

## **U.S. Copyright Termination:**

### **Remonetization's Final Frontier**

By: David M. Given, Esq.\*

#### **I. INTRODUCTION**

During its most recent overhaul of copyright law over 40 years ago, the U.S. Congress identified the need to protect authors and their heirs from “the unequal bargaining position of authors” in dealing in their insipient (read: unpublished) works.<sup>1</sup> This need arose primarily from “the impossibility of [an author] determining [her] work’s prior value until it has been exploited,” a proposition appearing on its face to be unassailable.<sup>2</sup> Until an author “monetizes” her creative work via publication, usually via a third-party in the business of exploiting creative works, she has no way to gauge that work’s critical importance or commercial value.

The above results in what economists call an imperfect market, exhibiting anomalies like a lack of ready buyers or patently unfair transactions (or both). Such anomalies are particularly evident when it comes to an unknown author granting all or substantially all of her rights in an unpublished work or works to a third-party.<sup>3</sup> These authors are especially vulnerable in such circumstances: Many struggle to make ends meet, and almost none have any meaningful experience in the business of exploiting their own works.

Thus, as it developed, what eventually became the 1976 Copyright Act (the “Act”) gave authors and their heirs certain statutory rights to terminate grants of their copyright interests either 35 years from the initial grant if the grant post-dated the Act, or 56 years from the copyright registration if the grant pre-dated the Act.<sup>4</sup> For recording artists, songwriters and their heirs, the mechanism by which the Act allows them to terminate grants has now emerged as a critical and increasingly deployed device for “re-monetizing” their sound recordings and musical compositions. Recapturing ownership of these copyrighted works by their authors or heirs has tremendous consequences. What follows summarizes the statutory and judge-made limitations on those termination mechanisms, how authors and their heirs use those mechanisms, and how the system, if utilized correctly, can create substantial benefit to recording artists, songwriters and their families.

#### **II. HISTORY, CONTEXT, AND SCOPE OF THE U.S. TERMINATION RIGHT**

##### **A. History of Recapture Rights in the U.S.**

The introduction of copyright termination rights can be traced to the renewal structure codified in the 1909 Copyright Act which can, in turn, be traced to the 1709 U.K. Statute of 8 Anne, c. 19.<sup>5</sup> That structure, which in 1909 included an original 28 years of copyright protection, followed by a separate renewal term of 28 years if the author survived the first term, was codified to give authors the same type of protection the current termination provisions are designed to today.<sup>6</sup> “It not infrequently happens,” Congress explained in 1909, “that the author sells his copyright outright to a publisher for a comparatively small sum. If the work proves to be a great success and lives beyond the term of 28 years [] it should be the exclusive right of the

author to take the renewal term, and the law should be framed as is the existing law, so that he could not be deprived of that right.”<sup>7</sup>

Unfortunately for authors, the U.S. Supreme Court stripped much of the intended benefits of the renewal system in its 1943 *Fred Fisher* decision; that decision held that authors could freely assign their renewal right prior to its exercise.<sup>8</sup> Predictably, newly-minted agreements appeared including a grant of both the original and renewal copyright and, whether they knew it, authors began giving up their renewal right in the first grant of rights in their insipient works. The current termination provisions of the Act sought in part to fulfill the intention of the 1909 renewal term concept.

## **B. Qualifying Grants**

The applicability and timing of the termination provisions to a given work are dependent on (1) the type of grant, (2) when the work was created, (3) when the grant was made, and (4) who made the grant.

The types of grants subject to the termination provisions are broad; they include nonexclusive licenses of copyright or any right comprised in a copyright.<sup>9</sup> Excluded are grants made by will, grants of works made for hire (a particularly fertile area for dispute over sound recording terminations; record labels often claim that these are works for hire under their agreements with recording artists and music producers), and grants made by those other than the author or his/her statutory heirs.<sup>10</sup>

A grant made by an author or his statutory heirs prior to Jan. 1, 1978 may be terminated under 17 U.S.C. § 304(c) during the five-year period beginning 56 years from the date the copyright was originally secured.<sup>11</sup> Section 304(d) provides authors and their heirs, whose termination term expired prior to 1998 and who had not previously exercised their termination right, a second chance to terminate starting 75 years from the date of original registration, also running for five years.

The termination of grants made on or after 1978 is governed by 17 U.S.C. § 203. A grant may be terminated under § 203 only if it was “executed by the author.”<sup>12</sup> Section 203 termination may be effected by the author, or, if the author is dead, by those who are entitled to exercise a total of more than one-half of that author’s termination interest.<sup>13</sup>

Section 203 terminations are relatively new phenomena because they may be effected during a five-year period beginning at the end of 35 years from the date of execution of the grant, or, if the grant covers the right of publication, during a five-year term beginning at the end of 35 years from the date of publication of the work under the grant or 40 years from the date of execution of the grant, whichever is earlier.<sup>14</sup> Thus, as terminations under section 203 only became effective in 2013 (35 years after 1978), this statutory scheme is *in practice* a relatively new phenomenon.

### **C. Foreign Reversionary Rights**

Termination or reversionary rights are not limited to the U.S. A number of European countries have some sort of reversionary right – many depend upon the use of the work made by the grantee.<sup>15</sup>

Under the EU “Term of Protection Directive” (Article 3.2a), recording artists have a non-waivable right to terminate a grant if, 50 years after the publication of their record, their record producer does not effectively exploit their sound recording.<sup>16</sup> In Germany and Poland, an author may terminate a contract if their work no longer reflects their convictions, or if exploitation is made contrary to their fundamental interest. In Spain, a publishing contract is automatically extinguished 10 years after its execution if payment is fixed as a flat fee.<sup>17</sup> In the United Kingdom, transfers made between July 1912 and June 1957 automatically revert to the author’s estate 25 years after the author’s death.<sup>18</sup> Australia, New Zealand, and South Africa have similar time-limited reversion laws, while Canada retains this precise structure for all transfers, even current ones.<sup>19</sup>

## **III. MECHANICS OF EXERCISING U.S. TERMINATION RIGHTS**

### **A. Section 304 Terminations**

To effectuate a termination in the U.S., a grantor must serve notice upon a grantee or the grantee’s successor no fewer than two years and no more than 10 years before the termination date.<sup>20</sup> Under federal regulations promulgated in 2003, the notice must contain:

- The termination provision;
- The name of each grantee;
- The title and name of at least one author and the date the original copyright was secured, and original registration number (if possible);
- A brief statement reasonably identifying the grant;
- The effective date of the termination (within the five-year periods identified above);
- If termination is under § 304(d), a statement that termination under § 304(c) has not been previously exercised;
- If the grant was made by persons other than the author, a listing of the surviving person or persons who executed the grant; and
- If (1) the grant was made by author(s) and (2) the termination is exercised by successors, a listing of names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author’s termination interest: surviving widow or widower, surviving children, or grandchildren of deceased children.<sup>21</sup>

If the information in the last bullet point is not available to the persons signing the notice, they may provide an explanation and a statement that to the best of their knowledge, the notice is signed by all persons whose signature is necessary to terminate the grant under § 304.<sup>22</sup> The

information must be contained in the notice itself and may not be incorporated by reference to other documents.<sup>23</sup>

If the grant was made by a non-author, all surviving persons who executed the grant must sign the notice. If the grant was made by an author, the notice must be signed by the author, or if the author is deceased, by the number and proportion of owners necessary to terminate the grant.<sup>24</sup>

The notice must be served personally or via first class mail to the last known address of the grantee.<sup>25</sup> The service requirement includes a reasonable investigation by the person executing the notice of the current ownership of the rights being terminated and the last known address of the owner(s).<sup>26</sup> A reasonable investigation includes a search of the records of the Copyright Office, the records of a performing rights society (if the work is a musical composition – in the U.S., the three principal societies are ASCAP, BMI and SESAC, all of which maintain publicly available databases of their song catalogs), and a report from that performing rights society identifying current claimants.<sup>27</sup>

A copy of the notice must be recorded in the U.S. Copyright Office together with a recordation fee and a statement setting forth the date and manner of service of the notice before the effective date of termination.<sup>28</sup> Importantly, the regulation provides that “harmless errors” in the notice “shall not render the notice invalid.”<sup>29</sup>

## **B. Section 203 Terminations**

The mechanics of a § 203 termination are identical to those under § 304, except that the notice need not contain the date of the original copyright registration and must contain the date of execution of the grant being terminated and, if the grant covered the right of publication, the date of publication of the work under the grant.<sup>30</sup>

Examples of both a § 304 termination (for musical compositions) and a § 203 termination (for sound recordings) are appended to this article.

## **IV. LIMITATIONS ON U.S. TERMINATION RIGHTS**

### **A. Statutory Limitations: Territoriality and Derivative Works**

Only rights conveyed by the grant and within the ambit of the Copyright Act are terminable. A mixed grant of rights under the Copyright Act and other rights, when terminated pursuant to the Copyright Act, only terminates the copyright portion of the conveyance.<sup>31</sup>

Of particular note are extraterritorial grants. Recording artists and songwriters commonly grant worldwide rights. The generally-accepted view is that the language of both §§ 203 and 304 (which is identical) indicate that such extraterritorial rights, to the extent they are grants of rights under foreign laws, are not reachable via the termination mechanisms of the United States.<sup>32</sup>

Another important limitation on the termination right is that “a derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the

termination of other derivative works based upon the copyrighted work covered by the terminated grant.”<sup>33</sup> Thus, a sound recording of a musical composition made before the termination of a grant of the right to the musical composition may continue to be exploited pursuant to the terms of the grant, even though the grant has been terminated. However, after termination, no further derivative works may be created pursuant to the terminated grant.

The statutory exclusion of foreign and derivative work rights create important limitations and complications for authors whose work creates income abroad or whose income stems from derivative works created during the term of the terminated grant. Even if the termination provisions are successfully employed, authors and their heirs may still be stuck with a vast majority of the grant they bargained for before they knew the value of their works.

## **B. Judicial Limitations: Joint Author and Multiple Work Complications and the Agreements to the Contrary Problem**

### **1. Victor Willis’s Extended Stay in San Diego**

While published decisions on the exercise of § 203 termination rights are scant, Victor Willis’s § 203 termination, litigated extensively in the Southern District of California (San Diego), provides a glimpse into complications arising when multiple authors and multiple works are involved.<sup>34</sup>

Willis, a songwriter and original member of THE VILLAGE PEOPLE, served a § 203 copyright termination notice on his music publisher in 2011, attempting to terminate his grant of certain music compositions (including “YMCA,” “In the Navy” and “Macho Man”).<sup>35</sup> Later that year, the publisher filed a lawsuit seeking a declaratory judgment that Willis had no interest in the compositions.<sup>36</sup> In 2012, the Court granted Willis’s motion to dismiss, holding that Willis could unilaterally terminate his grants under § 203 because his grant was separate from that of his co-authors.<sup>37</sup>

The music publisher amended its complaint and sought a declaratory judgment that Willis was entitled to at most 33.3% of the copyright interest because there were two other songwriters. Willis counterclaimed that he was entitled to 50% authorship of the 24 works because there was only one other songwriter.

After the court denied a motion to dismiss and three different motions for partial summary judgment made by the music publisher, the case went to a jury trial in 2015. The jury ruled that Willis was entitled to a 50% interest in 13 of the songs and a 33% interest in the remaining 11 songs.<sup>38</sup> Thus, after four years of federal court litigation, Willis’s termination rights were vindicated in substantial part, and he recovered over half a million dollars in costs and attorney’s fees for his trouble.<sup>39</sup>

### **2. To the Contrary of Plain Language**

Section 304 terminations have developed a more robust case law. One particularly litigious issue concerns what happens to the termination right when heirs renegotiate a pre-1978 grant post-1977. Section 304(c)(5) states: “Termination of the grant may be effected

notwithstanding any agreements to the contrary.” Commentators have argued that this plain language indicates that a post-1977 renegotiation of a pre-1978 grant should not extinguish termination rights.<sup>40</sup> Courts, however, have generally held that if the new agreement effectively revokes the old agreement under state contract law principles, the party has extinguished their § 304 termination right as to the old agreement.<sup>41</sup>

A very recent case at the intersection of the § 304 “agreements to the contrary” issues and § 203 is *Baldwin v. EMI Feist Catalog, Inc.* 805 F.3d 18 (2d Cir. 2015). A songwriter of the perennial holiday favorite “Santa Clause is Coming to Town” renegotiated his 1951 assignment to music publisher EMI in 1981. The court held that because the 1981 agreement effectively revoked the 1951 agreement, the § 304(d) termination notice, served in 2004 by his heirs, was ineffective, but the § 203 notice, served in 2007, was effective and terminated EMI’s rights to the song in 2016.

Thus, a living author’s subsequent renegotiation is saved by § 203, but heirs who renegotiate generally forfeit their termination right because § 203 is inapplicable to their grant.<sup>42</sup>

## **V. HOW U.S. TERMINATION RIGHTS ARE BEING EXERCISED<sup>43</sup>**

According to U.S. Copyright Office records, from 1977 to 2009, that Office received 8,429 § 304 notices and 105 § 203 notices. Since 2009, the Office has experienced a dramatic (and expected) increase in § 203 filings with over 1,000 notices received.

Data from the year 2000 provides a snapshot of the nature and scope of § 304 terminations. That year, 219 notices were recorded by 61 unique authors (or groups of authors), terminating the rights to 1,045 works. Of the 219 notices filed, only 19 were filed by the authors themselves, 43 were filed by an executor, and 157 were filed by some combination of surviving spouses and children. Of the non-author terminations, 107 of 200 were made by single parties holding 100% of the termination interest, and 79 of the 93 remaining multiparty terminators wielded 100% of the termination interest.

The majority of terminations were targeted to only one work and 47 of the 61 authors/author groups consisted of solo authors. *As to the type of works, the overwhelming majority were musical compositions.* In 2000, 879 of the 1,045 works terminated were musical compositions (84.11%); contributions to periodicals (e.g., a short story published in a magazine) were the next most popular with 40 terminations (3.83%). Overall, the numbers were skewed even further with 88.85% of all terminations noticed from 1978-2010 being for musical compositions. In addition, *terminated grantees have been overwhelmingly music publishers,* receiving 77.17% of notices in 2000.

Parties are exercising their termination rights as soon as possible. Over 75% of terminations come in the first year of the termination window and under 3% come in the last year. Notices, on the other hand, are given close to the deadline, with almost 37% of notices given just 2-3 years in advance and under 14% given in the 9-10 year range.

Thus, as a general proposition, *terminations are being exercised by heirs of single author songwriters yielding 100% of the copyright interest, terminating grants made to music publishers as soon as they possibly can.*

This data may speak to one or all of the following: The difficulties arising from more complicated terminations (see Victor Willis's case, above); the potential value in certain musical compositions; and the particular and historic transactional asymmetry between music publishers and songwriters.<sup>44</sup>

## **VI. THE REAL WORLD IMPACT OF COPYRIGHT TERMINATION**

So what does it all mean? If a musical work – be it a post-1972 sound recording (pre-1972 sound recordings are not protected by U.S. copyright law) or musical composition – has a commercial life exceeding 35 or 56 years, then it likely owes that success to the creative genius of the recording artist or songwriter, and not to the capital and labor contributed by the record label or music publisher.<sup>45</sup> It is therefore entirely correct and fair, in this author's view, that the recording artist or songwriter have the right and ability to claim the revenues earned later in a sound recording or musical composition's life from a record label or music publisher, and certainly from one having no direct involvement in the creative process.

In that circumstance, where a high-yield legacy recording or song is presumptively in issue, the financial stakes are extraordinary.<sup>46</sup> Copyrights in these works function as annuities – at their age, the works are “known commodities” (a term used advisedly), with a sound financial track record that one can extrapolate into the future. Their worth, when capitalized using standard accounting and valuation methods, can be tremendous. Even the threat of a recapture of rights in such works creates enormous leverage for an author or her heirs to “re-monetize” their interest in those works by, for example, settling existing audit issues, improving the terms and conditions of the grant or marketing the works to others.

More importantly, perhaps, whether a musical work is a high-yield asset or a vanity project with little financially at stake, retaking ownership and therefore management and control of its use and exploitation from a record label or music publisher can be exceedingly meaningful to an author and her heirs. Control of these works is enshrined in the concept of “droit moral” (moral rights), the personal and inalienable rights an author has in her work, which protects the artistic integrity of and prevents others from altering a work without the author's permission. While the U.S. Congress extended limited moral rights to works of visual art when it passed the Visual Artists Rights Act of 1990, no such rights attend to musical works in the U.S.<sup>47</sup>

Once an author or her heirs re-establish management and control over a musical work, the true business of “re-monetization” can begin. Termination and recapture allows a recording artist or songwriter or their heirs to reset the use and exploitation of the work upon termination and into the future – for the remaining life of the copyright in the work. By definition, this means new uses like cover recordings (in the case of songs), new compilations (in the case of recordings – including remixes), as well as television, film and internet uses.

The latter is especially important as the consumption of music transitions to a subscription-based streaming model. Because that model measures use in real-time, and compensates the copyright proprietor accordingly, and because like the performing rights societies these grants are almost always short-term and non-exclusive, an author or heir who has recaptured rights in a musical work should have an unobstructed path to determining how and where the work is heard. As new distribution platforms continue to emerge, presenting additional opportunities to re-monetize musical works, the time is now for recording artists and songwriters to take full advantage of the termination and recapture rights of U.S. copyright law.

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<sup>1</sup> H.R. Rep. No. 94-176, at 124 (1976).

<sup>2</sup> *Id.*

<sup>3</sup> Dick James was often called the “luckiest man in the history of the industry” because in early 1963, manager Brian Epstein handed him worldwide ownership and control of the entire song repertoire of THE BEATLES, an arrangement that “in nearly every reminiscence” Paul McCartney called “a slave deal – and worse;” reportedly, neither McCartney nor John Lennon even read the agreement put in front of them before signing it. Spitz, *The Beatles: The Biography*, at 363-65 (Little Brown, 2005). The result for the band and its two principal songwriters was described earlier in one of the most trenchant (and tragic) chapters ever written on the economics of the music business, ironically entitled “The Beatles Go Broke.” Goldman, *The Lives of John Lennon*, at 332-34 (Morrow & Co., 1988).

<sup>4</sup> 17 U.S.C. §§ 203, 304(c)-(d).

<sup>5</sup> *Fred Fisher Music v. M. Witmark & Sons*, 318 U.S. 643, 647 (1943).

<sup>6</sup> The current scheme generally provides copyright protection for works created on or after Jan. 1, 1978 for the author’s life plus 70 years, while works created prior to 1978 are entitled to a 28-year original term, plus a 67-year automatic renewal term. 17 U.S.C. §§ 302, 304.

<sup>7</sup> H.R. Rep. No. 2222, at 14 (1909).

<sup>8</sup> *Fred Fisher Music*, *supra*, 318 U.S. at 657-59.

<sup>9</sup> Nimmer on Copyright, § 11.02 [A] at 11-12 (2015).



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<sup>10</sup> 17 U.S.C. §§ 203, 304(c) & (d). §§ 203(a)(2) & 304(c)(2) set out how the ownership of the termination interest is divided if the author is dead: If a widow survives and there are no surviving grandchildren, he/she owns the entire interest. If a widow and surviving children/grandchildren survive, the widow gets 50% and the children/grandchildren get 50%, divided per stirpes. If there is no widow, the children/grandchildren own the entire interest. If there is no widow or children/grandchildren, the author’s executor owns the entire interest.

<sup>11</sup> 17 U.S.C. § 304(c)(3).

<sup>12</sup> 17 U.S.C. § 203(a).

<sup>13</sup> *Id.*

<sup>14</sup> 17 U.S.C. § 203(a)(3).

<sup>15</sup> European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs, *Contractual Arrangements Applicable to Creators: Law and Practice of Selected Member States: Study*, § 3.2 at 77-78 (2014), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/juri/dv/contractualarrangements\\_/contractualarrangements\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/contractualarrangements_/contractualarrangements_en.pdf) (last visited Feb. 22, 2016).

<sup>16</sup> *Id.* EU “Term of Protection Directive” (Article 3.2a) states: “If, 50 years after the phonogram was lawfully published or, failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract by which the performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter a ‘contract on transfer or assignment’). The right to terminate the contract on transfer or assignment may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract on transfer or assignment pursuant to the previous sentence, fails to carry out both of the acts of exploitation referred to in that sentence. This right to terminate may not be waived by the performer. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment in accordance with applicable national law. If the contract on transfer or assignment is terminated pursuant to this paragraph, the rights of the phonogram producer in the phonogram shall expire.”

<sup>17</sup> *Id.*

<sup>18</sup> U.K. Copyright Act of 1911, § 5(2); Nimmer, *supra*, at § 17.12[A][2][a].

<sup>19</sup> Canada Copyright Act § 14; D’Agostino, *Copyright, Contracts, Creators: New Media, New Rules*, at 117 (Edward Elgar Pub. 2010).

<sup>20</sup> 17 U.S.C. § 304(c)(4).

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<sup>21</sup> 37 C.F.R. § 201.10(b)(1)(i)-(vii).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at § 201.10(b)(3).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at § 201.10(d)(1).

<sup>26</sup> *Id.* at § 201.10(d)(1)-(2).

<sup>27</sup> *Id.* at § 201.10(d)(3).

<sup>28</sup> *Id.* at § 201.10(f).

<sup>29</sup> *Id.* at § 201.10(e); Compare *Burroughs v. Metro-Goldwyn-Mayer*, 683 F.2d 610 (2d. Cir. 1982) (failure to list five of 35 books in copyright termination notice means termination was ineffective as to those five books) with *Siegel v. Warner Bros. Entertainment*, 658 F. Supp.2d 1036, 1091-95 (C.D. Cal. 2009) (discussing harmless error provision and finding two weeks' worth of comic strips excluded from notice containing thousands of works were effectively terminated by otherwise sufficient notice).

<sup>30</sup> 37 C.F.R. § 201.10(b)(2)(iii).

<sup>31</sup> Nimmer, *supra*, § 11.02[B][1] at 11-21.

<sup>32</sup> 17 U.S.C. §§ 203(b)(5) & 304(c)(6)(E) (“Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.”). The “generally-accepted view” is reflected in one court decision, *Fred Ahlert Music v. Warner/Chappell Music*, 155 F.3d 17, 20 (2d. Cir. 1998), and supported by one of the leading authorities on copyright law, see Nimmer, *supra*, § 11.02[B] at 11-21. The author takes a slightly different position, namely that this question may also be answered with reference to the actual grant of rights including, crucially, the language of the parties’ written agreement. (The Copyright Act requires a writing assigning a copyright ownership interest from the author to a third-party. 17 U.S.C. § 204.) In the right circumstance, a court could find under general contract principles that the parties contemplated *by agreement* the right of termination over the entire worldwide grant.

<sup>33</sup> 17 U.S.C. §§ 203(b)(1), 304(c)(6)(A).

<sup>34</sup> *Scorpio Music v. Willis*, No. 11-cv-1557BTM (RBB), 2015 WL 5476116 (S.D. Cal. Sept. 15, 2015).

<sup>35</sup> *Id.* at \*1.

<sup>36</sup> *Id.*

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<sup>37</sup> *Scorpio Music v. Willis*, No. 11-cv-1557BTM (RBB), 2012 WL 1598043 (S.D. Cal. May 7, 2012).

<sup>38</sup> *Scorpio Music, supra*, 2015 WL 5476116, at \*1-2. Among the big three musical compositions, Willis ended up with 50% of “YMCA,” and a third of both “In the Navy” and “Macho Man.”

<sup>39</sup> *Id.* at \*5. Mr. Willis’s legal adventures are not over quite yet; the music publisher has appealed the attorney’s fee order to the Ninth Circuit.

<sup>40</sup> Nimmer, *supra*, § 11.07, at 11-73-11-127; Menell & Nimmer, *Judicial Resistance to Copyright Law’s Inalienable Right to Terminate Transfers*, 33 Colum. J.L. & Arts 227 (2009); Bates, *The Grapes of Wrathful Heirs: Termination of Transfers of Copyright and ‘Agreements to the Contrary’*, 27 Cardozo Arts & Ent. L.J. 663 (2010).

<sup>41</sup> *DC Comics v. Pacific Pictures*, 545 Fed. Appx. 678 (9th Cir. 2013); *Penguin Group v. Steinbeck*, 537 F.3d 193 (2d. Cir. 2008); *Milne v. Slesinger*, 430 F.3d 1036 (9th Cir. 2005). But see *Classic Media v. Mewborn*, 532 F.3d 978 (9th Cir. 2008).

<sup>42</sup> Space does not permit a thorough-going analysis of other, perhaps more complex and potentially intractable technicalities of termination; for that, see generally Donnelly, *Everything You Need to Know About Copyright Reversions*, St. John’s Entertainment, Arts & Sports Law J., Vol. 1:1 (2012).

<sup>43</sup> What follows here comes courtesy of (and with the author’s gratitude to) R. Anthony Reese, Chancellor’s Professor of Law at the University of California, Irvine School of Law. Professor Reese is engaged in extensive research into the use of the U.S. termination mechanisms by authors and their heirs. This research includes his team’s coding all termination notices received by and recorded in the U.S. Copyright Office for analysis. While his research is ongoing, Professor Reese was generous enough to share some preliminary data with the author for purposes of this article.

<sup>44</sup> Conclusions drawn from this data are solely those of the author and do not reflect the views of Professor Reese or the conclusions he or his team may ultimately reach once their work is complete.

<sup>45</sup> Goldstein on Copyright, § 5.4 at 5:113 (3d ed. 2016). On the treatment of pre-1972 sound recordings and statutory termination, see U.S. Copyright Office, *Federal Copyright Protection for Pre-1972 Sound Recordings: A Report of the Register of Copyrights*, at 146-49 (Dec. 2011).

<sup>46</sup> Those having filed to recapture their song copyrights reportedly include Bob Dylan, Tom Petty, Bryan Adams, Loretta Lynn, Kris Kristofferson, Tom Waits and Charlie Daniels. Rohter, *Record Industry Braces for Artists’ Battles Over Song Rights*, N.Y. Times, Aug. 15, 2011.

<sup>47</sup> See 17 U.S.C. § 106(A).

**RECORDED DOCUMENTS****FL-10A****DATE:** January 15, 2014

DAVID M. GIVEN  
50 California Street, Suite 3240  
San Francisco, California 94111

ATTN: Mr. David M. Given:

We have recorded the enclosed document(s) in the official records of the Copyright Office:

VOLUME

DOC. NO.

3621

352

The recording fee has been handled as follows:

RECEIVED

\$

APPLIED

\$

REFUNDED (under separate cover)

\$

**CHARGED TO YOUR DEPOSIT ACCOUNT**

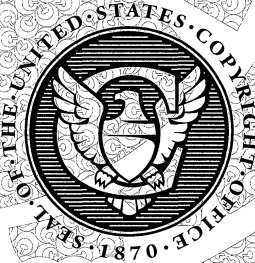
**\$**

Sincerely yours,  
Register of Copyrights

ENCL(S):

DOC(S):

1



# Certificate of Recordation

This is to certify that the attached document was recorded  
in the Copyright Office on the date and in the place shown below.

This certificate is issued under the seal of the  
United States Copyright Office.

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DATE OF RECORDATION

22Sep13

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VOLUME

DOC. NO.

3621

352

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VOLUME

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*Maria A. Pallante*

Register of Copyrights, United States of America

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office or call (202) 707-3000 or 1-877-460-7775 (toll free).



# Document Cover Sheet

united states copyright office

### For Recordation of Documents

Volume 3621 Document 352

Volume \_\_\_\_\_ Document \_\_\_\_\_

Date of recordation M 9 D 22 Y 13  
(ASSIGNED BY THE COPYRIGHT OFFICE)

Funds received \_\_\_\_\_

Privacy Act Notice: Sections 408-410 of title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 U.S.C. §705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law.

DO NOT WRITE ABOVE THIS LINE · SEE INSTRUCTIONS ON REVERSE

To the Register of Copyrights: Please record the accompanying original document or its properly certified copy.

**1** First party name given in the document BMG Chrysalis US  
(IMPORTANT: Please read instruction for this and other spaces.)

**2** First title given in the document Big Noise From Speonk

**3** Total number of titles in the document 31

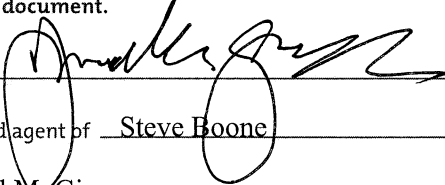
**4** Amount of fee calculated \$195.00

**5** Fee enclosed  Check  Money order  
 Fee authorized to be charged to Copyright Office deposit account  
Deposit account number n/a  
Deposit account name n/a

**6** Completeness of document  Document is complete by its own terms  Document is not complete. Record "as is."  
**IMPORTANT NOTE:** A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.

**7** Certification of photocopied document Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature.  
**NOTE: This space may not be used for documents that require an official certification.**

I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document.

Signature  Date 09-19-13

Duly authorized agent of Steve Boone

**8** Return to Name David M. Given  
Number/street 50 California Street Apt/suite 3240  
City San Francisco State CA Zip 94111  
Phone number (415) 398-0900 Fax number (415) 398-0911  
Email dmg@phillaw.com

SEND TO: Library of Congress, Copyright Office-DOC, 101 Independence Avenue SE, Washington, DC 20559

INCLUDE ALL THESE TOGETHER: (1) two copies of this form; (2) payment from a deposit account or by check/money order payable to Register of Copyrights; and (3) your document.

**NOTICE OF TERMINATION  
OF AN EXCLUSIVE OR NON-EXCLUSIVE GRANT  
OF A TRANSFER OR LICENSE OF A COPYRIGHTED WORK**  
*17 U.S.C. Sec. 304(c)*

**THIS NOTICE** terminates the below referenced exclusive or non-exclusive grant of transfers and/or license in and to the copyrighted works which appear in Schedule A (the "Works") and is made under the U.S. Copyright Act, 17 U.S.C. Sec. 304(c).

This Notice shall be effective as to the following grantees:

BMG Chrysalis US  
1745 Broadway, 19<sup>th</sup> Floor  
New York, NY 10019

Carlin Music America  
126 E 38th Street  
New York, NY 10016

V3621 D352



Date(s) of execution of the grant(s) being terminated is/are: See Schedule A.

Date(s) of publication of the Works: See Schedule A.

The Works to which the Notice of Termination applies:

Title: See Schedule A.

Name of Author: Steve Boone

Copyright Registration Nos.: See Schedule A.

This termination notice applies to any and all grants, transfers and licenses of copyrights under any and all agreements between and among Steve Boone, on the one hand, and BMG Chrysalis US, Carlin Music America, and their predecessors or successors in interest, on the other hand, including, without limitation, the following agreements:

- (1) Songwriter's Agreement between Steve Boone and Chardon Music, Inc. dated June 15<sup>th</sup>, 1965; and
- (2) Annual Extensions of the above agreement dated April 6<sup>th</sup>, 1966, April 14<sup>th</sup>, 1967, April 15<sup>th</sup>, 1968 [and May 5<sup>th</sup> 1969]. This last extension is bracketed because there does not appear to be any song copyrighted or published after this date.

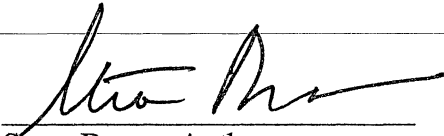
Effective date(s) of this termination: See Schedule A.

V3621 D352  
Page 1

Signatures:

AUTHOR:

---



Steve Boone, Author  
c/o Phillips, Erlewine & Given LLP  
50 California Street, Suite 3240  
San Francisco, CA 94111



**SCHEDULE A:**

<b>Title of Work</b>	<b>Original Reg. No.</b>	<b>Author</b>	<b>Date Copyright Originally Secured</b>	<b>Publication Date</b>	<b>Effective Date of Termination</b>
Big Noise From Speonk	EU0000932810	Steve Boone	4/05/1966	March 1966	4/05/2022
Butchie's Tune	EU0000926397	Steve Boone	2/24/1966	March 1966	2/24/2022
End Title	EU0000961840	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Forever	EU0000033485	Steve Boone	1/22/1968	Sept. 1969	1/22/2024
Full Measure	EU0000970371	Steve Boone	12/05/1966	1966	12/05/2022
Gray Prison Blues	EU0000961839	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Summer In The City	EP0000231387	Steve Boone	7/19/1966	7/04/1966	7/19/2022
You Didn't Have To Be So Nice	EU0000915912	Steve Boone	11/26/1965	1965	11/26/2021
You Didn't Have To Be So Nice	EP0000231386	Steve Boone	12/06/1965	1965	12/06/2021
A Cool Million	EU0000961836	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Lookin' To Spy	EU0000961838	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Phil's Love Theme	EU0000961841	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Pow	EU0000861842	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Pow Revisited	EU0000967002	Steve Boone	11/16/1966	11/02/1966	11/16/2022
Unconscious Minuet	EU0000961844	Steve Boone	10/17/1966	11/02/1966	10/17/2022
Bay Music (Cue – "What's Up, Tiger Lily?")	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Cobra Dance (Cue – "What's Up, Tiger Lily?")	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Danger Chord (Cue – "What's Up, Tiger Lily?")	n/a	Steve Boone	1966	11/02/1966	1/01/2022

Death Scene (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Girls Exercise (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Hallway (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Nobody Knows (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Poison Gas (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Prison Music (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Snake (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Spoonfuls (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Spoonfuls Beat (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
Sting (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
The Strip (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022
What’s Up Tiger Lily?	n/a	Steve Boone	1966	11/02/1966	1/01/2022

(Cue – “What’s Up, Tiger Lily?”)					
Whorehouse (Cue – “What’s Up, Tiger Lily?”)	n/a	Steve Boone	1966	11/02/1966	1/01/2022

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL  
AND U.S. FIRST CLASS MAIL**

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF SAN FRANCISCO )

Kyle P. O'Malley, being duly sworn, avers that he served the enclosed NOTICE OF TERMINATION OF AN EXCLUSIVE OR NON-EXCLUSIVE GRANT OF A TRANSFER OR LICENSE OF A COPYRIGHTED WORK upon the following:

BMG Crystals US  
1745 Broadway, 19<sup>th</sup> Floor  
New York, NY 10019

Carlin Music America  
126 E 38<sup>th</sup> Street  
New York, NY 10016

by placing a true and correct copy in envelopes addressed as shown above and causing the same, to be deposited, with postage prepaid, in the United States mail at San Francisco, California.

  
\_\_\_\_\_  
Kyle P. O'Malley

September 19, 2013  
Date



RECORDED DOCUMENTS

FL-10A

DATE: May 7, 2014

DAVID M. GIVEN  
50 California Street, Suite 3240  
San Francisco, California 94111

ATTN: Mr. David M. Given:

We have recorded the enclosed document(s) in the official records of the Copyright Office:

VOLUME	3619
DOC. NO.	167

The recording fee has been handled as follows:

RECEIVED	\$
APPLIED	\$
REFUNDED (under separate cover)	\$
<b>CHARGED TO YOUR DEPOSIT ACCOUNT</b>	<b>\$</b>

Sincerely yours,  
Register of Copyrights

ENCL(S):  
DOC(S): 1



# Certificate of Recordation

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This is to certify that the attached document was recorded  
in the Copyright Office on the date and in the place shown below.

This certificate is issued under the seal of the  
United States Copyright Office.

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DATE OF RECORDATION

16Jan14

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VOLUME

3619

DOC. NO.

167

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VOLUME

DOC. NO.

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*Maria A. Pallante*

Register of Copyrights, United States of America



# Document Cover Sheet

UNITED STATES COPYRIGHT OFFICE

Copyright Office fees are subject to change. For current fees check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write to the Copyright Office, or call (202) 707-3000.

### For Recordation of Documents

Volume 3619 Document 167

Volume \_\_\_\_\_ Document \_\_\_\_\_

Date of recordation M 1 D 16 Y 14  
(ASSIGNED BY THE COPYRIGHT OFFICE)

Funds received \_\_\_\_\_

DO NOT WRITE ABOVE THIS LINE • SEE INSTRUCTIONS ON REVERSE

To the Register of Copyrights: *Please record the accompanying original document or properly certified copy thereof.*

**1** First party name given in the document Cherry Red Records, Ltd.

(IMPORTANT: Please read instruction for this and other spaces.)

**2** First title given in the document Fresh Fruit for Rotting Vegetables

**3** Total number of titles in the document 15

**4** Amount of fee calculated \$165 (paid by check dated 8/19/13)

**5** Fee enclosed  Check  Money order  
 Fee authorized to be charged to Copyright Office deposit account

Deposit account number \_\_\_\_\_

Deposit account name \_\_\_\_\_

**6** Completeness of document  Document is complete by its own terms  Document is not complete. Record "as is."

**IMPORTANT NOTE:** A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.

**7** Certification of Photocopied Document Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature.

**NOTE:** This space may not be used for documents that require an official certification.

I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Duly authorized agent of \_\_\_\_\_

**8** Return to: Name David M. Given, Esq.

Number/street 50 California Street Apt/suite 3240

City San Francisco State CA Zip 94111

Phone number (415) 398-0900 Fax number (415) 398-0911

Email dmg@phillaw.com

**SEND TO:** Library of Congress, Copyright Office, Documents Recordation Section, 101 Independence Avenue SE, Washington, DC 20559-6000  
**INCLUDE ALL THESE TOGETHER:** (1) Two copies of this form; (2) payment from a deposit account or by check/money order payable to Register of Copyrights; and (3) your document.



**NOTICE OF TERMINATION  
OF AN EXCLUSIVE OR NON-EXCLUSIVE GRANT  
OF A TRANSFER OR LICENSE OF A COPYRIGHTED WORK**

*17 U.S.C. Sec. 203*

**THIS NOTICE** terminates the below referenced exclusive or non-exclusive grant of transfers and/or license in and to the copyrighted works which appear in Schedule A (the "Works") and is made under the U.S. Copyright Act, 17 U.S.C. Sec. 203.

This Notice shall be effective as to the following grantees:

Cherry Red Records, Ltd.  
Power Road Studios  
114 Power Road  
London W4 5PY

Date of execution of the grant being terminated: **February, 28 1980.**

Date of publication of the Works: **September 2, 1980.**

The Work(s) to which the Notice of Termination applies:

Title: See Schedule A.: "Fresh Fruit for Rotting Vegetables"  
Name of Authors: Raymond J. Pepperell (a.k.a. East Bay Ray)  
Eric R. Boucher (a.k.a. Jello Biafra)  
Geoffrey Lyall (a.k.a. Klaus Floride)  
Bruce Slesinger (a.k.a. Ted)  
Darren Henley (a.k.a. D. H. Peligro)

Copyright Registration Nos.: See Schedule A.

This termination notice applies to the Agreement between Raymond J. Pepperell, Eric R. Boucher, Geoffrey Lyall, Bruce Slesinger, Darren Henley, p/k/a Dead Kennedys, and Iain McKay o/b/o Cherry Red Records, Ltd. ("Cherry Red") executed February 28, 1980.

Effective date of this termination: **September 2, 2015**

Signatures:

Kevin Raleigh

An Authorized Signatory

Decay Music o/b/o Raymond J. Pepperell, Eric R. Boucher,  
Geoffrey Lyall, Bruce Slesinger, and Darren Henley, p/k/a Dead Kennedys  
11849 West Olympic Blvd., Suite 1000  
Los Angeles, CA 90064



**SCHEDULE A:****ALBUM:** Fresh Fruit for Rotting Vegetables**PUBLISHED:** September 2, 1980**EFFECTIVE DATE OF TERMINATION:** September 2, 2015

<b>Title of Work</b>	<b>Reg. No.</b>	<b>Publication Date</b>	<b>Effective Date of Termination</b>
Kill the Poor	n/a	09/02/1980	9/02/2015
Forward to Death	n/a	09/02/1980	9/02/2015
When Ya Get Drafted	n/a	09/02/1980	9/02/2015
Let's Lynch the Landlord	n/a	09/02/1980	9/02/2015
Drug Me	n/a	09/02/1980	9/02/2015
Your Emotions	n/a	09/02/1980	9/02/2015
Chemical Warfare	n/a	09/02/1980	9/02/2015
California Über Alles	n/a	09/02/1980	9/02/2015
I Kill Children	n/a	09/02/1980	9/02/2015
Stealing People's Mail	n/a	09/02/1980	9/02/2015
Funland at the Beach	n/a	09/02/1980	9/02/2015
Ill in the Head	n/a	09/02/1980	9/02/2015
Holiday in Cambodia	n/a	09/02/1980	9/02/2015
Viva Las Vegas	n/a	09/02/1980	9/02/2015

**NOTE:** This album and the titles contained within were never registered with the Copyright Office, so there are no registration numbers.

**AFFIDAVIT OF SERVICE  
BY U.S. FIRST CLASS MAIL**

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF SAN FRANCISCO)

Kyle P. O'Malley, being duly sworn, avers that he served the enclosed NOTICE OF TERMINATION OF AN EXCLUSIVE OR NON-EXCLUSIVE GRANT OF A TRANSFER OR LICENSE OF A COPYRIGHTED WORK upon the following:

Cherry Red Records, Ltd.  
Power Road Studios  
114 Power Road  
London W4 5PY

by placing a true and correct copy in envelopes addressed as shown above and causing the same, to be deposited, with postage prepaid, in the United States mail at San Francisco, California.

  
\_\_\_\_\_  
Kyle P. O'Malley

January 13, 2014  
Date