

2003 = The New Millennium for Copyright

Remember the anticipation leading up to the clock striking Midnight, ringing in January 1, 2000? Groceries were purchased; water was stored; and disaster plans were practiced. Thankfully, the disaster plans were not needed, and life continued with only normal glitches throughout 2000.

Songwriter's, and anyone else owning or controlling copyrighted works, should have made preparation for January 1, 2003 from a copyright perspective with the same intensity as precautions were made for the Year 2000. January 1, 2003 "rang in a new year" for termination of transfers of copyrights under the Copyright Act of 1976.

A termination of a transfer is simply the right of an author of a copyrighted work to terminate an interest in the work. The interest, or grant of rights, that may be terminated could be a publishing agreement or a license of the work.

As a general rule, pursuant to revisions to the Copyright Act of 1976, the copyright in a song, not written as a work for hire, will last until 70 years after the author's death. Most, but not all licenses / transfers of rights are granted for the life of the copyright. There are certain procedures built into both the Copyright Act of 1976 and 1909 to terminate transfers during the life of the copyright.

Under the Copyright Act of 1976, any grant of rights made by the author on or after January 1, 1978 may effectively be terminated by the author (or certain heirs if the author is deceased) during a five year window of time beginning at the end of thirty-five (35) years from the date of the grant or date of publication, whichever is shorter. The "35 Year Termination" does not apply to works made for hire. The notice of termination must fall into the five-year window and may not be made more than ten (10) years prior to the start of the window, or less than two years prior to the close of the window.

Yes, it is confusing to calculate and confusing to understand. There are numerous intricate details to consider in the process that will not be discussed in this article. In the simplest terms, imagine you entered into a single song publishing agreement on January 15, 1978 for the song "That Song is Mine." On January 15, 2003 you could send the appropriate notice to the copyright holder terminating the transfer under the single song agreement for "That Song is Mine" effective January 15, 2013.

Here is how the math works:

Transfer occurs January 15, 1978

Add 35 years to 1978 = 2013 plus 5 = 2018 (2013 - 2018 is the five year window)

In the above example, notice to terminate may be sent as early as January 15, 2003, but no later than January 14, 2016 to fall within the five year window and to meet the requirement of not being more than ten years or less than two years.

The notice must be sent to the grantee of the rights and filed with the U.S. Copyright Office prior to the effective date of termination. If notice is either not sent, or is improperly sent, the grant will not be terminated, and the grant, in most situations, will continue until the expiration of the song's copyright.

The greatest factor in determining whether to send notice to terminate a transfer is potential income stream. The question a songwriter must ask is "whether or not the termination and reclamation of the rights granted, increase money flowing to the songwriter."

Once the grant is terminated, the songwriter may enter into new licenses for the work. In some situations, it may be lucrative for the songwriter to enter into a new agreement with the party he just terminated. Often the exercise of the termination will force the hand of the then grantee to offer additional monetary advances to enter into a new agreement.

If you wrote songs prior to January 1, 1978, or you are an heir to someone who wrote songs prior to that time, the 1909 Copyright Act, 56-year termination provision applies. The "56 Year Rule" is similar, but not identical to the "35 Year Rule." Under the 1909 Copyright Act there were two terms of copyright protection: an initial term of 28 years and a renewal term of 28 years. Under the original version of the 1909 Copyright Act, works went into the public domain if the renewal was not properly filed, or at the end 56 years. Revisions to the 1976 Copyright Act have extended the life of the copyright for works published pre-1978 such that the original term is 28 years and the renewal term is 67 years. Works that were published after January 1, 1978 are governed by different timelines.

To terminate a transfer under the 56 Year Rule, notice of termination must be properly sent within a five-year window of time which begins at the end of 56 years from the date of registration of the copyright in the work. This is a distinction from the 35 Year Rule. Under the 35 Year Rule the time was measured from the date of transfer, but the 56 Year Rule measures the window from the date of the copyright registration of the work. By terminating under the 56 Year Rule, the author or heirs will reclaim the work for the maximum remaining years in the copyright. In most cases, that will be 39 years.

Both the 35 Year Rule and 56 Year Rule allow songwriters or their heirs an opportunity at a second bite at the apple to most efficiently make money from their songs. This article does not claim to address every detail of either rule. There are many intricacies to properly effectuate a termination. Although, an individual can file their own notices of termination, legal counsel is advisable to assist in this process.

*The Bennett Law Office
counsels clients in the
areas of entertainment,
internet and intellectual
property law matters.*

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In The News And At The Courthouse

NOT JUST THE LITTLE GUYS

Walt Disney Co. sued Blockbuster Inc., for breach of contract claiming it was cheated out of more than \$120 million. The suit alleges Blockbuster used shady accounting, sold videotapes prematurely and failed to account for hundreds of thousands of missing videotapes under a 1997 agreement.

ACQUITTAL IN 1ST DMCA CRIMINAL TRIAL

A jury rejected arguments that a Russian company committed a crime under the federal Digital Millennium Copyright Act by releasing code-busting computer software. The jury did not find that defendant, ElcomSoft, had the request criminal intent to convict. During the trial, lawyers revealed ElcomSoft only sold five copies of its software and had pulled its software from the market a mere five days

after it was notified that the product could violate U.S. law.

RATED R TO RATED PG

Video rental stores and technology companies that alter videos by removing nudity, violence and foul language are facing copyright infringement law suits for creating derivative works.

DAVID LEE ROTH SUES VAN HALEN

David Lee Roth has filed a lawsuit against his ex-Van Halen band mates, accusing them of diverted royalties and breaching their fiduciary duty to Roth. The singer claims that the band signed a deal with Warner Bros. without his knowledge for increased royalties from album sales. Roth's losses were an estimated \$200,000.

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Copyright Questions & Answers	Copyright Questions & Answers
<p><i>Completing a copyright application is relatively easy so long as you have the answers to the following questions.</i></p> <p>WHAT IS THE TITLE OF WORK? Was there a previous or alternate title for the work? Was this a publication as a contribution to a collective work?</p> <p>WHAT ARE THE NAME(S) OF THE AUTHOR(S)? What was the nature of authorship contributed by each author? Was the work created as a work for hire? In what country is the author a citizen? What are the dates of birth and death (if applicable) of the author?</p> <p>WHAT IS THE YEAR OF CREATION? WHAT IS THE DATE OF PUBLICATION? WHO ARE THE COPYRIGHT CLAIMANT(S)? IS THE WORK A DERIVATIVE WORK?</p> <p><i>What copyright application form do I use?</i></p> <p><i>The following is a summary of the most often used forms and their subject matter.</i></p> <p>Form PA - Performing arts such as musical works, motion pictures and choreographic works.</p> <p>Form SR - Sound recordings.</p> <p>Form TX - Literary works such as books, manuscript or text.</p> <p>Form VA - Visual art works such as pictorial, graphic or sculptural works.</p> <p>Form SE - Serial works such as newspapers and magazines.</p> <p>Copyright applications may be downloaded from the copyright office website at http://lcweb.loc.gov/copyright.</p>	<p><i>Express Mail Changes</i></p> <p>Patent and Trademark Rule 1.10, 37 C.F.R. § 1.10, provides a procedure for obtaining a filing date as of the date that correspondence is deposited as "Express Mail" with the United States Postal Service. However, the Patent and Trademark rules have changed such that the following documents mailed via Express Mail, will now receive a filing date upon receipt by the U.S. Trademark Office, not upon deposit with the U.S. Postal Services:</p> <p>trademark applications amendments to allege use statements of use requests for extension of time to file a statement of use affidavits of continued use renewal applications requests to change or correct address</p> <p><i>Increase in Trademark Filing Fee</i></p> <p>Effective January 1, 2003, the fee for filing a federal application for trademark registration was increased to \$335.00 per International Class. The trademark office will not accept applications that are filed on or after that date that are not accompanied by a minimum of \$335.00.</p>