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# Copyright Reversion: A Statutory Balance of Interests and Its Related Challenges and Risks

By Thomas Cockriel

U.S. copyright law serves a dual purpose: to protect the rights of creators while promoting the progress of knowledge and the arts for the public good. At the heart of this legal framework lies the concept of ownership, particularly the rights of authors to control and benefit from their creative works. The legal framework started with Article 1, Section 8 of the U.S. Constitution and has been developed by Congress and the courts subsequently. One author protection that was implemented by Congress but does not receive much attention is an author's right to reclaim previously assigned works (copyright reversion). Copyright reversion is an important statutory mechanism that allows authors to reclaim rights to their works after a specified period, thus allowing more control over their works and related intellectual property.

Understanding copyright reversion is increasingly important in an era where the landscape of content creation is rapidly changing, driven by digital technologies and evolving market dynamics. A discussion of the statutory framework governing copyright reversion in the United States, the practical challenges authors face in exercising their reversion rights, and the broader implications of these laws on various creative industries follows.

## STATUTORY FRAMEWORK OF COPYRIGHT REVERSION

Copyright reversion in the United States is primarily governed by Sections 203 and 304 of the Copyright Act of 1976, which provide authors with mechanisms to terminate transfer agreements and regain ownership of their works. For the purposes of this article, "author" includes the original author and the statutory successors that own and may exercise a deceased author's copyright reversion interests.

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## Section 203 of the Copyright Act

Section 203 allows authors to terminate transfers of copyrights that occurred more than 35 years prior. This section applies specifically to works created on or after January 1, 1978. The reversion process is initiated by a written notice from the author to the current copyright holder.

### Conditions Under Which Reversion Applies

To qualify for reversion under Section 203, several conditions must be met:

*Timing:* The author can terminate the transfer of rights only after the earlier of 35 years from the date of publication or 40 years following the date of the original grant of rights if the work has not been published.

*Eligibility:* The author's rights to be reclaimed must have been transferred under a contract, which can include assignments or exclusive licenses. Importantly, works made for hire by employees or under specific circumstances, transfers via wills, and nonexclusive licenses do not qualify for termination under this section.

*Notice Requirement:* The author must serve a written notice of termination to the current copyright holder. This notice must be sent within a specific time frame, typically not less than two years before the termination date. Once the appropriate notice has been served, the copyright reverts to the author automatically after the 35-year period has elapsed.

## Section 304

Section 304(c) provides the opportunity for authors of works published before January 1, 1978,

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to reclaim their copyrights. This section addresses the rights of authors to terminate renewal copyrights, which are applicable for works that were initially published with a copyright notice.

### **Reversion for Works Published Before 1978**

Under Section 304(c), authors can reclaim their rights during a five-year period beginning 56 years from the initial copyright date on the terms below.

*Expiration of Renewal Terms:* The work must have been published with a copyright notice. Initially, the copyright lasts for 28 years, with the possibility of a renewal for an additional 67 years. Authors can terminate the renewal at any point during this 67-year period.

*Written Notice:* Similar to Section 203, a written notice must be provided to the current copyright holder, indicating the author's intent to reclaim their rights.

*Eligibility Criteria:* This section allows authors to claim renewal rights, ensuring that the original creators or their descendants can benefit from the works long after their initial publication.

Under Section 3.04(d), certain assignments may be terminated during the copyright's renewal term or beginning 75 years after the copyright was secured.

### **Implications of the Statutory Framework**

The statutory framework provided by Sections 203 and 304 reflects author-centric copyright policies, recognizing that authors in the creative economy may have differing rights and leverage over time and allowing a restoration of the authors' control over their works and related intellectual property. However, the termination process is not without its complexities and challenges, which will be discussed in the paragraphs below.

## **PRACTICAL CHALLENGES IN EXERCISING REVERSION RIGHTS**

Despite the express legal framework established under U.S. copyright law, authors often face significant hurdles when attempting to exercise their reversion rights.

### **Complexity of the Termination Process**

The process of reclaiming copyrights can be intricate and overwhelming, particularly for authors who may not have a strong legal background.

#### **Understanding Legal Language**

The legal jargon involved in copyright transfer agreements can be confusing. Authors may find it challenging to interpret contracts and understand the implications of the terms they agreed to, especially if they entered into the agreements early in their careers.

#### **Navigating Legal Requirements**

The specific requirements for serving notice of termination, including timing and method, can pose challenges. For instance, notice must be in writing during the proper period prior to the reversion date and comply in form, content, and manner of service as prescribed by the U.S. Copyright Office. Although harmless errors in termination notices and related service to the current copyright holder will not necessarily invalidate the notice, material errors in the notice could invalidate the notice or fail to effectuate the reversion in all intended works. Additionally, prior to service of the notice, the author must make a reasonable investigation into the current copyright holder of the work, and such ownership may not always be clear. Authors must ensure that they meet all legal criteria to avoid jeopardizing their reversion rights.

#### **Necessity for Legal Representation**

Given the complexity of copyright reversion and the potential for disputes, many authors may require legal representation to navigate the reversion process effectively.

#### **Necessity and Costs of Legal Assistance**

A copyright attorney may need to be involved in all aspects of the process – from calculating the termination date and notice deadline to determining current ownership of the work and delivering proper notice. Additionally, once a termination notice is received, the current copyright holder can use the period between receipt of the notice and the reversion date to renegotiate rights in the applicable work. Legal counsel can be expensive and pose a financial barrier to authors. This may discourage them from pursuing reversion, even when they have viable claims.

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### *Potential for Disputes*

When authors attempt to reclaim their rights, current copyright holders may contest the termination, including making claims that the notice is invalid or that the transfer of the rights cannot be terminated.

Many disputes relate to whether the works are works made for hire. A current copyright holder seeking to prevent termination of its rights by an author might argue that the author had been, at the time of the transfer, an employee or that the work was a work for hire, so the author owned no rights that could be terminated. The work for hire determination is complex, and there are various factors and tests used in the analysis. This can lead to protracted legal battles, further complicating the reversion process and increasing the author's cost of reclaiming the rights.

Copyright reversion does not affect authorized derivative works created by the copyright holder prior to the copyright reversion. Given that the author must provide written notice of the copyright reversion in advance of the actual copyright reversion occurring, the copyright holder may be motivated to create many additional creative works before the reversion date, each of which would be owned by the copyright holder, not the author. Such creation of derivative works has the potential to impair the value of the author's reclaimed rights, and the author will not be able to terminate the copyright holder's rights in the new derivative works until the future termination window for such works.

### **Impact of Original Transfer Agreements**

The language of the original copyright transfer agreements plays an important role in determining an author's ability to exercise reversion rights.

### *Ambiguities in Contracts*

Contracts may contain vague or ambiguous language that complicates the determination of the parties' rights. For instance, the assignment date, creation date, publication date, and scope of assigned rights may all impact the applicable termination notice and reversion dates. Although Sections 203 and 304 state that the termination rights cannot be waived, authors may believe that the wording of their agreements (or positions taken by the current copyright holder) limits their ability to reclaim

ownership of the work. Although the reversion rights may not be waived, the parties are permitted to renegotiate existing transfers, which could include termination of the existing assignment and re-assignment of the same work on different terms and a new 35-year rights window.

### *Transfer of Other Rights*

A copyright reversion only affects U.S. copyrights and has no effect on other federal, state, or non-U.S. rights. In the initial copyright transfer agreements, authors often transfer a broad range of rights to publishers, music labels, or production companies. This broad language can complicate efforts to reclaim specific rights and may result in a loss of rights that the author may not have anticipated. Authors need to determine whether exercising their termination rights would diminish the value of the work because the current copyright holder would have continuing rights to exploit existing derivative works, foreign rights, and non-copyright-related rights (such as trademark and publicity rights), or other works for which rights were granted by the author and for which termination is not available.

## **IMPACT ON THE CREATIVE INDUSTRIES**

Copyright reversion is applicable to all types of copyrightable works. However, its implications can vary across different creative sectors.

### **Effects on Literature**

In the literary world, copyright reversion empowers authors to reclaim their works, which can lead to new opportunities for publication and adaptation.

### *Revitalization of Classic Works*

As authors regain rights to their works, they may choose to republish or license them independently, which could result in revitalized interest in previously unknown or underappreciated works.

### *Negotiating Better Terms*

Individual, young, and first-time authors are often in a weaker negotiating position when initially attempting to exploit their works. For example, they may have lesser bargaining power against an established publishing house. With the ability to reclaim rights, authors are better positioned to

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negotiate favorable terms with publishers or adapt their works for new media, especially if the author's status has increased in the decades between the initial transfer of rights and the copyright reversion.

### **Effects on Film and Television**

In addition to the foregoing items, film and television industries also feel the impact of copyright reversion, particularly regarding the adaptation of literary works to the film and television medium.

### ***Reclaiming Adaptation Rights***

Authors who have reclaimed their works may choose to adapt their stories for film or television or other new media formats that were not popular or available at the time of the initial transfer of rights, which allows authors creative control and the possibility of further exploiting their works.

### ***Influence on Franchise Dynamics***

Copyright reversion can alter the dynamics between original creators and studios as authors seek to maintain creative control over adaptations. However, the author's right of reversion is limited to each separate work, so studios may continue to control the more recent and more popular works.

### **Effects on Music**

In the music industry, copyright reversion provides artists with the opportunity to reclaim their master recordings and alter their licensing rights.

### ***Control Over Master Recordings***

Musicians can reclaim their master recordings after a specified period, enabling them to control how their music is distributed and marketed after the copyright reversion.

### ***Impact on Licensing***

With the rise of digital streaming platforms, reclaiming rights allows artists to renegotiate licensing agreements and seek compensation for their work in technologies and channels that may not have been available at the time of the initial transfer of rights or that the current copyright holder did not exploit.

### **Effects on Software**

In the software industry, it is quite common for a company to engage third parties, whether

companies or individuals, to develop the company's software. In order for the company to own the developed software, a written contract containing an assignment of the software to the company must be executed. Given that the software industry developed rapidly in the 1990s and 2000s, the copyright reversion window is approaching for software assigned pursuant to those types of written contracts.

Additionally, the software industry is unique compared to other industries in which this issue arises due to the nature of software development. The source code of software is constantly being revised and updated, and kernels of code are used as starting points for derivative works. It may be difficult to determine whether some code is the original work, a derivative work of the work, or a completely new work. Further, many developers view favorably the sharing of code, which is evidenced by the abundance of free and open-source software, so copyright reversion may be more commonplace in the software industry than other industries.

### **Balancing of Interests**

By allowing authors to reclaim their works, copyright reversion allows the authors to benefit from the value of their works in a way that may not have occurred under the prior transfer of rights. While copyright reversion empowers authors, it can also create tension with publishers, studios, and other stakeholders who may resist these changes.

Publishers, record labels, and other stakeholders may need to adapt their business models to accommodate the possibility of copyright reversion and negotiate terms that may be suitable for long-term protection. These could include a contractual right of first refusal after termination or rights to exploit related non-copyright rights. They may also be more proactive about calculating copyright reversion timelines and initiating negotiations with the authors before the authors can test the open market for the value of the works.

### **FUTURE CONSIDERATIONS**

As the landscape of copyright law continues to evolve, there may be future recognition of the importance of author rights, including copyright reversion opportunities. This could lead to litigation clarifying aspects of the reversion process and other legislative reforms aimed at enhancing the

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protections afforded to creators. However, production companies and other stakeholders will want to maintain and protect their rights as well.

The rise of digital media has transformed how works are distributed, highlighting the need for updated copyright frameworks that reflect the realities of the digital age. For instance, the use of blockchain technology could provide authors with greater transparency and control over their works, facilitating more efficient management of rights and royalties. Innovative digital rights management (DRM) solutions can also help authors protect their works while allowing for greater opportunity in licensing agreements and other value-creation arrangements.

## **CONCLUSION**

Copyright reversion law is a vital component of U.S. copyright policy, designed to empower authors and ensure that they retain control over their creative works. By understanding the statutory framework, recognizing the practical challenges involved, and appreciating the impact on various creative industries, authors can navigate the complexities of copyright reversion more effectively.

As the creative landscape continues to evolve, ongoing dialogue among policymakers, legal practitioners, and authors is essential. Copyright reversion not only serves as a mechanism for reclaiming ownership but also plays an important role in the economy related to creativity in the United States.

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