



# ANNOUNCEMENT

from the Copyright Office, Library of Congress,  
101 Independence Avenue, S.E., Washington, D.C. 20559-6000

## NOTICE OF PROPOSED RULEMAKING

## NOTICE OF TERMINATION

The following excerpt is taken from Volume 66, Number 86 of the *Federal Register* of Thursday, May 3, 2001 (pp. 22139-22140)

### LIBRARY OF CONGRESS

Copyright Office  
37 CFR Part 201  
[Docket No. 2001-2]

#### Notice of Termination

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office is proposing amendments to its regulation governing notices of termination of transfers and licenses covering the extended renewal term. The current regulation is limited to notices of terminations made under section 304(c) of the copyright law. The Sonny Bono Copyright Term Extension Act created a separate termination right under section 304(d). Under the proposed regulation, procedures governing notices of termination of the extended renewal term would cover notices made under either section 304(c) or 304(d).

**DATES:** Comments should be in writing and received on or before June 18, 2001.

**ADDRESSES:** If sent By Mail, ten copies of written comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If Hand Delivered, ten copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT** David O. Carson, General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under the 1909 copyright law, which was in effect until January 1, 1978, works were subject to

a renewal system in which the term of copyright was divided into two consecutive terms. Under the system initially established by the 1909 legislation, the duration of copyright protection was an initial copyright term of 28 years and a renewal term of an additional 28 years. The Copyright Act of 1976, Pub. L. 94-554, retained the renewal system for works that had subsisting copyrights on January 1, 1978. However, under section 304 of the copyright law (17 U.S.C. 304), the renewal term was extended to 47 years, creating a total potential term of protection of 75 years.

Besides generally extending the renewal term to 47 years, Congress also provided a termination procedure authorizing the termination of transfers or licenses during the extended renewal term. Established under section 304(c) of the copyright law, this provision created a means for authors and their surviving spouses and offspring to secure the benefits of the additional 19 years added to the renewal term. In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act, ("the Act"), Pub. L. 105-298, 112 Stat. 2827 (1998). The Act amended the copyright law, title 17 United States Code, to extend for an additional 20 years, the term of copyright protection in the United States. For works in which the duration of protection was determined under section 304 of title 17, the renewal term was extended from 47 years to 67 years. Like the Copyright Act of 1976, the Sonny Bono Copyright Term Extension Act also contained a termination provision covering the newly extended part of the extended renewal term (i.e., the last twenty years). Established under section 304(d) of the copyright law, this new right of termination was limited to authors and other successors-in-interest specified in the statute who had not previously terminated under section 304(c).

The termination provision created by sec-

tion 304(d) largely incorporates by reference the standards established by section 304(c). Since notices of termination may be served up to ten years before the termination is to take effect, the right to serve termination notices under section 304(d) vested immediately upon the enactment of the Sonny Bono Copyright Term Extension Act. Although the Copyright Office has not put in place final regulations governing notices of termination issued under section 304(d), the Copyright Office Documents Section has already received a number of such notices for recordation. The Copyright Office has proceeded with recording these notices under its existing provisions for recordation of notices of termination pursuant to section 304. However, it is desirable that the Office's regulations on notices of termination be amended to provide expressly for notices of termination pursuant to section 304(d).

The Copyright Office has concluded that, with a few adjustments, Sec. 201.10 can be adapted to cover terminations under either section 304(c) or section 304(d). The proposed regulation begins by adding introductory text clarifying that the scope of the regulation covers terminations under either sections 304(c) or 304(d). In provisions where the current regulation refers to section 304(c), the proposed regulation has been modified to add an alternative reference to section 304(d). Finally, a reference to section 304(d) has been added to Sec. 201.4(a)(v) regarding recordation of transfers and certain other documents.

Paragraph (b) relating to contents of the notice would add two substantive changes not in the current regulation. Section (b)(i) of the proposed regulation [Page 22140] requires that if the termination is made under section 304(d), the notice should provide a statement to that effect. Most of the notices of termination made under section 304(d) which have been received in this Office already contain such a statement. Inclusion of this requirement in the regulation appears to be a logical addition and would provide clarity to the notice. No corresponding requirement has been

imposed in notices of termination issued under section 304(c) because such a requirement would upset established practices in issuing notices under that section.

The second substantive change adds a new Sec. 201.10(b)(vi) requiring notices issued under section 304(d) to contain a statement "that the rights in the extended renewal term which are being terminated have not been subject to a previous termination." This is a statutory requirement imposed in section 304(d). Incorporating the requirement as part of the contents helps ensure that second notices of termination covering the same rights already terminated by a previous notice will not be served and recorded. This provision is not intended to preclude one joint author who has not previously exercised his termination right from terminating, even in cases where other joint authors have exercised such rights. Section 304(c) permits joint authors to exercise their termination rights separately. H.R. Rep. No. 94-1476, at 141 (1976).

The Copyright Office seeks public comment on these two proposed substantive additions to the required content of the notice of termination. The Copyright Office does not propose that the two new requirements be applied to notices already issued or to those issued before the proposed regulation is adopted in final form. If the two requirements are adopted in the final regulation, they are intended to be treated as requirements only after the effective date of the final regulation.

#### List of Subjects in 37 CFR Part 201

Copyright.

#### Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR, chapter II in the manner set forth below:

#### PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702; Sec. 201.10 is also issued under 17 U.S.C. 304.

#### Sec. 201.4 [Amended]

2. Amend Sec. 201.4(a)(1)(v) by adding "and (d)" after "304(c)".

3. Section 201.10 is amended as follows:

- a. by adding introductory text before paragraph (a);
- b. by revising paragraphs (c)(2), (d)(2), (d)(4) and (e);
- c. by redesignating paragraphs (b)(1)(i) through (v) as (b)(1)(ii) through (v) and (vii), respectively; and
- d. by adding new paragraphs (b)(1)(i) and (b)(1)(vi). The revisions and additions to Sec. 201.10 read as follows:

#### Sec. 201.10 Notices of termination of transfers and licenses covering extended renewal term.

This section covers notices of termination of transfers and licenses covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C.

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(b) \*\*\*

(1) \*\*\*

(i) If the termination is made under section 304(d), a statement to that effect;

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(vi) If termination is made under section 304(d), a statement that the rights which are being terminated have not been subject to a previous termination pursuant to section 304; and

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(c) \*\*\*

(2) In the case of a termination 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 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.

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(d) \*\*\*

(2) The service provision of either 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.

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(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of either 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 either 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) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) 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.

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4. Amend the new Sec. 201.10(b)(1)(vii) by removing "paragraph (v)" and adding "paragraph (vii)".

Dated: April 26, 2001

**Marybeth Peters**  
*Register of Copyrights*

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