



AUTHORS
ALLIANCE

authorsalliance.org
510.480.8302

2705 Webster St. #5805
Berkeley, CA 94705

August 5, 2020

Regan A. Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

By Electronic Submission

RE: Modernizing Recordation of Notices of Termination

Dear Ms. Smith:

Authors Alliance appreciates the opportunity to offer comments in response to the United States Copyright Office's Notice of Proposed Rulemaking and Notification of Inquiry on Modernizing Recordation of Notices of Termination.¹ Authors Alliance is a nonprofit organization with the mission to advance the interests of authors who want to serve the public good by sharing their creations broadly. We create resources to help authors understand and enjoy their rights and promote policies that make knowledge and culture available and discoverable.² Alongside other educational efforts, Authors Alliance provides resources and tools to help authors understand and exercise termination of transfer rights under U.S. law,³ including the online interactive Termination of Transfer Tool⁴ and templates for notices of termination.⁵ Authors Alliance applauds the Office for its work to improve efficiency in processing notices of termination and to provide additional guidance to authors on this topic. We write to express our wholehearted support for the Office's proposal to provide template forms for notices of termination and/or an online notice builder.

Authors Alliance believes that the Office's investment in facilitating the termination of transfer process will benefit authors and the public. Creators are routinely asked to transfer the rights to their works by, for example, signing publication contracts that assign their copyrights to

¹ 85 Fed. Reg. 34150 (June 3, 2020).

² For more information about Authors Alliance, see *About Us*, AUTHORS ALLIANCE, <http://www.authorsalliance.org/about> (last visited June 16, 2020).

³ *Termination of Transfer*, AUTHORS ALLIANCE, <https://www.authorsalliance.org/resources/termination-of-transfer/> (last visited June 16, 2020).

⁴ Authors Alliance/Creative Commons, TERMINATION OF TRANSFER TOOL, <https://rightsback.org> (last visited June 16, 2020).

⁵ *Termination of Transfer: Information and Templates for Notices of Termination Under § 203 and § 304(c)*, AUTHORS ALLIANCE, <https://www.authorsalliance.org/wp-content/uploads/2018/03/20180315-ToT-Templates.pdf> (last visited June 17, 2020).

publishers “for the life of copyright.” If they acquiesce, they may come to regret the decision. While the opportunity for creators or their heirs to recapture rights to enjoy more of their work’s financial success is the most celebrated aspect of the termination of transfer provisions, it is not the only benefit. Termination rights also give creators the ability to give new life to works that have outlived their commercial lives but are nonetheless historically and culturally valuable. As time passes, many creators find that their works are no longer as available as they might wish.⁶ 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, termination of transfer is a powerful option for getting their works back out in front of audiences. These creators might choose to, for example, make their reverted works available to the public on open terms. Other authors may opt to re-release their works with commercial publishers. In fact, a recent empirical study reveals that the termination provisions in U.S. law, together with a legal decision establishing that some authors retained e-book rights under standard publication terms in the pre-digital era, have significantly increased the availability of books to consumers.⁷

While termination rights are immensely important for authors and the public, termination rules are complicated and formalistic, which likely contributes to underutilization of this important tool.⁸ The statutory provisions governing timing of the notice and termination windows, together with the regulations governing the information required in notices of termination, are complex. Adhering to these requirements can be especially burdensome to creators who are not represented by agents or attorneys. Hurdles to a successful notice of termination include creating a proper notice with all of the required information and acting within the proper notice window.

Given Authors Alliance’s efforts to address these challenges by providing resources and tools to help creators understand how to evaluate whether and when a work might be eligible for termination and how to exercise termination rights, it will come as no surprise that we wholeheartedly support the Office’s proposal to develop sample templates for notices of termination and/or an online notice builder. In fact, Authors Alliance has already created a set of templates for notices of termination under § 203 and § 304(c).⁹ We would be very happy to support the Office’s efforts in this area based on our experience developing these forms. Our templates include guidance to help creators understand what information is required by the statute, information about what factors may complicate a notice of termination, and a description of the required steps to serve the notice to the grantee and submit a copy of the form to the Copyright Office.¹⁰ Templates are most useful to creators if they include instructions on how to complete the form. To this aim, the Office should ensure that any template notice or online notice builder is accompanied by guidance to help creators understand what information is required, where to find the required information, and how to proceed where there is uncertainty (for example, in our experience, many authors seeking to terminate a transfer no longer have access

⁶ See Paul J. Heald, *How Copyright Keeps Works Disappeared*, 11 J. OF EMPIRICAL LEGAL STUD., 829 (2014).

⁷ *Id.*

⁸ See R. Anthony Reese, *Termination Formalities and Notice*, 96 B.U. L. REV. 895, 898-99 (2016) (describing how hurdles imposed by the statute’s complex formalities can potentially stymie attempts to exercise termination rights).

⁹ *Termination of Transfer: Information and Templates*, *supra* note 5.

¹⁰ *Id.*

to a copy of their publication contracts and, as such, may not know the date of execution of the agreement).

In addition to developing sample templates for notices of termination and/or an online notice builder, Authors Alliance strongly recommends that the Office consider developing or integrating tools that help authors understand the complex timing provisions governing notice and termination windows. The right to terminate a transfer of copyright is only meaningful if authors exercise that right at the correct time. Again, Authors Alliance's own tools may provide a helpful model for the Office and we would be delighted to partner with the Office in these efforts. To address the pressing need for resources that help creators understand the eligibility and timing requirements for terminating transfers, Authors Alliance and Creative Commons¹¹ developed an online Termination of Transfer Tool.¹² The interactive educational tool prompts users to input relevant information about hypothetical works and their eligibility for termination. It then calculates the proper notice and termination windows. The website on which the tool resides, rightsback.org, also includes a glossary to help users understand the complex vocabulary related to termination¹³ and a Frequently Asked Questions page for questions about the law and the tool.¹⁴

Authors Alliance commends the Copyright Office for giving consideration to developing templates for notices and other resources to help creators properly effectuate their termination rights, and we would welcome the opportunity to collaborate with the Office in these efforts. With proper tools and guidance, we believe more authors will be able to terminate rights in order to make their works newly available and, as a result, reach more readers, continue to contribute to scholarly and cultural discourse, and ensure that their works' continuing impact and relevance are not limited by their commercial lives. In turn, the public will benefit from ongoing access to knowledge and culture.

Respectfully submitted,



Brianna Schofield
Executive Director, Authors Alliance

Diana Buck
Copyright Intern, Authors Alliance

¹¹ For more information about Creative Commons, see *What We Do*, CREATIVE COMMONS, <https://creativecommons.org/about/> (last visited June 16, 2020).

¹² Authors Alliance/Creative Commons, TERMINATION OF TRANSFER TOOL, *supra* note 4. The Termination of Transfer Tool code is licensed under the AGPL 3.0+.

¹³ Authors Alliance/Creative Commons, *Glossary*, TERMINATION OF TRANSFER TOOL, <https://rightsback.org/glossary/> (last visited June 17, 2020).

¹⁴ Authors Alliance/Creative Commons, *FAQ*, TERMINATION OF TRANSFER TOOL, <https://rightsback.org/faq/> (last visited June 17, 2020).