, termination under section 203 is accomplished by serving a notice of termination on the grantee or the grantee's successor in title and recording the notice with the Copyright Office prior to the effective date of termination. The notice must be served no more than 10 years and no later than two years before the effective date of termination. 17 U.S.C. 203(a)(4)(A). As

<sup>3</sup>The Sonny Bono Copyright Term Extension Act, ("the Act"), Pub. L. 105-298, 112 Stat. 2827 (1998), extended the renewal term by an additional twenty years and gave authors or their statutory successors a second opportunity to terminate transfers or licenses during the extended renewal term. 17 U.S.C. 304(d). Earlier this year, the Copyright Office amended 37 CFR 201.10 to adopt requirements for notices of termination pursuant to section 304(d). 67 FR 69134 (Nov. 15, 2002).

with section 304 terminations, “The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.” 17 U.S.C. 203(a)(4)(B).

The rationale for the section 203 termination right is similar to the rationale for the section 304 termination right. As the legislative history of section 203 states:

The provisions of section 203 are based on the premise that the reversionary provisions of the present section on copyright renewal (17 U.S.C. 24) should be eliminated, and that the proposed law should substitute for them a provision safeguarding authors against unremunerative transfers. A provision of this sort is needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work’s value until it has been exploited. Section 203 reflects a practical compromise that will further the objectives of the copyright law while recognizing the problems and legitimate needs of all interests involved.

House Report on Copyright Act of 1976, H.R. Rep. No. 94-1476, at 124 (1976).

Because section 203 terminations may be made only with respect to grants made on or after January 1, 1978, and because notice of termination may be served no earlier than 25 years from the date of execution of the grant (which, in the earliest case, would be 10 years before the effective date of termination, which may be no earlier than 35 years from the date of execution of the grant),<sup>4</sup> no termination notices under section 203 have been possible between January 1, 1978, and the present. However, commencing January 1, 2003, certain authors and their statutory successors will be able to serve section 203 notices of termination, because on that date, 25 years will have passed since January 1, 1978.

Because notices of termination must comply with requirements prescribed in a regulation by the Register of Copyrights, it is now necessary to adopt a regulation that will set forth the requirements as to form, content and manner of service of section 203 notices of termination. Fortunately, the regulation governing section 304 notices of termination provides a model for a regulation governing section 203 notices. Because the statutory requirements for termination under section 304 are very similar to the statutory requirements for termination under section 203, we propose to adopt a regulation modeled closely on the existing section 304 regulation. *See* 37 CFR 201.10. In this notice of proposed rulemaking, we seek comments on the rules that we propose to adopt, which would amend Sec. 201.10 to add requirements for section 203 notices of termination.<sup>5</sup>

Existing Sec. 201.10 sets forth require-

<sup>4</sup>Or, if the grant covered publication of the work, notice may be served no earlier than 30 years from the date of execution of the grant or 25 years from the date of publication under the grant. *See* the discussion above.

ments governing the form and content of section 304 notices of termination, the signature on a notice of termination, the manner of service, the effect of harmless errors in the notice, and recordation of the notice. We propose to modify Sec. 201.10(b), which governs the contents of a section 304 notice of termination, by adding a new subparagraph to govern the contents of a section 203 notice of termination. The new subparagraph adapts the content requirements of the existing regulation to meet the needs of section 203. Somewhat different treatment is also required for signatures of section 203 notices of termination. Beyond those changes, only minor revisions in the wording of various provisions are necessary in order to reflect the fact that notices of termination may be served under section 203.

### Contents of the Notice

The first modification that we propose is an amendment to Sec. 201.10(b)(1)(i). Currently, that subparagraph requires that if termination is being made under section 304(d)—the termination provision added by the Sonny Bono Copyright Term Extension Act—the notice must include a statement to that effect. The requirement that notices of termination under section 304(d) refer specifically to section 304(d) was added in the recent amendment of Sec. 201.10, in order to distinguish such notices from notices served under section 304(c). No corresponding requirement was imposed for notices of termination issued under section 304(c) because such a requirement would have added a new requirement for such notices,

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which have been served since 1978, and might upset established legal practices in issuing notices under that section.

Because a third category of notice of termination—pursuant to section 203—is now available, we believe that it would be prudent to require all notices of termination—whether under section 203, 304(c) or 304(d)—to state which statutory provision is being invoked. Requiring such specification should assist in eliminating confusion over the nature of any notice of termination. Accordingly, we propose to amend Sec. 201.10(b)(1)(i) to require that a notice of termination pursuant to section 304 must identify whether the termination is made under section 304(c) or section 304(d).<sup>6</sup>

We propose to add a new Sec. 201.10(b)

<sup>5</sup>Because of the time required to receive and consider comments from the public, it will not be possible to announce final regulations prior to January 1, 2003. However, because some authors or statutory successors may be able to and desire to serve notices of termination as early as January 1, 2003, we intend to publish an interim regulation shortly after publication of this notice of proposed rulemaking, and before January 1, 2003. The interim regulation will be virtually identical to the regulation proposed herein and will be in force pending the adoption of a final regulation.

(2) to state the required contents of a section 203 notice of termination. The proposed requirements are very similar to the requirements for section 304 notices, departing from that model only in instances where the requirements of section 203 are different from the requirements of section 304. Section 201.10(b)(2)(i) would require that a notice of termination made under section 203 identify itself as such. Section 201.10(b)(2)(ii) would be identical to current Sec. 201.10(b)(1)(ii), requiring identification of the name of each grantee (or successor in title) whose rights are being terminated, as well as the address at which service of the notice is being made.

Section 201.10(b)(2)(iii) would impose a requirement not found in the regulation governing section 304 notices of termination: identification of the date of execution of the grant being terminated and, if the grant covered the right of publication of a work, identification of the date of publication of the work under the grant. In contrast, current Sec. 210.10(b)(1)(ii) requires that a notice of termination under section 304 identify the date copyright was originally secured. When the original regulation was adopted, we explained that the latter requirement was being imposed because “the period during which termination may be effected is measured from the date copyright was originally secured.” Final Regulation, Termination of Transfers and Licenses Covering Extended Renewal Term, 42 FR 45916, 45917 (Sept. 13, 1977). Therefore, in order to determine whether a notice of termination was being served in a timely fashion, it was necessary to know the date the copyright in the pertinent work had been secured. In contrast, for section 203 terminations, the period is calculated based on the date the grant was executed or, in the case of grants covering the right of publication, the earlier of 40 years from the date of execution of the grant or 35 years from the date of publication. Accordingly, we propose that section 203 notices of termination state the date the grant was executed and, if a work was published under the grant, the date the work was published. Unlike section 304 terminations, terminations under section 203 present no need to state the date copyright was secured.

Current Sec. 201.10(b)(1)(ii) also requires that a section 304 notice of termination identify the title and at least one author of each work to which a notice applies, as well as the copyright registration number. However, the registration number must be provided only “if possible and practicable.” We propose to retain these requirements for section 203 notices of termination, but with one modification. In contrast to section 304, which permits each author (or the statutory successors of each author) of a work to terminate “that particular

<sup>6</sup>The interim regulation to be announced shortly will not include this amendment because we do not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice. The interim regulation will be effective January 1, 2003.

author's share in the ownership of the renewal copyright" (17 U.S.C. 304(c)(1)), section 203 requires that in the case of a grant executed by two or more authors of a joint work, termination may be effected by a majority of the authors who executed the grant (or, if an author is dead, by the persons such as the widow, children, etc., identified in section 203(a)(2)). 17 U.S.C. 203(a)(1). As a result, we believe that when the grant being terminated was made by two or more authors of a joint work, a section 203 notice of termination should be required to identify all of the authors of that work who executed the grant.

When Sec. 201.10 was originally adopted, we rejected a proposal that a section 304 notice of termination must identify all the authors of a work. That proposal was based on the assumption that it would be necessary "to determine whether the proper parties have joined in the notice." 42 FR at 45917. We concluded that because section 304(c) does not require more than one coauthor to join in terminating a copyright transfer or license during the extended renewal term, such identification was unnecessary. "[A] notice terminating a grant may be effected as to any particular author's share of the work. There is no requirement of unanimity, majority interest, or the like, among granting co-authors." *Id.* Therefore, identification of all co-authors "has nothing to do with the effectiveness of a termination notice served by those authors (or their successors) who do wish to terminate rights in a work to the extent of their share." *Id.* at 45917-45918. In contrast, as noted above, a section 203 termination of a grant covering a joint work does require participation by at least a majority of the authors who executed the grant.

The final two current requirements relating to contents of section 304 notices of termination (a brief statement reasonably identifying the grant to which the notice of termination applies and identification of the effective date of termination) appear to be equally applicable to section 203 notices of termination, and we propose to retain them for purposes of section 203.

#### Signature

As noted above, termination under section 304 differs from termination under section 203 in that under section 304, each author of a joint work may terminate a grant "to the extent of [that] particular owner's share." 17 U.S.C. 304(c)(1). In contrast, section 203 requires participation in the termination by a majority of the authors of a joint work. Because of these differing approaches, the current signature requirements for section 304 notices of termination cannot be applied to section 203 without modification. Section 201.10(c)(2) currently provides that in the case of a termination of a grant executed by one or more of the authors of a work, a notice "as to any one author's share shall be

signed by that author" or his agent or statutory successors. We propose to add a new Sec. 201.10(c)(3) to state the signature requirements for section 203 notices of termination. While these requirements are similar to the requirements stated in Sec. 201.10(c)(2), the inapplicable reference to "one author's share" is deleted.

#### Comments

The Copyright Office solicits comments on the proposed regulation governing notices of termination under section 203. The Office also seeks comments on whether the Office should provide official forms for notices of termination of transfers and licenses under sections 203, 304(c) and 304(d), and whether the use of such forms should be made mandatory. Requiring the use of official forms might make it less likely that notices of termination that do not comply with the statutory and regulatory requirements will be served. It would also facilitate the Office's processing of notices of termination submitted for recordation.

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#### Information on Copyright Office Website

The entire text of Sec. 201.10 as it would appear after adoption of the proposed amendments may be found on the Copyright Office website at <http://www.copyright.gov/docs/203.html>.

#### List of Subjects in 37 CFR Part 201

Copyright.

#### Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 201 of 37 CFR, chapter II as follows:

#### PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Section 201.10 is amended as follows:

(a) By revising the section heading and the first sentence of the undesignated paragraph preceding paragraph (a).

(b) By revising paragraph (b)(1) introductory text.

(c) By revising paragraph (b)(1)(i).

(d) By revising paragraph (b)(1)(v).

(e) By revising paragraph (b)(1)(vii)(B).

(f) By redesignating paragraph (b)(2) as paragraph (b)(3); and adding a new paragraph (b)(2).

(g) By revising newly designated paragraph (b)(3).

(h) By revising paragraphs (c)(1) and (c)(2).

(i) By redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), respectively; and adding a new paragraph (c)(3).

(j) By revising the introductory text of paragraph (d)(2).

(k) By revising paragraph (d)(4).

(l) By revising paragraph (e)(1).

(m) By revising paragraph (e)(2).

The additions and revisions to Sec. 201.10 read as follows:

#### Sec. 201.10 Notices of termination of transfers and licenses.

This section covers notices of termination of transfers and licenses under sections 203, 304(c) and 304(d) of title 17, of the United States Code. \* \* \* \*

\* \* \* \* \*

(b) \* \* \*

(1) A notice of termination covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C., must include a clear identification of each of the following:

(i) Whether the termination is made under section 304(c) or under section 304(d);

\* \* \* \* \*

(v) The effective date of termination;

\* \* \* \* \*

(vii) \* \* \*

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304 of title 17, U.S.C., or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under section 203 of title 17, U.S.C., must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated; and, if possible and practicable, the original copyright registration number;

(v) A brief statement reasonably identifying the grant to which the notice of termination applies;

(vi) The effective date of termination; and

(vii) In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a



listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 203 of title 17, U.S.C., or by their duly authorized agents.

(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) *Signature.* (1) In the case of a termination of a grant under section 304(c) or section 304(d) executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant under section 304(c) or section 304(d) executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 203 of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

\* \* \* \* \*

(d) \* \* \*

(2) The service provision of section 203, section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a

reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being

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terminated, and based on such investigation:

\* \* \* \* \*

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies. \* \* \*

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

\* \* \* \* \*

Dated: December 17, 2002.

**David O. Carson,**  
*General Counsel.*

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