

# Copyright Reversion – A Smart Way Out of A Bad Deal

By Deborah Murad, Esq.

You were only 20 when you received your first publishing deal. You were thrilled. You had made it!! Years later, you learned that that glorious deal wasn't actually so glorious. You may have accepted a sub-standard royalty or assigned the copyright in your work to the publisher. Or maybe the contract was standard for someone just starting their career, but you've since had several successful productions and know you could do something significant with your work if you could only regain control from the publisher. Enter: copyright reversion.

## **What is Copyright Reversion?**

17 U.S.C. Section 203 provides that any work created on or after January 1, 1978, is subject to copyright reversion. Copyright reversion allows a creator who transferred all or part of their rights in a copyrighted work to claw back those rights after 35 years. Congress enacted this provision because they recognized the uneven bargaining power between established publishers/producers and early-career creators. As the U.S. Copyright Office has explained, the intention was to give authors "an opportunity to share in the later economic success of their works by allowing authors or their heirs, during particular periods of time long after the original grant, to regain the previously granted copyright or copyright rights."

Anticipating that an experienced publisher or producer might have an author waive their right to copyright reversion, Congress stipulated that the "termination of the grant may be effected notwithstanding any agreement to the contrary." In other words, despite any contract or agreement you may have signed, you (or your heirs) will always have the right to terminate under this provision. (Your heirs? Yes—if you don't invoke copyright reversion during your lifetime, the right to do so will pass to your heirs!)

## **Who Can Terminate?**

Living authors always have the right to terminate a grant under section 203. If a work is written by a single author, that author will have the right to terminate. If the work is a joint work (written by multiple authors), the authors can terminate with a majority vote.

As previously mentioned, the right of reversion is inherited by an author's heirs. So, heirs of a deceased author also have a right to terminate under section 203. Exactly which heirs inherit and in what proportion they inherit is outlined in the statute. What is critical to know is that it often results in multiple individuals holding interest and a majority vote to terminate. In the case of a joint work, the heirs will vote as a single unit representing the deceased author and vote alongside any living authors.

Notably, executors, administrators, personal representatives, and trustees only obtain the right to terminate if there are no heirs.

## **When Can I Terminate?**

Copyright law is particular about when an author can invoke copyright reversion. If the author misses the specific termination window, the opportunity is lost. Termination under copyright reversion must occur during the 5-year window (called the "termination window") that begins 35 years after the day the grant was made (the "effective termination date"). For a publication, termination must occur during the 5-year window that begins 40 years from the date the grant was made or 35 years from the date of publication, whichever is sooner.

### *Example:*

Assume that Doris signed an agreement with a publishing company on May 9, 1979, and the work was published the following year, on April 19, 1980. She now feels that she could benefit from new opportunities and wants to terminate her agreement with her publisher. When can Doris terminate?

Because this is a publication, Doris can terminate during the 5-year period that begins 40 years after the grant (i.e., May 9, 1979 + 40 = May 9, 2019) or 35 years after the publication date (i.e., April 19, 1980 + 35 = April 19, 2015), whichever is sooner. In this case, the April 19, 2015 date is sooner, so the 5-year termination window would begin on April 19, 2015 and end on April, 2020.

## **How Do I Terminate?**

If the author's termination window has not passed and the author would like to terminate under Section 203, they must issue a notice of termination to the other party. Again, the copyright statute is particular about when and how this must occur:

The earliest the author can supply notice is ten years before the effective termination date; the latest the author can send notice is two years before the effective termination date.

Failure to comply with these requirements will ordinarily render the termination ineffective.

### *Example:*

Using our previous example, Doris would need to send her notice no earlier than ten years before the termination date (i.e. April 19, 2005) but no later than two years before the termination date (April 19, 2013).

## **What Do I Say In The Notice To Terminate?**

By this point, it is probably no surprise that the statute is particular about the notice document. Because of the complex and specific nature of the notice document, we suggest having your personal attorney draft the document. Unfortunately, something like "note that as of this date, I am terminating this agreement subject to copyright reversion" will not suffice.

Once issued, the notice should be registered with the U.S. Copyright Office.

### **Are There Any Exceptions I Should Know About?**

As with many legal matters, there are specific exclusions to copyright reversion. In other words, there are a few instances where the author cannot terminate the grant.

First is a work-made-for-hire. Because the author never owns the copyright under a work-made-for-hire, the reversion right would not vest in the author. Second is a grant by will. One cannot undo a grant made in a will. (On the other hand, the statute says nothing about trusts and other estate planning tools.) Third is an international grant. Copyright reversion is particular to the United States. One cannot use it to terminate grants made to foreign entities. Fourth is derivative rights. Derivative rights licensed under the initial grant cannot be terminated. In other words, if an author gives someone the right to adapt their play into a movie, the movie cannot be removed from the shelves with copyright reversion. Finally, grants of less than 35 years cannot be terminated under copyright reversion. This is something to consider when signing a deal. Where a contract specifies a five-year term that automatically renews, for example, copyright reversion would never apply. In that instance, the author should make sure the contract provides another way to terminate.

### **In Conclusion**

If you've read this article, I welcome you to the club of savvy dramatists. Calculate your termination dates and consider what you might wish to terminate. And please join us for National Estate Planning Week on October 17-21, 2022, for more information on this and related topics.

*Deborah Murad is the Executive Director of DG Copyright Management, Inc, an estate planning consultancy whose aim is to help dramatists devise a plan for the long-term care of their copyrights. DG Copyright Management also manages copyrights bequeathed to the Dramatists Guild with input from the Dramatists Guild Council.*