

Getting Rights Back: Termination of Transfer



AUTHORS
ALLIANCE



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ALA CopyTalk - September 6, 2018

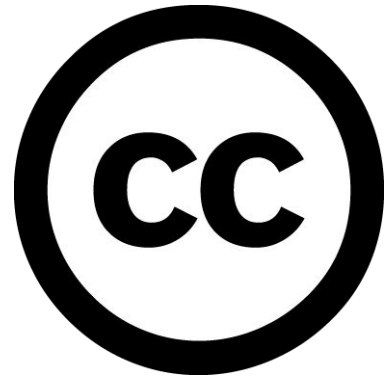
What is Authors Alliance?

- Nonprofit supporting authors who want to get (and keep!) their works in the hands of readers
- Provide educational resources and tools to help authors understand copyright and publishing contracts
- Give voice to authors in policy debates
- Join today! authorsalliance.org/join



What is Creative Commons?

- Global nonprofit working to create a vibrant and usable commons
- Provides free copyright licenses and public domain tools that anyone can use: “some or no rights reserved”
- Cataloguing and making searchable and usable the commons of openly-licensed and PD works
- Advocates for open policies and © reform
- **Join today! network.creativecommons.org**



MOST OPEN



CC0



BY



BY



SA



BY



ND



BY



NC



BY



NC



SA



BY



NC

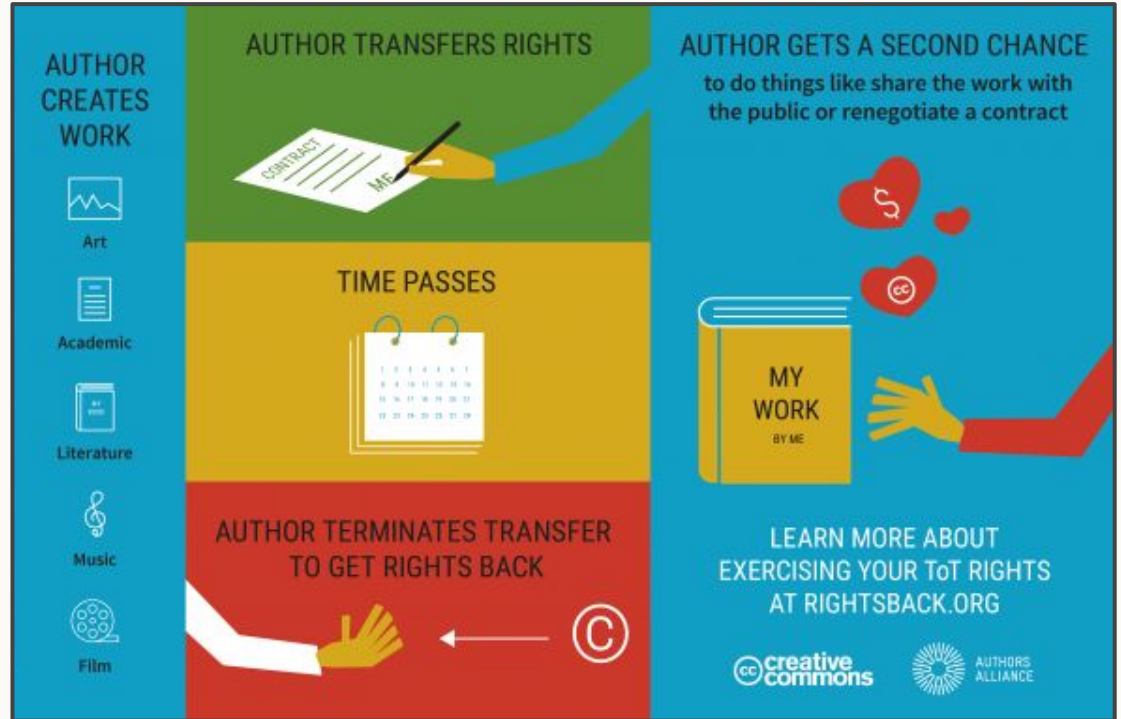


ND

LEAST OPEN

Agenda

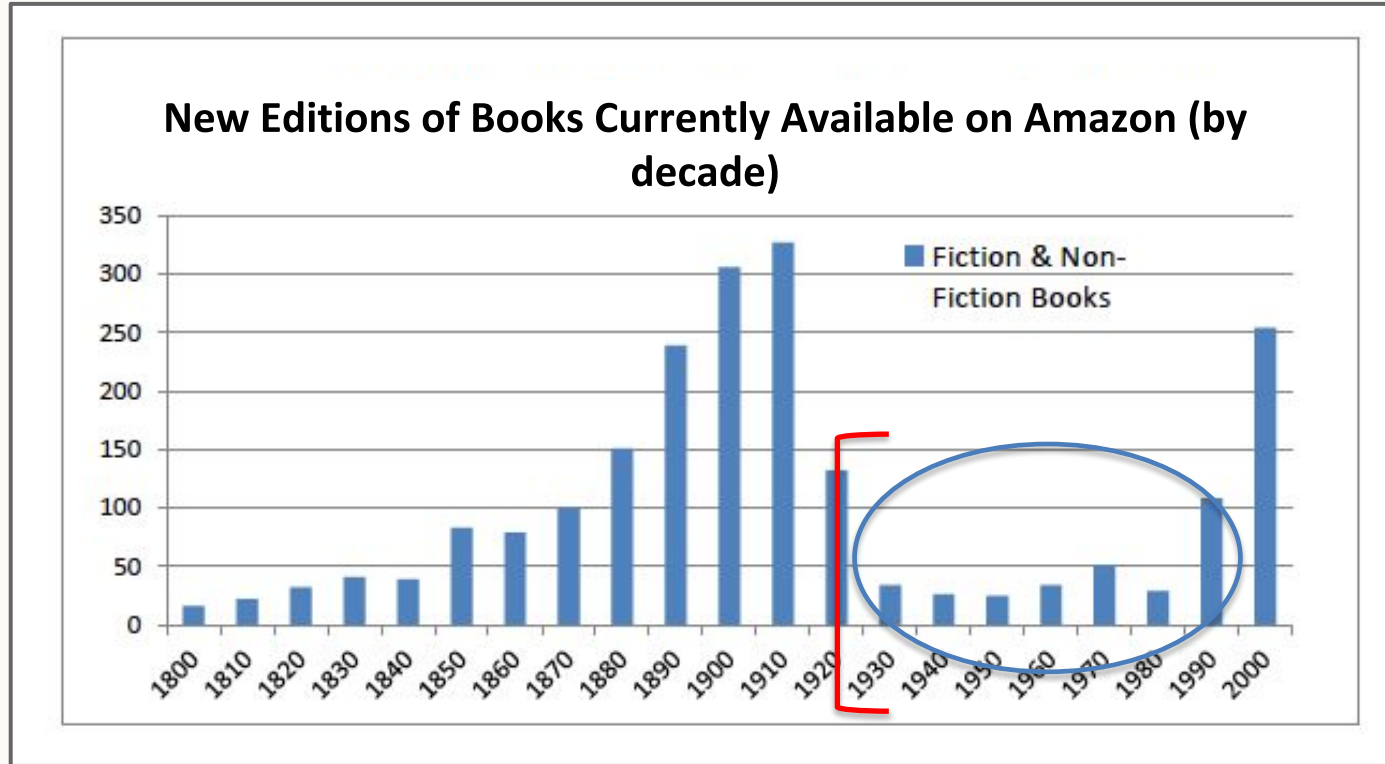
- Why get rights back?
- Termination of Transfer Basics
- Authors Alliance and Creative Commons Termination of Transfer Tool at rightsback.org
- Creative Commons Int'l Rights Back Resource



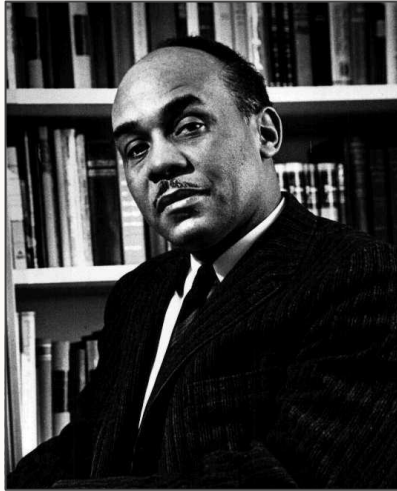
Why Get Rights Back?



Why get rights back?



Why get rights back?



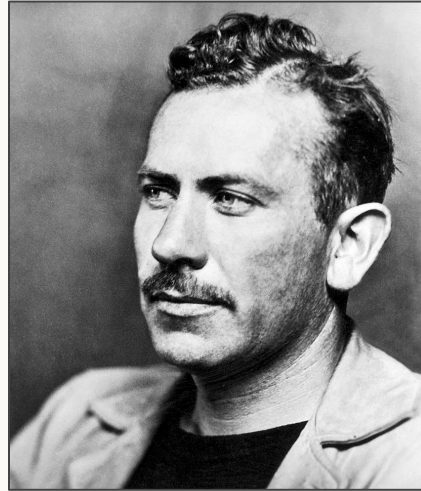
Ralph Ellison

Photo by United States Information Agency
staff photographer



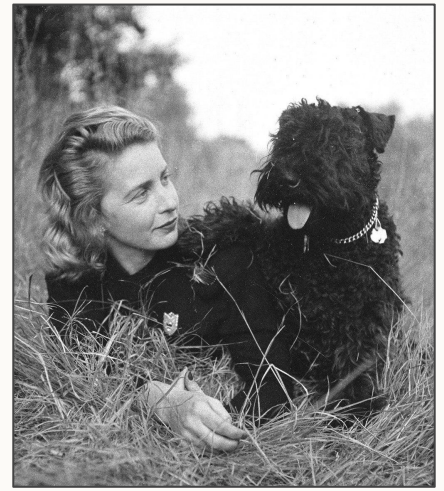
Margaret Mitchell

Photo by New York World-Telegram and the Sun
photographer Aumuller, Al



John Steinbeck

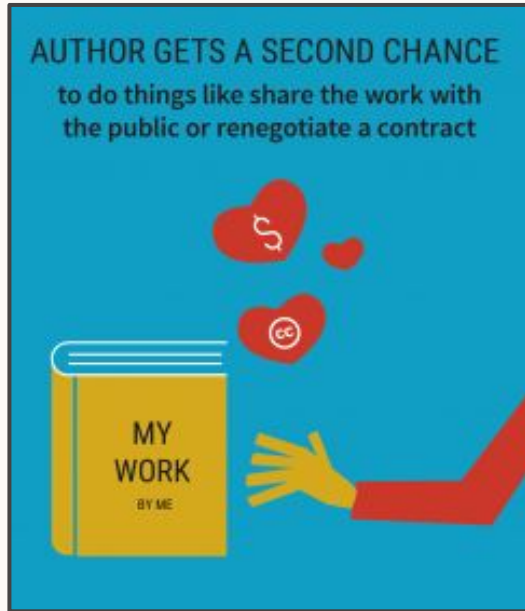
Photo by McFadden Publications, Inc.;
no photographer credited



Margaret Wise Brown

Photo by Consuelo Kanaga

Why get rights back?

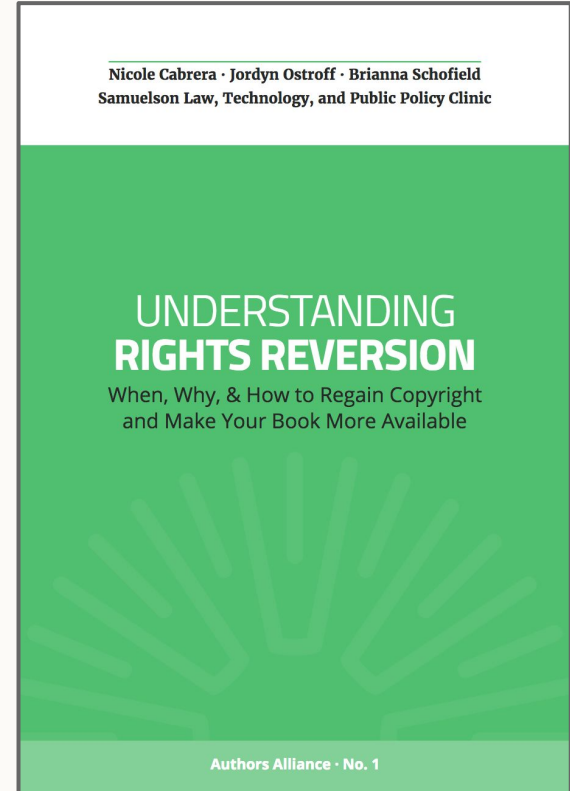


The opportunity to recapture rights allows creators to:

- Give new life to works that have outlived their commercial lives (by, for example, releasing them to the public on open terms)
- Renegotiate contracts and enjoy more of their works' financial success

Rights Reversion

- A *right of reversion* is a contractual provision permitting an author to regain some or all of the rights in her book from her publisher when its triggering conditions are met.
- Authors can still negotiate with their publishers in the absence of a contractual clause.
- Our rights reversion materials are free to download at authorsalliance.org/resources/rights-reversion-portal/



Termination Basics



Termination of Transfer

- Statutory right to get your rights back after a period of time passes
- § 203, § 304(c) or § 304(d) of the U.S. Copyright Act
- Five-year window starts 35, 40, 56, or 75 years from triggering event, depending on circumstances
 - E.g., Under § 203, a transfer executed on or after Jan. 1, 1978, agreement is generally terminable 35 years from date it was signed (or, if it covers the right to publish the work, 35 years from publication or 40 years from execution, whichever ends earlier)



Termination of Transfer



- In order to effectuate a termination right, authors must serve notice on the party whose grant is being terminated 2-10 years before the termination date.
- AND send a copy of that notice to the U.S. Copyright Office, together with a cover letter (form TCS) and \$105.



ToT Tool at Rightsback.org



IS THE ToT TOOL USEFUL TO ME?

The Termination of Transfer (ToT) tool helps authors understand the termination of transfer provisions of U.S. copyright law, which allow authors to regain copyright to creative works they have previously signed away, even if their contracts say otherwise



AUTHOR CREATES WORK



Art



Academic



Literature



Music



Film

AUTHOR TRANSFERS RIGHTS



TIME PASSES



AUTHOR TERMINATES TRANSFER TO GET RIGHTS BACK



AUTHOR GETS A SECOND CHANCE

to do things like share the work with the public or renegotiate a contract



LEARN MORE ABOUT
EXERCISING YOUR ToT RIGHTS
AT [RIGHTSBACK.ORG](https://rightsback.org)

 creative commons



Authors Alliance/Creative Commons
Termination of Transfer Tool (ToT Tool)

Termination of Transfer

[Intro](#) [About](#) [Overview](#) [Useful Documents](#) [Glossary](#) [FAQ](#) [Start the Tool!](#)

Intro

Returning Authors' Rights: The Authors Alliance/Creative Commons Termination of Transfer Tool

Welcome to the [Authors Alliance/Creative Commons](#) Termination of Transfer tool. This page explains what termination of transfer is all about and what this tool does.



Termination of transfers: Get rights back!

Creators of all kinds routinely transfer rights to their works (by signing publication contracts that assign copyright to their publishers, for example). While many of these agreements last “for the life of copyright” (which under current United States law generally means seventy years after the author dies), the law takes into account that these terms can ultimately be unfair to authors and artists. This is where “termination of transfers” come in.

In the United States, authors can use the termination of transfers laws to regain the rights they have signed away. But because the law is complex, and because it requires that authors wait years or decades to take advantage of it, creators need to be patient, savvy, and persistent to exercise this right.

Many people use terminations because their works are tremendously successful, and they want to recapture rights to enjoy more of their work’s financial success.

Many others find that their works are no longer as available as they might wish. Their books might be out of print, or their songs might not be digitized or available online. For creators who want their works to be widely shared and enjoyed—who want to take advantage of a vibrant internet that might not have existed when they signed that contract all those years ago—terminations are a powerful option for getting their works back out in front of audiences.

Whatever they choose to do, it is important that creators know this law exists, and that they feel empowered to take advantage of it. Authors Alliance and Creative Commons developed this tool to raise awareness of the law and its importance to creators who want to share their works widely.

rightsback.org

Termination of Transfer

[Intro](#) [About](#) [Overview](#) [Useful Documents](#) [Glossary](#) [FAQ](#) [Start the Tool!](#)

Returning Author's Rights: The Termination of Transfer Tool

Please note that the content provided on this website and the Termination of Transfer Tool itself are intended solely for educational purposes and do not constitute legal advice. Termination of transfers is a complex area specific to United States law requiring the analysis of many factors. As a result, nothing on this website can be expected to accurately predict whether any given person has a right to terminate a copyright assignment. Only a licensed attorney can properly evaluate the circumstances specific to each copyrighted work and determine whether a transfer of copyright is terminable. If you believe that you may have a right to terminate a transfer of copyright, you should consult an attorney. Neither Authors Alliance nor Creative Commons provide legal advice, and your use of this website and of the Termination of Transfer Tool does not create an attorney-client relationship. In addition, please note that the information on this website might not be current—please see below of the date of our last review.

Date last reviewed: September 29, 2017

Your answers

As you respond to the questions we'll save the answers here.

First tell us a few things about the work

When was the work created?

The year in which a work was created can affect its copyright status and its treatment under U.S. copyright law. Most importantly, the tool is concerned with whether a work was made before or after January 1, 1978, when the most recent overhaul of U.S. copyright went into effect.

[Back](#)[Next](#)

This website and the termination of transfers tool are not legal advice, nor does using this website or the termination of transfers tool create an attorney-client relationship. Please consult an attorney if you would like legal advice about your rights, obligations, or individual situation.

[Terms of Service](#)[Privacy Policy](#)

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Termination of Transfer tool code is licensed under the AGPL 3.0+.

rightsback.org

Termination of Transfer Tool

Statutory termination eligibility:

- Was the transfer a part of a will?
- Was the work created within the scope of the author's employment?
- Was the work created in response to a special order or commission?

Transfer by Will

It is unlikely that works with the characteristics provided would have a termination right. The information provided indicates that the agreement or transfer in question is a will. Transfers of copyright interests that occur by will cannot be terminated. Please consult a licensed attorney to determine whether the copyright assignment was transferred by a will and whether a termination right in fact exists for a given work.

Possible public domain work:

- When was the work created?
- Was the work published? If so, when?
- Does the work have a copyright notice?
- Was the work registered with the U.S. Copyright Office?

Public domain work

Works with the characteristics provided would likely be in the public domain. Because works in the public domain are not protected by copyright, the termination of transfer provisions are inapplicable. Please consult a licensed attorney to determine whether a work with the characteristics provided are in the public domain and whether a termination right in fact exists for a given work.

Timing of termination window:

- When was the work created?
- Was the work published? If so, when?
- Was the work registered? If so, when?
- When was the agreement signed?

Termination Type	Under § 203
§ 203 notice window	2006-2019
§ 203 termination window	2016-2021

Termination of Transfer Tool

First tell us a few things about the work

When was the work created?

The year in which a work was created can affect its copyright status and its treatment under U.S. copyright law. Most importantly, the tool is concerned with whether a work was made before or after January 1, 1978, when the most recent overhaul of U.S. copyright went into effect.

Termination of Transfer Tool

Your answers

When was the work created?	1980
Has the work been published?	yes
When was the work first published?	1981
When was the work first published under the grant?	1981
Published works from 1989 and earlier usually display a copyright notice. Did the work have a copyright notice?	yes
Has the work been registered with the United State Copyright Office?	no
What is the year of the agreement or transfer?	Effective: 1980 User entered: 1980

First tell us a few things about the work

Did the agreement or transfer include the right of publication?

If a [transfer](#) from 1978 or later includes the right of [publication](#), there is a different set of rules for determining when the transfer is eligible for termination.

☐ yes ☐ no ☐ maybe

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Termination of Transfer Tool

Termination of Transfer Information Sheet Creative Commons and Authors Alliance

This is an information sheet generated by the Termination of Transfer tool developed by Creative Commons and Authors Alliance (last reviewed October 5, 2017). The information provided here is intended solely for educational purposes and does not constitute legal advice. Only a licensed attorney can properly evaluate the circumstances specific to each copyrighted work and determine whether a transfer of copyright is terminable.

If you believe that you may have a right to terminate a transfer of copyright, you should consult an attorney. Neither Authors Alliance nor Creative Commons provide legal advice, and your use of the Termination of Transfer Tool does not create an attorney-client relationship.

For more information, check out the FAQ at <https://rightsback.org/faq/>.

Information Sheet Date: 25th July 2018

Results

Potentially Eligible for termination Under § 203

Thank you for using the Termination of Transfer Tool. Works with the characteristics provided potentially are eligible for termination during the windows specified in the PDF information sheet. Feel free to check out the FAQ for additional information. Please consult a licensed attorney to better understand the complexities of copyright termination and to determine whether a termination right fact exists for a given work.

Flags

Understanding the § 203 termination window

When a transfer made in or after 1978 is eligible for a termination, it will be under section 203 of the Copyright Act. In these circumstances, the termination window opens 35 years after the transfer and lasts for five years; however, if the author granted publication rights, the test is a little different. In those cases, the five-year termination window opens either 35 years from publication or 40 years from the transfer—whichever comes first.

Details

Creation Year	1990
Effective Grant Year	1990
User Entered Grant Year	1990
Termination Type	Under § 203
§ 203 notice window	2015-2028
§ 203 termination window	2025-2030

Details

Creation Year	1990
Effective Grant Year	1990
User Entered Grant Year	1990
Termination Type	Under § 203
§ 203 notice window	2015-2028
§ 203 termination window	2025-2030

Termination of Transfer Tool: Scenario 1

Your answers	
When was the work created?	1980
Has the work been published?	yes
When was the work first published?	1981
When was the work first published under the grant?	1981
Published works from 1989 and earlier usually display a copyright notice. Did the work have a copyright notice?	yes
Has the work been registered with the United State Copyright Office?	yes
When was the work registered with the United States Copyright Office?	1981
What is the year of the agreement or transfer?	Effective: 1980 User entered: 1980
Did the agreement or transfer include the right of publication?	yes
Is the agreement or transfer in question part of a last will and testament ?	no
Are any of the authors or artists still alive?	yes
Was the work created within the scope of the author's employment ?	no
Was the work created in response to a special order or commission by some other person or company?	no
Has the original transfer since been renegotiated or altered?	no
Did one or more of the authors enter into the agreement or transfer?	yes

Termination of Transfer Tool: Scenario 1

Details

Creation Year	1980
Publication Year	1981
Publication Year Under Grant	1981
Triggering Publication Date	1981
Effective Grant Year	1980
User Entered Grant Year	1980
Copyright Registration Year	1981
Termination Type	Under § 203
§ 203 notice window	2006-2019
§ 203 termination window	2016-2021

Termination of Transfer Tool: Scenario 2

Your answers

When was the work created?	1950
Has the work been published?	yes
When was the work first published?	1950
When was the work first published under the grant?	1950
Published works from 1989 and earlier usually display a copyright notice. Did the work have a copyright notice?	yes
Has the work been registered with the United State Copyright Office?	yes
When was the work registered with the United States Copyright Office?	1950
What is the year of the agreement or transfer?	Effective: 1950 User entered: 1950
Is the agreement or transfer in question part of a last will and testament ?	no
Was the work created within the scope of the author's employment ?	no
Was the work created in response to a special order or commission by some other person or company?	no
Has the original transfer since been renegotiated or altered?	no
Did one or more of the authors enter into the agreement or transfer?	yes

Termination of Transfer Tool: Scenario 2

Details

Creation Year	1950
Publication Year	1950
Publication Year Under Grant	1950
Effective Grant Year	1950
User Entered Grant Year	1950
Copyright Registration Year	1950
Termination Type	Under § 304
§ 304(c) notice window begins	1996
§ 304(c) notice window ends	2009
§ 304(c) termination window begins	2006
§ 304(c) termination window ends	2011

Termination of Transfer Tool

Termination of Transfer Information Sheet Creative Commons and Authors Alliance

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If you believe that you may have a right to terminate a transfer of copyright, you should consult an attorney. Neither Authors Alliance nor Creative Commons provide legal advice, and your use of the Termination of Transfer Tool does not create an attorney-client relationship.

For more information, check out the FAQ at <https://rightsback.org/faq/>.

Information Sheet Date: 25

Results

Potentially Eligible for termination
Under § 203

Thank you for using the Termination of Transfer tool. You are free to check out the FAQ for more information and to understand the complexities of copyright law. The fact exists for a given work.

Flags

Understanding the § 203

When a transfer made in or after 1976, the Copyright Act. In these circumstances, the transfer lasts for five years. However, in those cases, the five-year term is calculated from the transfer—whichever

Details

Creation Year
Effective Grant Year
User Entered Grant Year
Termination Type
§ 203 notice window
§ 203 termination window

This is an information sheet generated by the Termination of Transfer tool developed by Creative Commons and Authors Alliance (last reviewed October 5, 2017). The information provided here is intended solely for educational purposes and does not constitute legal advice. Only a licensed attorney can properly evaluate the circumstances specific to each copyrighted work and determine whether a transfer of copyright is terminable.

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For agreements on or after January 1, 1978

If an author first published a work between
1980-1993,
the notification window could now be open!

(assuming publication rights were included, the work was published within 5 years of the grant, and the work is eligible for termination)

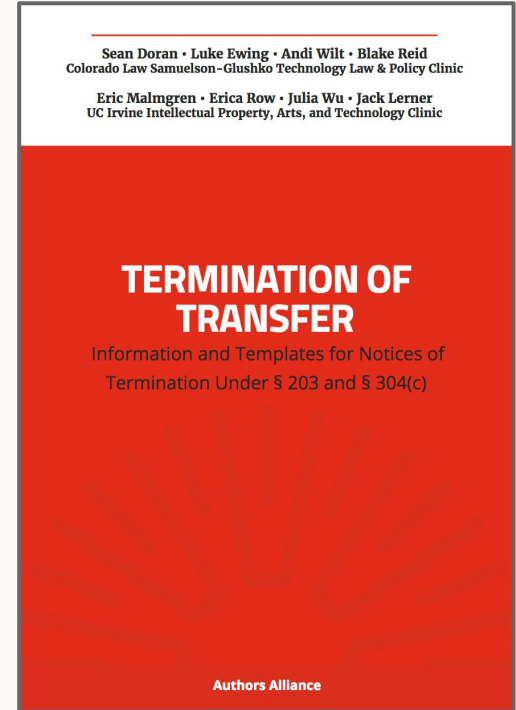
For agreements prior to January 1, 1978

If copyright was secured between
1959-1972,
the notification window could now be open!

(assuming the work is eligible for termination)

Termination of Transfer: Notice Templates

- In order to effectuate a termination right, authors must serve notice on the party whose grant is being terminated 2-10 years before the termination date.
- Authors must also submit a copy of that notice of termination to the U.S. Copyright Office.
- Templates for and information about notices of termination available at:
authorsalliance.org/resources/termination-of-transfer/



Rights Back Resource



RIGHTS BACK RESOURCE



<https://labs.creativecommons.org/reversionary-rights/>



Termination and Reversion Rights Globally

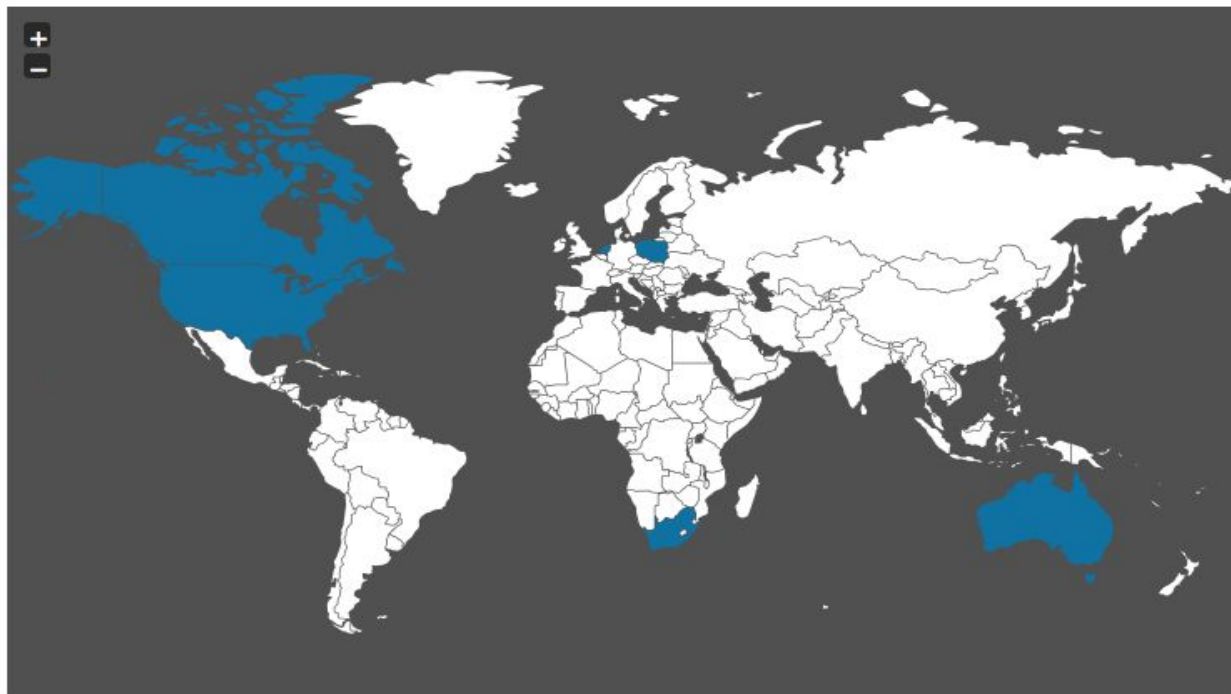
- Other countries provide statutory rights that allow authors to reclaim or have their rights returned
- Generally, come in two flavors:
 - Automatic reversion: e.g., In Canada, assignment or grant of the copyright in certain works terminates 25 years after the death of the author, and reverts to the author's estate
 - Termination upon demand: e.g., in Poland, an author has a right to renounce or terminate the contract and claim the damage, if the acquirer of the author's economic rights or the licensee does not start the dissemination of the work within the agreed time limit.

What's the Rights Back Resource?

- Searchable database of termination and reversionary rights in other countries
- Aggregates
 - Laws (enacted and pending/proposed)
 - Case law and administrative decisions
 - Scholarly articles and other resources
 - Links to termination tools (currently U.S. and Poland)
 - Other information and contact information
- Legal experts and others are encouraged to contribute!



Countries



Select a country on the map above, or:

Poland

Legislation

Title	Number
Act of 4 February 1994 On copyright and Related Rights, Journal of Laws of 2017, item 880,1089 from 2018, item 650	art. 57, Section 1

Bills

Title	Number
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Decisions

Title	Number
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Resources

Title

Contribute a New Entry

If you know of an entry we should add to this page, you can select one of the links here to go to the form for doing so:

- [Add new legislation](#)
- [Add a new bill](#)
- [Add a new legal decision](#)
- [Add a new other resource](#)

Contributors

Katarzyna Strycharz.

Act of 4 February 1994 On copyright and Related Rights, Journal of Laws of 2017, item 880,1089 from 2018, item 650

Country

[Poland](#)

Number

art. 57, Section 1

Effective Date

1994-05-23

Link

http://www.prawoautorskie.gov.pl/media/download_gallery/04_18.pdf

Link (in English)

http://www.copyright.gov.pl/media/download_gallery/Act%20on%20Copyright%20and%20Related%20Rights.pdf

Summary

"If the acquirer of the author's economic rights or the licensee who has undertaken to disseminate the work does not start the dissemination within the agreed time limit or if there is no agreed time limit, the author may renounce or terminate the contract within two years from the acceptance of the work and may claim the damage to be repaired after the expiry of an additional time limit, not shorter than six months." This provision was meant to protect the interests (both moral and economic) of the creator (and legal successors), which concern the public presentation (public access) of his work. The author has a right to renounce or terminate the contract and claim the damage, if the the acquirer of the author's economic rights or the licensee does not start the dissemination of the work within the agreed time limit. The author can exercise his rights only after the expiry of an additional period, not shorter than six months after agreed time limit or if the is no agreed time limit, after two years from the acceptance of the work. This provision does not apply to architectural and architectural and urban planning works.

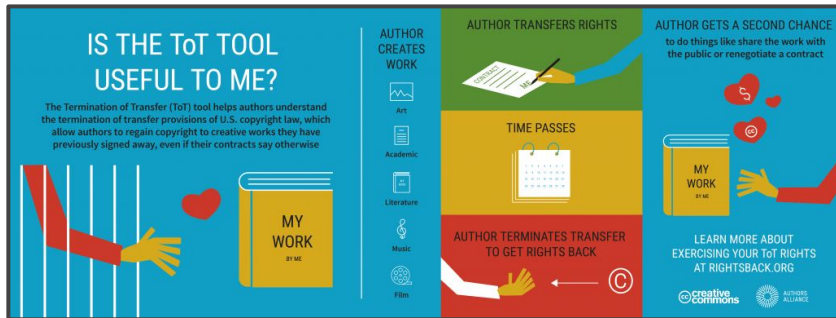
Contributed By

Katarzyna Strycharz

Questions?



AUTHORS
ALLIANCE



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