

## 2003 = THE NEW MILLENNIUM FOR COPYRIGHT

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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 term of copyright in a song, not written as a work for hire, is the life of the last living author plus 70 years. 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. The window to terminate transfers begins 35 years from the date of publication or 40 years from the date of transfer, whichever is earlier. The "35 Year Termination" does not apply to works made for hire. The notice of termination may not be served 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.

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 of 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 beginning 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 or publication, whichever was earlier, 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.

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 increases money flowing to the songwriter.”

Once the decision is made to terminate the transfer under either the 35 or 56 Year Rule, there are very specific procedures for granting further rights. Neither further grants nor agreements to make a further grant of any right subject to termination executed prior to the date of termination will be valid. As always, there is an exception to the rule. The original grantee (or its successor) and those authorized to make such further grants on behalf of the grantor, may enter into an enforceable agreement for a further grant prior to the effective date of termination.

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 and a valid grant of the rights terminated. Although an individual can file their own notices of termination, legal counsel is advisable to assist in this process.

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