

The American Bar Association  
Section of Intellectual Property Law  
and the  
ABA Center for Continuing Legal Education  
Present

## **Termination of Transfer Rights 101**





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## **FICTIONAL CHARACTERS AND SUPERHEROES ARE THEY IMMORTAL?**

**Carole E. Handler**

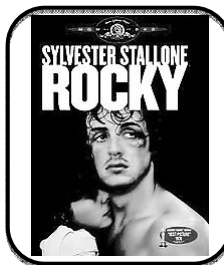
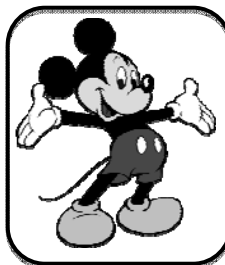
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**Are characters immortal? Do they survive  
the episodes in which they appear?**



**Characters are often afforded copyright protection independent  
of the filmed or televised works in which they appear.**

## To understand character in termination, must understand the importance of character



- Character draws us into any film or story.
  - Rich, multidimensional “round” characters – Anna Karenina, A Place in the Sun, Rick in *Casablanca*.
  - Single quality, “flat” characters – Laurel and Hardy, silent film comedies, some comic book characters.
  - “Idea” v. “Expression” – what is protectable?
  - Scènes à faire.
- Known characters create a common language and make communication instantaneous.
  - Symbols for self-identification.
  - Understood by recipient above any other transnational issue.
  - Used in games, social networking, videos, etc.
- The viewer – consumer – reader is a creator and recognized in copyright.
  - Everyone sees a movie character differently; Allen’s take on *Casablanca* in *Play It Again, Sam*; viewer is part of the artistic experience.
  - Technology allows the consumer to share that creative dimension – is that infringement?
- Characters are defined outside their stories.

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**“Flat” characters – When are characters mere ideas or stock figures and not protectable?**



- E.M. Forster, *Aspects Of The Novel*; “Flat” characters are predictable, repetitive, “idées fixes” (drunken Santa, Punch and Judy).
- Jung, *Man and His Symbols*, Ancient myths embody archetypes that invoke universal themes – hero myths follow a universal pattern. Are they protectable? Likely not. But Superman is.
- Bergson, *Laughter*; Comedic figures are repetitive, rigid, do not invoke feeling (Bugs Bunny “steamroller” characters), and embody stock characteristics that make us laugh. Often not copyrightable.



## **“Round” characters – What makes a character protectable?**



- Forster, *Aspects of the Novel*; multidimensional characters have a life of their own; “round” characters are fully developed.
- *Nichols v. Universal Pictures Corp.*, 45 F.2d 119,121 (2d Cir. 1930) “[I]deas in the play [are] as little capable of monopoly as Einstein’s Doctrine of Relativity, or Darwin’s Theory of the Origin of Species. It follows that the less developed the characters, the less they can be copyrighted.”
- Cases pay lip service to protecting the “fully developed” character but are often not decided that way – often depends if they are in a series.

## **Cases that govern character protection in traditional media: Second Circuit test**



- *Nichols v. Universal Pictures Corp.* follows a “character delineation” test. Judge Hand ruled that characters must be developed with sufficient specificity to be deemed expression, not an idea.
- Has been applied to characters like James Bond, Tarzan, Rocky Balboa. But what makes them “developed”?



## The Ninth Circuit test

- The “story being told” test: *Warner Bros. Pictures v. Columbia Broadcasting System*, 216 F.2d 945 (9th Cir. 1954).
  - Dashiell Hammett’s use of his “Sam Spade” character in a television series did not infringe his grant of film rights in *The Maltese Falcon* to Warner Bros.
  - “It is conceivable that the character really constitutes the story being told, but if the character is only the chessman in the game of telling the story, he is not within the area of protection afforded by the copyright.”
  - Test is hard to apply; not favored and comes out of unfavorable facts.
  - Single (remade) movie, not a series with continuing characters.



## Ninth Circuit; the visual depiction test



- *Walt Disney Prod'ns v. The Air Pirates*, 581 F.2d 751 (9th Cir. 1978);
  - Distinguishes between literary characters depicted in words (Sam Spade) and characters portrayed visually. Case involved an “underground” comic book portraying Disney characters in an unflattering light.
- Characters create a Disney “brand.”
- Court held that: Comic book characters are more akin to expression than are literary characters, developed only in words. Referencing 1914 cases, court abandons “delineation” test (and idea/expression dichotomy), for a bright line test protecting *all* graphic depiction.



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## Ninth Circuit; 007



- *Metro-Goldwyn-Mayer v. American Honda Motor Co., Inc.*, 900 F. Supp. 1287 (C.D. Cal. 1995).
- A hero's stock characteristics can be combined to create a copyrightable character; tuxedo, good looks, shaken not stirred, beautiful companions.
  - Honda developed a commercial for a car with a detachable roof, featuring a glamorous couple and metal-encased villain. The darkly handsome driver releases the detachable roof, sending the villain into space.
  - Honda alleged that the film was mere “genre,” that the villain and woman were stock characters, and that Bond is not protectable as a character.
  - At issue: did MGM have rights in the character?
    - “Plaintiffs MGM do not allege that Defendants have violated Plaintiffs’ copyright in the James Bond character itself, but rather in the James Bond character as *expressed and delineated in Plaintiffs’ sixteen films*. To the extent that copyright law only protects original *expression*, not *ideas*, Plaintiffs’ argument is that the James Bond character as developed in the sixteen films is the copyrighted work at issue, not the James Bond character generally.” *See, e.g., Anderson v. Stallone*, 1989 U.S. Dist. LEXIS 11109, 11 U.S.P.Q.2D (BNA) 1161, 1989 WL 206431, \*6 (C.D. Cal. 1989) (holding that Rocky characters as developed in three “Rocky” movies “constitute expression protected by copyright independent from the story in which they were contained”).

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## Ninth Circuit; 007

- Court held Bond as developed in a film series is protectable independent of a single story – as expressed in the then 16 films.
  - Bond’s characteristics – “his cold-bloodedness; his overt sexuality; his pre-*Casino Royale* love of martinis “shaken, not stirred;” his marksmanship; his “license to kill” and use of guns; his physical strength,” – not to mention his penchant for fast cars, vintage wines, evening jackets, and glamorous female companions – are hardly unique, and taken one by one, might be deemed no more than “*scènes à faire*.” But in combination, in a series of novels and films, with his “entourage” (M, Q, Felix Leiter) his traits create a unique and unforgettable character who is both “the story being told” and the fully delineated character that Judge Hand ruled would be protectable in *Nichols*.✂ True of Rocky, Freddy, Tarzan, Bond.
  - Deconstructing character into “ideas” does not divest it of copyright.✂





## Other cases – series is important

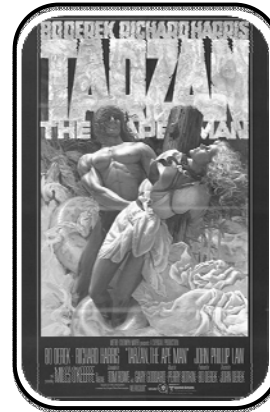
- *Anderson v. Stallone*, 11 U.S.P.Q. 2d 1161 (C.D. Cal. 1989)
  - The *Anderson* court stated that Sylvester Stallone’s “Rocky” character “is such a highly developed character that ... his character has become identified with specific character traits ranging from speaking mannerisms to his physical characteristics,” but --
    - Isn’t Rocky no more than the classic underdog (loser) who triumphs against the odds?
    - The court concluded that because Rocky is a reappearing character, together with his entourage, *Rocky* and the other primary characters were “so highly developed and central” to the Rocky movies that they constituted “the story being told,” and indeed, that Rocky was copyrighted independent of any given story. What is the effect of this theory when terminations are raised?

## Other cases – series

- *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, 519 F. Supp. 388 (S.D.N.Y. 1981), *aff'd* 683 F.2d 610 (1982)

- Issue was whether Edgar Rice Burroughs' "Tarzan" character, as described in numerous novels, was infringed by a modern remake of the movie *Tarzan, The Ape Man*. The court found that "Tarzan" was protected by copyright, stating:

"It is beyond cavil that the character 'Tarzan' is delineated in a sufficiently distinctive fashion to be copyrightable. . . . Tarzan is the ape-man. He is an individual closely in tune with his jungle environment, able to communicate with animals, yet experience human emotions. He is athletic, innocent, youthful, gentle and strong. He is Tarzan."



## Other cases – series

- *Silverman v. CBS, Inc.*, 632 F. Supp. 1344 (S.D.N.Y. 1986) (Amos 'n Andy Series)
  - Characters appearing in audio-visual works, even if the literary works embodying them are in the public domain, remain protected and cannot be used in new works – protection goes beyond the work itself to the very character. Even if episode is in the public domain, could be protected by trademark.

## What happens to character if episode falls into public domain or is terminated?



- *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, 683 F.2d 610 (1982)
  - Purported termination of certain works ineffective.
  - MGM was granted right to create a story based on the character of Tarzan. Had remake rights. Produced a film.
  - 1959: remade *Tarzan the Ape Man*. Burroughs sued on the grounds that film exceed agreement. Court found for MGM.

## Tarzan and Terminations; Sec. 304(c)



- December 12, 1977: Burroughs family attempted to terminate. Recorded in copyright office. No service on MGM. 1976 Act not yet effective.
- 1980: MGM announced plans for a remake. Lower court found that in the 1931 agreement, a copyright interest had been conveyed and that the notice of termination was ineffective because (a) 1976 Act was not yet effective, (b) MGM had not been served, and (c) the notice did not list each grantee or title.
- Summary judgment for MGM

## Tarzan and Termination



- Plaintiff claimed a copyright in the underlying work – and that any character license was infringed.
  - “Plaintiffs argue that ERB, Inc.’s surviving interest in these five titles (“the Surviving Five”) is irrelevant to the present lawsuit because if Tarzan as a literary character is protectable by copyright, he was copyrightable only in his initial appearance, for only in that appearance was he original. MGM was given a copyright license to use the character Tarzan, that license was revoked when the heirs gave ERB, Inc., notice of termination of the Book. . .

\* \* \*

In sum, as the 1931 Agreement was written, ERB, Inc., gave MGM, by hypothesis, a license to use the character Tarzan and any of the other characters from fourteen of Burroughs’s books. After the heirs’ notice of termination, ERB, Inc., still had authority to license the character Tarzan by virtue of its rights in the Surviving Five, and MGM therefore still had the right to reuse Tarzan and whatever other characters it had used in the 1932 film if they appeared in any of the Surviving Five.”

## Newman Concurrence



- “I accept the majority’s premise that the omission of the five titles from the termination notice the heirs gave to ERB, Inc. left the corporation with the same rights it would have had if the 1923 grant from Burroughs had conveyed rights in only those five titles. But I cannot agree with the conclusion that the Corporation, as grantee of copyright in the five omitted titles, would have been able to convey to MGM any right under copyright to the character Tarzan. This conclusion fails to reckon with the fundamental principle of copyright law that a **proprietor’s copyright protects only what is original with the proprietor or his grantor**. On the assumption that the character Tarzan is sufficiently delineated to support a copyright, there is no dispute that the delineation was complete upon the 1912 appearance of the first Tarzan title Tarzan of the Apes. Subsequent titles, including the omitted five, contained original exploits of Tarzan, but were not original with respect to the character itself. As to the character Tarzan, the subsequent titles were sequels, ‘subsequent stories employing the same character.’

\* \* \*

When Burroughs granted to the Corporation the rights to Tarzan of the Apes, he conveyed a copyright interest in the character Tarzan. Section 101(c)(6) of the Act, 17 U.S.C. s 304(c)(6), provides that upon the effective date of termination, ‘all of a particular author’s rights under this title that were covered by the terminated grant revert’ to those owning the author’s interest in the extended renewal term, in this case, the heirs. At least as between the heirs and the Corporation, the termination notice, by including Tarzan of the Apes among the 35 listed titles, effectively restored to the heirs all of their copyright interest in that work, including the character of Tarzan.”

**Public Domain: *Silverman v. CBS Inc.*, 632  
F.Supp. 1344 (S.D.N.Y. 1986)**



- Plaintiff wanted to use Amos 'n' Andy characters in a musical comedy, using radio programs broadcast from 1928-48 scripts; in public domain. CBS counterclaimed for infringement.
- Moving for summary judgment, CBS alleged that any use of its characters infringed both copyright and trademark.

“With the broadcasts protected, but not at issue, and the scripts in the public domain, the question becomes, may the plaintiff, as he proposes, freely use any part of these programs ‘including but not limited to, their title, characters, format, structure, themes, plots, character names and physical embodiments, characterizations and character relationships.’ We cannot make so sweeping a declaration. Admittedly, the plaintiff can incur no liability for copyright infringement by using parts of the public domain scripts. However, if he makes ‘free use’ of the items enumerated above, he may incur other liability. For example, despite loss of copyright protection, the Amos ‘n’ Andy characters may be protected by the law of trademark or unfair competition. *See 1 Nimmer §2.12* at 2-177 & n.25. Consequently, the plaintiff is free to use the 1928-1948 scripts *only* if he does not infringe other property rights of CBS.”

**Summary of principles**



- **Character copyright often survives the copyright of specific stories or episodes.**
- **Characters have an independent mortality.**
- **What does this mean when rights to the original episode are terminated?**
- **Does “original” mean “the first?”**



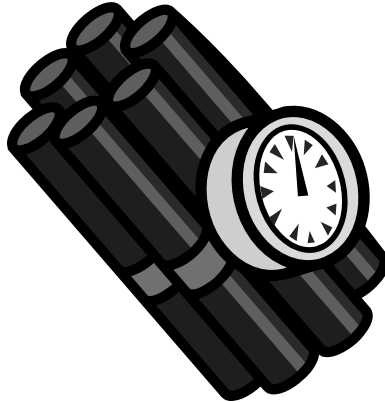
# Thank You



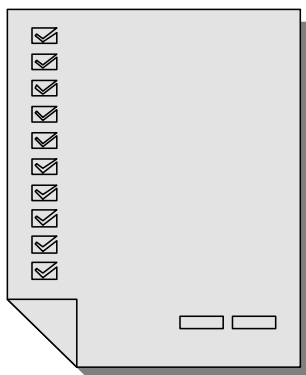
**Carole E. Handler**  
(310) 860-8704  
handler@wildman.com



## Notices of Termination



## What Is the Form for the Bomb?



## Identify the Work

- Title
- Author
- For Pre 1/1/78 Grants, the © Date
- Original © registration number



## Notice of the Grants Affected

- Describe the Grant;
- Grant Date;
- Name of each grantee or its successor in interest;
- Addresses for service;
- Effective date of termination



## Who Do You Serve?

- (i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or
- (ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.



## Where/How Do You Serve?

- Personal Service or
- First class mail to the last known address
  - 37 CFR § 201.10(d)(1).
- Service may result in personal jurisdiction over you in the notice recipient's district.
  - *Marvel Worldwide, Inc. v. Kirby*, USDC, SDNY, Case No. 1:10-cv-00141.

## Who Must Sign the Notice?

- For §304 terminations, the grantor, if author was not the grantor.
- The author-grantor
- If the grantor was the author, and author is dead, then a majority of the statutory heirs

Where there is a surviving spouse and children, at least one child must sign with the widow to effect a termination.

## What if I Make a Mistake in the Notice?

Harmless errors that do not materially affect the adequacy of the information shall not render the notice invalid.

37 CFR §201.10(e)



# Super Clause Saves the Day

[E]ach and every work (in any medium whatsoever, whenever created) that includes or embodies any character, story element, or indicia reasonably associated with SUPERMAN or the SUPERMAN stories, such as, without limitation, Superman, Clark Kent, Lois Lane, Perry White, Jimmy Olsen, Superboy, Supergirl, Lana Lang, Lex Luthor, Mr. MXYZTPLK . . . , Ma and Pa Kent, Steel, the planet Krypton, Kryptonite, Metropolis, Smallville, or the Daily Planet. Every reasonable effort has been made to find and list herein every such SUPERMAN-related work ever created. Nonetheless, if any such work has been omitted, such omission is unintentional and involuntary, and this Notice also applies to each and every such omitted work.

## Record in the Copyright Office


- Before the termination date
- An exact duplicate notice
  - Legible and capable of being scanned
- Showing the actual signatures
- With proof of service
- With the recording fee

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Clerk of the Copyright Office



HON. SUZANNE K. NUSBAUM (RET.)

Hon. Suzanne K. Nusbaum (Ret.) is fulltime neutral, providing amicable dispute resolution in copyright cases. Judge Nusbaum serves as an arbitrator, mediator and settlement judge on many ADR rosters, including the U.S. District Court for the Northern District of California, California Superior Court, FINRA, the International Chamber of Commerce, the World Intellectual Property Organization, and Arts Arbitration and Mediation.

A member of the ABA Copyright Litigation Committee, and an ABA Foundation Fellow, she serves as Vice Chair of the LESI Copyright Licensing Committee.

She chairs the Northern California Chapter of the Chartered Institute of Arbitrators, and is a Master of the San Francisco Bay Area American Inn of Court. She belongs to the Santa Clara County Bar Association High Tech Executive Committee, and the ADR Committee of the IPO.

You may contact her at 119 Millrich Drive, Los Gatos, CA 95030 USA.

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**NOTICE OF TERMINATION OF TRANSFER  
COVERING EXTENDED RENEWAL TERM**

TO: Time Warner Inc.  
c/o Gerald M. Levin  
Chairman of the Board & C.E.O.  
75 Rockefeller Plaza  
New York, NY 10019

Time Warner  
Entertainment Company, L.P.  
75 Rockefeller Plaza  
New York, NY 10019

Warner Communications Inc.  
75 Rockefeller Plaza  
New York, NY 10019

Warner Bros. Inc.  
c/o Robert Daly and Terry Semel  
Co-Chairmen of the Board & Co-C.E.O.  
4000 Warner Boulevard  
Burbank, CA 91522

DC Comics Inc.  
c/o Jenette Kahn  
President & Editor In Chief  
1700 Broadway  
New York, NY 10019

DC Comics,  
a New York General Partnership  
c/o Paul Levitz  
Executive V.P. & Publisher  
1700 Broadway  
New York, NY 10019

Warner Bros. Television  
c/o Tony Jonas, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Bros. Consumer Products  
c/o Dan Romanelli, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Bros. Worldwide Licensing  
c/o George Jones, President  
4000 Warner Boulevard  
Burbank, CA 91522

Warner Music Group  
c/o Robert Daly and Terry Semel  
Co-Chairmen  
75 Rockefeller Plaza  
New York, NY 10019

Dark Horse Publications  
c/o Michael Richardson, President  
10956 S.E. Main St.  
Milwaukie, OR 97222

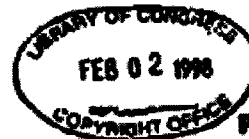
Marvel Entertainment Group, Inc.  
c/o Scott Sassa, C.E.O.  
387 Park Ave. South  
New York, NY 10016

Hasbro, Inc.  
c/o Alan Hassenfeld, C.E.O.  
1027 Newport Ave.  
Pawtucket, RI 02861

Fleer/Skybox International  
c/o Ed Feeley, President & C.E.O.  
1120 Route 73  
Mt. Laurel, NJ 08054

Golden Books Publishing  
1220 Mound Ave.  
Racine, WI 53404

Inverse Ink  
TAO Research Corporation  
c/o Lingtao Wang, President  
785A Castro Street  
Mountain View, CA 94041



PLEASE TAKE NOTICE that pursuant to Section 304(c) of the Copyright Law (Title 17, U.S.C.) and the regulations issued thereunder by the Register of Copyrights, 37 C.F.R. section 201.10, the undersigned Joanne Siegel and Laura Siegel Larson, being the persons who own an interest sufficient to terminate transfers pursuant to said statutory provisions, hereby terminate the grant of the transfer of renewal copyright(s) (to the extent of author Jerome Siegel's share in the ownership of the renewal copyright(s)) made in a certain agreement between Jerome Siegel and Joe Shuster and Detective Comics, Inc. executed on or about December 4, 1937, and the undersigned set forth in connection therewith the following:

1. The names and addresses of the grantees and/or successors in title whose rights are being terminated are as follows. Time Warner Inc., 75 Rockefeller Plaza, New York, NY 10019; Time Warner Entertainment Company, L.P., 75 Rockefeller Plaza, New York, NY 10019; Warner Communications Inc., 75 Rockefeller Plaza, New York, NY 10019; Warner Bros. Inc., 4000 Warner Boulevard, Burbank, CA 91522; DC Comics Inc., 1700 Broadway, New York, NY 10019; DC Comics, a New York General Partnership, 1700 Broadway, New York, NY 10019; Warner Bros. Television, 4000 Warner Boulevard, Burbank, CA 91522; Warner Bros. Consumer Products, 4000 Warner Boulevard, Burbank, CA 91522; Warner Bros. Worldwide Licensing, 4000 Warner Boulevard, Burbank, CA 91522; Warner Music Group, 75 Rockefeller Plaza, New York, NY 10019; Dark Horse Publications, 10956 S.E. Main St., Milwaukie, OR 97222; Marvel Entertainment Group, Inc., 367 Park Ave. South, New York, NY 10016; Hasbro, Inc., 1027 Newport Ave., Pawtucket, RI 02861; Fleer/Skybox International, 1120 Route 73, Mt. Laurel, NJ 08054; Golden Books

Publishing, 1220 Mound Ave., Racine, WI 53404; and Inverse Ink, TAO Research Corporation, 785A Castro Street, Mountain View, CA 94041. Pursuant to 37 C.F.R. Section 201.10(d), service of this notice is being made by first class mail to the above grantees or successors at the addresses shown.

2. Each work to which this notice of termination applies is as follows: The title of the original copyrighted work to which this Notice of Termination applies is SUPERMAN, an illustrated comic book story constituting a front cover and pages 1-13, inclusive, in the body of Action Comics, Vol. 1, No. 1, June, 1938 issue, publication date April 18, 1938 (which is also the date that copyright was originally secured in this work), Copyright Registration No. B379787. This work was written by Jerome Siegel and illustrated by Joe Shuster. Renewal for the work was made June 1, 1965, in the name of National Periodical Publications, Inc. claiming as proprietor of copyright, renewal registration No. R362188. The aforesaid work was based upon the following works to which this Notice of Termination also applies: Twenty-four (24) days (i.e., four weeks) of previously unpublished SUPERMAN newspaper comic strips (created c. 1934), also written by Jerome Siegel and illustrated by Joe Shuster; and a seven page synopsis of the last 18 days (i.e., weeks 2, 3, & 4) of said 24 days of strips, also created c. 1934 and written by Jerome Siegel. The remaining works to which this Notice of Termination applies<sup>1</sup> are:

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<sup>1</sup>This Notice of Termination applies to each and every work (in any medium whatsoever, whenever created) that includes or embodies any character, story element, or indicia reasonably associated with SUPERMAN or the SUPERMAN stories, such as, without limitation, Superman, Clark Kent, Lois Lane, Perry White, Jimmy Olsen, Superboy, Supergirl, Lana Lang, Lex Luthor, Mr. MXYZPTLK (also known as Mr. MXYZPTLK), Ma and Pa Kent, Steel, the planet Krypton, Kryptonite, Metropolis, Smallville, or the Daily Planet. Every reasonable effort has been made to find and list herein every such SUPERMAN-related work ever created. Nevertheless, if any such work has been omitted, such omission is unintentional and involuntary, and this Notice also applies to each and every such omitted work.

<sup>1</sup>December 4, 1997 Agreement

Title	Name of Author <sup>2</sup>	Date Copyright Secured <sup>3</sup>	Copyright Reg. No.
SUPERMAN story in Comic Book form	Jerome Siegel	Unpublished Work created c. 1933	N/A <sup>4</sup>
Untitled paragraph previewing future SUPERMAN exploits	Jerome Siegel	Unpublished Work created c. 1934	N/A
15 SUPERMAN daily comic strips (12 strips & 3 scripts)	Jerome Siegel	Unpublished Work created c. 1934	N/A
9 page synopsis covering an additional 2 months of daily (at 6 days per week) comic strips of SUPERMAN <sup>5</sup>	Jerome Siegel	Unpublished Work created c. 1934	N/A

<sup>2</sup>Pursuant to 37 C.F.R. § 201.10(b)(1)(ii), this Notice includes the name of at least one author of each work to which this notice of termination applies. The listing of any corporation as author of any work is done per the practice shown in Copyright Office records, and is not to be construed as an admission that any given work is or was a work made for hire. Nor is anything else herein to be construed as any such admission.

<sup>3</sup>Regarding works governed by the 1976 Copyright Act as to "Date Copyright Secured," and commencing in 1976, the records of the U.S. Copyright Office list only the year of creation, rather than the day, month, and year of creation. Accordingly, for every registered post-1977 published work whose year of creation is the same as its year of publication, only the specific publication date (month, day, and year) will be given, and the year therein will constitute the year of creation. For every registered post-1977 published work whose year of creation differs from its year of publication, the year of creation will be given (e.g., "DCRE: 1979" [i.e., "Date Created: 1979"]), followed by the specific publication date. For every registered post-1977 unpublished work whose year of creation is the same as its year of registration, only the specific registration date (month, day, and year) followed by the designation "(DREG)" [i.e., "Date Registered"] will be given, and the year therein will constitute the year of creation. For every registered post-1977 unpublished work whose year of creation differs from its year of registration, the year of creation will be given (e.g., "DCRE: 1979"), followed by the specific registration date.

<sup>4</sup>The first four works listed in this table as well as the above-referred 24 days of previously unpublished SUPERMAN newspaper comic strips and seven page synopsis of the last 18 days of said strips were never published or registered, at least not in their original form, so there are no copyright registration numbers for them. Accordingly, under the 1909 Act, copyright in the said works was not (and could not have been) secured prior to April 18, 1938, the date of the first published and registered SUPERMAN work, namely, Action Comics #1 (described above).

<sup>5</sup>This list of titles/works as part of paragraph number 2 continues through page 550. Paragraph number 3 begins on page 551.

3. The grant to which this Notice of Termination applies is a two page agreement between Detective Comics, Inc. and Jerome Siegel and Joe Shuster, co-authors of the comic book/strip SUPERMAN, identified as follows: An Agreement of Employment executed on or about December 4, 1937, which states in part that "any new and additional features which the Employees [Siegel and Shuster] produce for use in a comic magazine are to be first submitted to the Employer [Detective Comics, Inc.], who reserves the right to accept or reject same within a period of Sixty days." Prior to the execution of this agreement, Jerome Siegel had written the following SUPERMAN works: SUPERMAN story in a form suitable for comic book publication, twenty-four (24) days (i.e., four weeks) of previously unpublished SUPERMAN newspaper comic strips, a seven page synopsis of the last 18 days (i.e., weeks 2, 3, & 4) of said 24 days of strips, an untitled paragraph previewing future SUPERMAN exploits, fifteen SUPERMAN daily comic strips (12 strips and 3 scripts), and a nine page synopsis covering an additional two months of daily (at 8 days per week) comic strips of SUPERMAN. Assuming for purposes of this notice that said agreement contains a provision affecting rights to SUPERMAN, which, when first exercised by Detective Comics, Inc. on March 1, 1938, constituted a grant of non-work-for-hire SUPERMAN works and a grant of a transfer of renewal copyright(s) in SUPERMAN, the said grant included all SUPERMAN works in existence up through said date (March 1, 1938) as listed in paragraph 2 above and the renewal rights therein, and also included rights in the future including the renewal rights in the remaining works set forth in paragraph 2 above.

4. The effective date of termination shall be April 16, 1999.

1-December 4, 1937 Agreement


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5. Jerome Siegel died on January 28, 1985. Mr. Siegel is survived by his widow, Joanne Siegel, and two children: Jerome and Joanne Siegel's daughter Laura Siegel Larson, and Mr. Siegel's son by a previous marriage, Michael Siegel. Joanne Siegel and Laura Siegel Larson, who own and constitute more than one-half of author Jerome Siegel's termination interest, are executing this notice and constitute a 75% majority interest of those persons entitled to exercise the termination interest of Jerome Siegel as to the grant of the transfer described herein above. To the best knowledge and belief of the undersigned, this notice has been signed by all persons whose signature is necessary to terminate said grant under Section 304(c) of Title 17, United States Code.

Dated: March 30, 1997

  
 Joanne Siegel  
 13900 Pansy Way, R-115  
 Marina del Rey, CA 90292

  
 Laura Siegel Larson  
 6400 Pacific Avenue, No. 106  
 Playa del Rey, CA 90293





### **§ 203. Termination of transfers and licenses granted by the author<sup>3</sup>**

(a) CONDITIONS FOR TERMINATION. — In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests

required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) EFFECT OF TERMINATION. — Upon the effective date of termination, all rights under this title that were covered by the terminated grants revert to the author, authors, and other persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) 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.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the persons provided by clause (3) of this

subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grants that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.



Code of Federal Regulations, Title 37

[§ 201.10 Notices of termination of transfers and licenses.](#)

This section covers notices of termination of transfers and licenses under sections 203, 304(c) and 304(d) of title 17, of the United States Code. A termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939.

(a) *Form.* The Copyright Office does not provide printed forms for the use of persons serving notices of termination.

(b) *Contents.*

(1) A notice of termination covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C., must include a clear identification of each of the following:

- (i) Whether the termination is made under section 304(c) or under section 304(d);
- (ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;
- (iii) The title and the name of at least one author of, and the date copyright was originally secured in, each work to which the notice of termination applies; and, if possible and practicable, the original copyright registration number;
- (iv) A brief statement reasonably identifying the grant to which the notice of termination applies;
- (v) The effective date of termination;
- (vi) If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised; and
- (vii) In the case of a termination of a grant executed by a person or persons other than the author, a listing of the surviving person or persons who executed the grant. In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the 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: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304 of title 17, U.S.C., or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under section 203 of title 17, U.S.C., must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated; and, if possible and practicable, the original copyright registration number;

(v) A brief statement reasonably identifying the grant to which the notice of termination applies;

(vi) The effective date of termination; and

(vii) In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the 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: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (b)(2)(vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 203 of title 17, U.S.C., or by their duly authorized agents.

(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

*(c) Signature.*

(1) In the case of a termination of a grant under section 304(c) or section 304(d) executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant under section 304(c) or section 304(d) executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 203 of title 17, U.S.C., or by



their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(4) Where a signature is by a duly authorized agent, it shall clearly identify the person or persons on whose behalf the agent is acting.

(5) The handwritten signature of each person effecting the termination shall either be accompanied by a statement of the full name and address of that person, typewritten or printed legibly by hand, or shall clearly correspond to such a statement elsewhere in the notice.

(d) *Service.*

(1) The notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

(2) The service provision of section 203, section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

(3) For purposes of paragraph (d)(2) of this section, a *reasonable investigation* includes, but is not limited to, a search of the records in the Copyright Office; in the case of a musical composition with respect to which performing rights are licensed by a performing rights society, a “reasonable investigation” also includes a report from that performing rights society identifying the person or persons claiming current ownership of the rights being terminated.

(4) Compliance with the provisions of paragraphs (d)(2) and (d)(3) of this section will satisfy the service requirements of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) *Harmless errors.*

(1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Recordation.*

(1) A copy of the notice of termination will be recorded in the Copyright Office upon payment of the fee prescribed by paragraph (2) of this paragraph (f) and upon compliance with the following provisions:

(i) The copy submitted for recordation shall be a complete and exact duplicate of the notice of termination as served and shall include the actual signature or signatures, or a reproduction of the actual signature or signatures, appearing on the notice; where separate copies of the same notice were served on more than one grantee or successor in title, only one copy need be submitted for recordation; and

(ii) The copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice. In instances where service is made by first-class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.

(iii) The copy submitted for recordation must be legible per the requirements of §201.4(c)(3).<sup>1</sup>

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<sup>1</sup> § 201.4 (c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(3) To be recordable, the document must be legible and capable of being imaged or otherwise reproduced in legible copies by the technology employed by the Office at the time of submission.

(d) *Fees.* The fees for recordation of a document are prescribed in §201.3(c).

(2) The fee for recordation of a document is prescribed in §201.3(c).<sup>2</sup>

(3) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement referred to in paragraph (f)(1)(ii) of this section, have been received in the Copyright Office. After recordation, the document, including any accompanying statement, is returned to the sender with a certificate of record.

(4) Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination if, in the judgment of the Copyright Office, such notice of termination is untimely. If a document is submitted as a notice of termination after the statutory deadline has expired, the Office will offer to record the document as a “document pertaining to copyright” pursuant to §201.4(c)(3), but the Office will not index the document as a notice of termination. Whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction.

(5) A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. However, the fact that the Office has recorded the notice does not mean that it is otherwise sufficient under the law. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.

(6) Notices of termination should be submitted to the address specified in §201.1(b)(2).<sup>3</sup>

(Pub. L. 94–553; 17 U.S.C. 304(c), 702, 708(11))

[42 FR 45920, Sept. 13, 1977, as amended at 56 FR 59885, Nov. 26, 1991; 60 FR 34168, June 30, 1995; 64 FR 29521, June 1, 1999; 64 FR 36574, July 7, 1999; 66 FR 34372, June 28, 2001; 67 FR 69136, Nov. 15, 2002; 67 FR 78176, Dec. 23, 2002; 68 FR 16959, Apr. 8, 2003; 71 FR 36486, June 27, 2006; 74 FR 12556, Mar. 25, 2009]

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<sup>2</sup> § 201.3 (c) *Registration, recordation and related service fees.* The Copyright Office has established the following fees for these services:

Registration, Recordation and Related Services	Fees
(15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	105
Additional titles (per group of 10 titles)	30

<sup>3</sup> § 201.1 (b) *Limited purpose addresses.* The following addresses may be used only in the special, limited circumstances given for a particular Copyright Office service: .... (2) *Notices of termination.* Notices of termination submitted for recordation should be mailed to Copyright Office, Notices of Termination, P.O. Box 71537, Washington, DC 20024–1537.



## United States Code, Title 17, Chapter 3: Duration of Copyright

### § 304. Duration of copyright: Subsisting copyrights <sup>1</sup>

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM. — In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, <sup>2</sup> otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

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<sup>1</sup> The Copyright Renewal Act of 1992 amended [section 304](#) by substituting a new subsection (a) and by making a conforming amendment in the matter preceding paragraph (1) of subsection (c). Pub. L. No. 102-307, 106 Stat. 264. The Act, as amended by the Sonny Bono Copyright Term Extension Act, states that the renewal and extension of a copyright for a further term of 67 years “shall have the same effect with respect to any grant, before the effective date of the Sonny Bono Copyright Term Extension Act [October 27, 1998], of a transfer or license of the further term as did the renewal of a copyright before the effective date of the Sonny Bono Copyright Term Extension Act [October 27, 1998] under the law in effect at the time of such grant.” The Act also states that the 1992 amendments “shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977. Copyrights secured before January 1, 1964, shall be governed by the provisions of [section 304\(a\)](#) of title 17, United States Code, as in effect on the day before . . . [enactment on June 26, 1992], except each reference to forty-seven years in such provisions shall be deemed to be 67 years.” Pub. L. No. 102-307, 106 Stat. 264, 266, as amended by the Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827, 2828.

In 1998, the Sonny Bono Copyright Term Extension Act amended [section 304](#) by substituting “67” for “47” wherever it appeared in subsection (a), by substituting a new subsection (b), and by adding subsection (d) at the end thereof. Pub. L. No. 105-298, 112 Stat. 2827. That Act also amended subsection 304(c) by deleting “by his widow or her widower and his or her children or grandchildren” from the first sentence of paragraph (2), by adding subparagraph (D) at the end of paragraph (2) and by inserting “or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),” into the first sentence of subparagraph (4)(A). *Id.*

<sup>2</sup> (i) the author (ii) the widow, widower, or children of the author, if the author is not living, (iii) the author's executors, if such author, widow, widower or children are not living, or (iv) the author's next of kin, in the absence of a will of the author.

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2), and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to all of those entitled to terminate the grant under clause (1) of this subsection. In the case of a grant executed by one or more of the authors of the work, all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to that author or, if that author is dead, to the persons owning his or her termination interest under clause (2) of this subsection, including those owners who did not join in signing the notice of termination under clause (4) of this subsection. In all cases the reversion of rights is subject to the following limitations:

(A) 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.

(B) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of this subsection.

(C) Where the author's rights revert to two or more persons under clause (2) of this subsection, they shall vest in those persons in the proportionate shares provided by that clause. In such a case, and subject to the provisions of subclause (D) of this clause, a further grant, or agreement to make a further grant, of a particular author's share with respect to any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under this clause, as are required to terminate the grant under clause (2) of this subsection. Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under this subclause, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons provided by the first sentence of clause (6) of this subsection, or between the persons provided by subclause (C) of this clause, and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.

(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.

(F) Unless and until termination is effected under this subsection, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (C) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT. — In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Sonny Bono Copyright Term Extension Act<sup>3</sup> for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

(1) The conditions specified in subsections (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.

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<sup>3</sup> The effective date of the Sonny Bono Copyright Term Extension Act is October 27, 1998.





## List of Cases and Articles about Copyright Termination

1. *Mills Music, Inc. v. Snyder*, 469 U.S. 153; 105 S. Ct. 638 (1985)
2. *Milne v. Stephen Slesinger, Inc.*, 430 F.3d 1036 (9<sup>th</sup> Cir. 2005), available at <http://www.ca9.uscourts.gov/datastore/opinions/2005/12/07/0457189.pdf>. Subsequent History: Motion denied by 2005 U.S. App. LEXIS 27008 (9th Cir. Cal., 2005), US Supreme Court certiorari denied by *Milne v. Stephen Slesinger, Inc.*, 548 U.S. 904 (2006).
3. *Broad. Music, Inc. v. Roger Miller Music, Inc.*, 396 F.3d 762 (6<sup>th</sup> Cir. 2005), available at <http://www.ca6.uscourts.gov/opinions.pdf/05a0042p-06.pdf>.
4. *Stewart v. Abend*, 495 U.S. 207; 110 S. Ct. 1750 (1990).
5. *Penguin Group (USA) Inc. v. Steinbeck*, 537 F.3d 193 (2d Cir. 2008), available at <http://www.ca2.uscourts.gov/decisions/isysquery/65c3ba7a-51a7-41bc-9cfb-2c7d9084927a/1/doc/06-3226-cv%20w%20Errata.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/65c3ba7a-51a7-41bc-9cfb-2c7d9084927a/1/hilite/>.
6. *Classic Media, Inc. v. Mewborn*, 532 F.3d 978 (9<sup>th</sup> Cir. 2008), available at <http://www.ca9.uscourts.gov/datastore/opinions/2008/07/11/0655385.pdf>.
7. *Newsome v. Brown*, No. 05-4735-cv, 2006 U.S. App. LEXIS 30979 (2d Cir. 2006), available at [http://www.ca2.uscourts.gov/decisions/isysquery/b6517100-59cb-4e1d-b31f-1be619f55eb0/1/doc/05-4735\\_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/b6517100-59cb-4e1d-b31f-1be619f55eb0/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/b6517100-59cb-4e1d-b31f-1be619f55eb0/1/doc/05-4735_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/b6517100-59cb-4e1d-b31f-1be619f55eb0/1/hilite/).
8. *Venegas-Hernandez v. Asociacion de Compositores y Editores de Musica Latino Americana*, 424 F.3d 50 (1st Cir. 2005), available at <http://www.ca1.uscourts.gov/pdf.opinions/04-1934-01A.pdf>.
9. *Marvel Characters v. Simon*, 310 F.3d 280 (2d Cir. 2002), available at [http://www.ca2.uscourts.gov/decisions/isysquery/b6b4470a-4240-4d4c-8a1b-e1ad2307a744/1/doc/02-7221\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/b6b4470a-4240-4d4c-8a1b-e1ad2307a744/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/b6b4470a-4240-4d4c-8a1b-e1ad2307a744/1/doc/02-7221_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/b6b4470a-4240-4d4c-8a1b-e1ad2307a744/1/hilite/).

10. *Siegel v. Time Warner*, Case No. 04-8776 (C.D. Cal.), Status Report, Doc. No. 184, filed December 21, 2009, available at <https://ecf.cacd.uscourts.gov/doc1/03119342564>.
11. *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, 683 F.2d 610 (1982) (Titles not listed in the notice of termination were not terminated.)
12. *Siegel v. Time Warner*, Case No. 04-8400 (C.D. Cal.), Order of Motion for Partial Summary Judgment, Doc. No. 293, March 3, 2008, available at <https://ecf.cacd.uscourts.gov/doc1/03115571053>; Order Denying Plaintiffs' Motion for Reconsideration; Order Amending Court's August 12, 2009 Order, Doc. 595, filed October 30, 2009, available at <https://ecf.cacd.uscourts.gov/doc1/03119054309> ((harmless error in meeting the formalities called for in the Regulations); Joint Status Report, Doc. No. 602, filed December 21, 2009, available at <https://ecf.cacd.uscourts.gov/doc1/03119342561>.
13. *Marvel Worldwide, Inc. et al v. Kirby et al*, Case No. 1:10-cv-00141-CM-KNF, Decision and Order Denying Defendants' Motion to Dismiss, Doc. No. 27, April 14, 2010, available at <https://ecf.nysd.uscourts.gov/doc1/12717643542>. (Notices of Termination sent into New York trigger operation of New York long arm jurisdiction.)
14. Copyright Termination of Transfer Tool, available at [http://labs.creativecommons.org/demos/termination/what\\_information\\_do\\_i\\_need.php](http://labs.creativecommons.org/demos/termination/what_information_do_i_need.php).
15. Pooh-Poohing Copyright Law's "Inalienable" Termination Rights" by Peter S. Menell and David Nimmer, [\*UC Berkeley Public Law Research Paper No. 1525516\*](#), December 18, 2009, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1525516###](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525516###).
16. Lauren Beth Emerson, "Termination of Transfer of Copyright: Able to Leap Trademarks in a Single Bound," 75 Fordham L. Rev. 207, available at <http://law2.fordham.edu/publications/articles/500flspub9616.pdf>.
17. Margo E. Crespin, "A Second Bite at the Apple: A Guide to Terminating Transfers under Section 203 of the Copyright Act."
18. "How to Investigate the Copyright Status of a Work," U.S. Copyright Office, available at <http://www.copyright.gov/circs/circ22.pdf>.