

Navigating the Complexities of Copyright Termination and Recapture Rights

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Topics To be Covered

- History
- Eligibility To Terminate
- Who May Terminate
- When To Terminate
- Notice Contents + Requirements + Common Pitfalls
- Nuanced Issues + Case Review

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Brief History

- Copyright Act of 1909
 - Copyright duration of 28 years (initial term), and renewal term of 28 years
 - Allow authors the opportunity to terminate contracts, recapture rights and enter into new deals
 - Did not work in practice
 - Publishers and other large rights holders would require assignment of renewal rights
- In approaching the Copyright Act of 1976, goal was to make termination rights inalienable
 - But, end result produced an overly complex, burdensome and expensive challenge for authors

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Eligibility

- **17 USC §§ 304**
 - Grants or licenses of copyrights executed by the author or author's heirs before January 1, 1978
 - AND only if the copyright in the work was secured before January 1, 1978
- **17 USC §§ 203**
 - Grants or licenses of copyrights executed by the author on or after January 1, 1978
 - Does not matter if the copyright in the work was secured before or after January 1, 1978
- Gap Grant Issue

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Ineligibility + Other Notable Issues

- Grants made via will
- Works made for hire
 - Works created by an employee within scope of employment
 - Works specially commissioned provided there is a written agreement and the work falls under one of the 9 designated categories of works under the Copyright Act
- Derivative Works
 - Derivative work created under a grant prior to its termination can be utilized under the terms of the grant post-termination
 - But, can't prepare new derivative works
- Only affects U.S. rights; ex-U.S. rights not affected

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Issue: Works Made For Hire / Loan-Out Companies

- Corporate entities cannot be the author of a work unless the work is created in a work-for-hire capacity
- Works made for hire cannot be terminated and recaptured

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