



Future of Music Coalition

1615 L Street NW, Suite 520, Washington, DC 20036 • 202.822.2051

The Right to Terminate: a Musicians' Guide to Copyright Reversion¹

Unlike most countries, the United States copyright law provides musicians and songwriters an opportunity to regain ownership of works that they transferred to outside entities, such as record labels and music publishers. Congress established this “second bite at the apple” for authors of creative works after a period of 35 years. “Termination of transfer” is not automatic, however, and there are certain steps creators must take to regain the rights to their works. This guide aims to shed more light on the process for the benefit of musicians and songwriters who are eligible to reclaim ownership of their creations.

As you read this guide, it is important to keep in mind that there are **two copyrights in a piece of music**: the **composition copyright** (think notes on paper) and the **sound copyright** (think sounds captured on tape or hard drive). Songwriters often enter agreements with publishers to “grant” their songwriting copyrights in exchange for up-front payment and/or the promise of circulation in the marketplace. Musicians (and bands) transfer their sound recordings to labels for similar reasons, including distribution, promotion and marketing. Authors of both copyrighted works can reclaim the copyrights to their original creations after a period of 35 years¹¹.

Some of the terminology around copyright can seem confusing at first. Here are few basic definitions.

Grant: the agreement of transferring or licensing your copyrights to an outside entity in exchange for a monetary advance or other consideration.

Termination: also known as “reversion”; your right as an author of a creative work to recapture your copyright after a set period of time.

Execution of grant: generally, when the original transfer of your copyright(s) took place. The Copyright Office has recently stated that a grant cannot be “executed” until a work is created. Specifically, the *execution of grant* is the date the grant transfer was made for an existing work or the date of its creation; whichever is later.

Date of publication: Generally, publication occurs on the date on which copies of the work are first made available to the public.

Why do creators have this right?

It is often difficult to determine the worth of a creative work at the time of its creation. Because the value is unknown, musicians and songwriters will not be in the most advantageous position when negotiating what labels and publishers will pay for commercially exploiting their work. Thus, Congress made a policy decision to give authors an opportunity to regain ownership of their copyrights and entertain new, potentially more lucrative licenses for their work. Creators may also choose to re-transfer their copyright(s) under more favorable licensing terms. Consider also that changes in the marketplace can increase the range of potential uses for a piece of music, which may not have existed at the time of its creation. For example, few could have anticipated the explosion of console video games and other licensing opportunities for music. In addition, artists can now “go direct,” selling music directly to fans without the high barriers to entry common to the historic marketplace. There are surely new platforms for music that have yet to arrive, so it is important that artists have the ability to directly participate in revenue streams generated by potential new uses.

Section 203 of the Copyright Act permits authors (songwriters and recording artists) to **terminate** deals that they made transferring or licensing their copyrights after 35 years. Meaning, if you transferred your recording or song to a record label or publisher at the beginning of your career or licensed certain rights, you may be eligible to regain ownership or terminate the licenses after this period. Artists may have more leverage than they did at the time that they signed away their copyright(s), and using this leverage, artists could re-grant their copyrights in a better deal or recapture ownership for the purpose of licensing directly.

Complicating factors

Successfully terminating a copyright transfer is not always a simple matter. Much depends on the nature of the grant you made to a label or publisher, as well as other factors. How many authors made the work? When was the work made? What rights associated with the work were assigned? Did the person/entity to which you granted your copyright later assign it to someone else?

Although crafted in 1976, the current version of the Copyright Act was not put into effect until 1978. This means that the first grants of transfer eligible for termination under the updated law are grants that were executed on or after January 1, 1978.ⁱⁱⁱ This guide will focus solely on works eligible for termination under Section 203 of the Copyright Act. This Guide is not legal advice. Since the process can be convoluted and to some extent uncertain, we strongly suggest that those seeking to undertake a termination seek formal legal advice from an attorney experienced in these matters.

What can be terminated?

Generally, any type of transfer or license that authors make with their copyright(s) can be terminated. This includes **assignments** (even such grants that purport to give someone else power over your copyright forever!) The grants that you can terminate apply only to transfers of copyrights; trademarks and other “related” non-copyright rights are not affected or terminable

(e.g., if you transferred the trademark in your band name to your label, it will retain ownership of the trademark).

However, there are a couple of exceptions:

- **Works for hire.** You, as an employee, make a musical work within the scope of your employment, or by an independent contractor, as a specially ordered or commissioned work for use as a contribution to a collective work or as a compilation or as part of an audiovisual work.
- **Grants by will.**
- **Grants *other than by the author(s)*.**
- **Derivative works.** Derivative works (think adaptations, synch uses, or officially-sanctioned remixes) made under a grant can still be used after termination; however, no further derivative works may be created by the original licensee based upon the work that was originally licensed or assigned.

Who Can Terminate?

Termination under § 203 applies to grants made by the author(s), not to grants made by anyone else. Eligibility is determined based upon the status of the author(s), basically whether they are living or dead.^{iv} Here is a chart to help explain:

Potential Claimants	Author(s) Alive	Author(s) Dead
Author	Author may terminate	Statutory successor
Author w/ spouse	Author may terminate	Spouse may terminate
Author w/ spouse & children	Author may terminate	Spouse gets 50% interest in termination while the other 50% is split equally amongst the children. Termination requires the spouse plus at least one child.

Potential Claimants	Author(s) Alive	Author(s) Dead
Author w/ spouse, children and grandchildren	Author may terminate	Spouse gets 50% interest in termination while the other 50% is split equally amongst the children. If one of the author's children dies and leaves behind grandchildren, each grandchild equally splits their parent's share in termination. The share of the dead child can be exercised only by a majority of his/her children. However, to utilize their part of the termination right at least 50% of the grandchildren need to vote for termination. Termination still requires the spouse plus at least one child.
Multiple authors of a joint work	Majority of the authors who entered into the grant must agree to terminate (Ex. If 2 authors, both must agree. If 5 authors of a work, but only 3 enter into the original grant, than only 2 of those who entered into the grant need to agree to terminate).	A majority of the authors interests still applies. See above to determine how a deceased author's termination interest is utilized.

As you can see, calculating who has the power to terminate gets tricky in a hurry. Remember, the chart above speaks in general terms. If you want to pursue your termination right, it is advisable to contact a lawyer.

The termination process

Now that we have figured out who and what are eligible, it is time look at how a grant transfer can be terminated. Although you might think that in this day and age of online databases there's an easy way to go about filing for termination, this isn't the case. Nor does the United States Copyright Office provide you step-by-step instructions or handy forms. After examining the statute and its concurrent regulations (37 C.F.R. 201.10), we were able to deduce basically **when** you need to send **what** and to **whom** to properly call yourself a "terminator."

Notice

Termination is all about notice. At the start of the process, you must let those to whom you granted your copyrights know that you are planning to reclaim them. This is accomplished by sending a letter or form to the grantee providing them with the relevant info. What should be in the letter and to whom it needs to be sent can be complicated. We will go into both areas – the **what** and the **who** – below.

The notice must be in writing and include:

- The **date** that termination will be effective.
- **Signatures** of all authors, or those who have the right to terminate (and their relationships to the authors).
- A **statement** that termination is being made under § 203 of the Copyright Act.
- The **name** of each person/entity whose rights are being terminated (this includes people who have been granted an interest after the original deal took place). The **addresses** where these individuals are being sent notice.
- The **date of execution** of the original grant (or the **date of publication** if the right that was granted was the publication right).
- The **title** of the work and the **name** of the author(s) who executed the original grant (if you want to be really fancy you should include the original copyright registration number).
- A brief **statement** that reasonably identifies the grant to which the notice of termination applies.
- A **statement** that certifies all the necessary people have signed the notice **to the best knowledge and belief** of all the people who signed the notice.

Well, that is a lot of info, and some of it may not be easy to gather. The regulations do say that you can include a **statement** explaining that you have provided as much information as is currently available to the individuals who are signing the notice and an explanation of why full information is not available. The regulations also explain that all information should be contained in the notice and not reference other documents. Small errors are OK, but if you have something wrong that **materially affects** the adequacy of the information in the notice than you won't be able to terminate. In other words be careful, and **consult an experienced attorney**.

Who gets sent the notice?

Notice must be sent to each entity whose rights are being terminated. If the company or individual to whom you originally transferred your rights hasn't given any portion of those rights to anyone else, then this task is (relatively) easy — you will just serve that company or individual. If the originally assigned rights have been given all or part to another party, then you may have to do some more detective work. Basically, anyone that can legally use your copyrighted material (which they obtained through a grant) needs to be notified that after termination their actions will constitute infringement. However, the government realized that such a search could be overly burdensome, so they only necessitate a **reasonable investigation**.

If there is **no reason to believe** that your copyrights — or portions thereof — have been transferred to new parties, then you can simply serve notice to the person/entity to whom you originally granted your copyright(s). If there *is* **reason to believe** that such rights have been transferred, then an investigation is necessary and **may include**: a search of the records in the

Copyright Office and, for musical compositions, a report from relevant performing rights societies. Either way, when you find out who needs to be served, you can either provide **personal service** of the notice or send it by **first-class mail** to what reasonable investigation shows is their last known address.

After you properly serve the individuals whose rights you are terminating, you **must record** the notice with the Copyright Office. You do this by submitting an exact copy of the original notice, accompanied by a small “recordation fee” and a statement explaining the manner in which notice was served and its date. You must record the notice in the Copyright Office **before** the date of termination specified on the notice.

When can notice be served?

If the grant does not include the right to distribute copies or sound recordings, 35 years after the execution of the grant, you may terminate that grant. You have a period of five years in which to terminate; however, notice needs to be served before the proposed date of termination.

Generally, notice **must** be served **no less than two, nor more than ten, years before the date of termination specified in the notice**. Meaning, the earliest you can serve notice of termination is 25 years after you granted the use of your copyright to someone and the latest is 38 years, so you have a 13-year window to serve your notice.

The reason for this is that the guidelines surrounding when you can serve notice have to do with the date of termination **that you specify in your notice**. You have a five-year window to terminate and you can pick any day within that period to do so. However, once you pick a date and write it on the notice you have to serve that notice somewhere in-between 10 to 2 years prior to the date you picked. If you choose a date early in the five-year window and for one reason or another can’t meet the timeline for serving notice, you can always try again by crafting a new notice with a new date of termination (within the five-year window, that is).

For grants of right by *the author* (and only the author), for all the exclusive rights granted by copyright except *publication*.

Execution of Grant	Earliest you can terminate grant. 35 years later	5 year termination window.	Latest you can terminate grant. 40 years later
	25 years later Earliest you can serve notice of termination.	13 year window for serving notice; no less than 2 and no more than 10 years before the date of termination.	38 years later Latest you can serve notice of termination.

If the grant includes the right of publication (i.e., the right to distribute copies for sale), the grant may be terminated during the 5-year period beginning the *earlier* of 35 years after publication or 40 years after the execution of the grant. Therefore, if publication takes place **within** five years of when you granted your copyright, the grant may be terminated in the five year period from 35 years to 40 years after the date of publication, as opposed to 35 years after the grant, and notice may be served during the 13 year window from 25 years to 38 years after the **date of publication**. On the other hand, if publication takes place **more** than five years after the execution of grant, the grant may be terminated in the five-year period beginning 40 years after the grant, and notice can be served during the 13-year window from 30 years to 43 years after the **execution of the grant**. This may sound confusing, which is why you should consult a lawyer with expertise in copyright issues.

For grants of right for the right of *publication*.

Execution of Grant	Within 5 years of execution. Date of Publication	Earliest you can terminate grant. Publication + 35	5 year termination window.	Latest you can terminate grant. Publication + 40
	Publication + 25	Earliest you can serve notice of termination.	13 year window for serving notice; no less than 2 and no more than 10 years before the date of termination.	Latest you can serve notice of termination. Publication + 38

Conclusion

The history of the music industry is rife with examples of musicians not getting a fair shake when it comes to their copyrights. Even if dealt with squarely, it is important that artists have further opportunities to benefit from their creative labors. It is clear that Congress intended as much in the crafting of federal laws around copyright.

We recognize that this process is complicated, requires specific information, some investigatory work and a strict adherence to dates. It may also be the case that those to whom you granted the use of your copyrights aren't in a hurry to return them. But remember, this is your right! We hope this guide proves helpful, but it should not act as a substitute for legal advice and guidance.

ⁱ This is NOT meant to be legal advice and artists should consult a lawyer if they wish to terminate their copyright transfers/licenses. In addition, this paper only discusses terminations under Section 203 of the U.S. Copyright Act, which only applies to works created on or after January 1, 1978.

ⁱⁱ If the work is considered a work made for hire, the creator cannot terminate the transfer of the work. There is currently disagreement over whether most sound recordings can be works made for hire.

ⁱⁱⁱ If a right to a work created after January 1, 1978 was transferred prior to that date (and prior to its creation), under the Copyright Office's interpretation of the law, that transfer is not executed until after the work is actually created (or "fixed in a tangible medium of expression"). Therefore those transfers are still ruled by §203. For more on these "Gap Works" See: <http://futureofmusic.org/blog/2011/06/23/termination-salvation>.

^{iv} It is important to send the termination notice early. If notice is sent and you die before the effective date, the copyrights will pass on according to your will, not to the statutory successor or state laws.