

**Duration of  
Copyrights  
And  
Limitation of Grants**

©Professor Spencer H. Boyer 2002

## DURATION OF COPYRIGHTS

### I. New Works Created After 1977

#### A. Duration

1. 1909 Act - 28 yrs. from date of copyright plus 28 yr. renewal
2. 1976 Act - in general - life of author plus 70 years § 302(a)

In case of joint works - life of last surviving author is measuring life § 302(b)

3. anonymous works/pseudonymous works where identification of author unrevealed/works made by employee-for-hire - 95 years from first publication, or 120 years from creation, whichever expires first § 302(c)

#### B. Examples

1. 6/1/79-----8/1/99-----12/31/2069  
original author copyright  
copyright died expires

Under 1976 Act, copyright expires at close of calendar year in which it would otherwise terminate.

2. 3/1/79-----5/1/79-----12/31/2074  
work work copyright expires  
created published (95 yrs. from creation)

### II. Pre-1978 Works in Their Original Term of Copyright

#### A. Duration

1. Original term of 28 yrs. as under 1909 Act § 304(a)
2. Renewal term preserved - extends 28 yr. term under 1909 Act to 67 years (total - 95 years) § 304(a)

Under 1909 Act, there was an obligation to file application for extension and renewal within 1 year prior to expiration of original term - otherwise copyright protection ended at end of 28 year period § 304(a).

#### B. Example

1. 6/1/1940-----5/31/1968 Copyright expired unless renewed 6/1/67 – 5/31/68  
Original 28 yr. term  
copyright expires

III. Pre-1978 Works In Their Renewal Term of Copyright

A. Duration

Renewal term extended for 67 yrs. (total - 95 yrs.) § 304(b)

B. Example

6/1/1940-----	5/31/1968-----	12/31/2035
Original	expiration of	expiration of
copyright	original term	67 yr. extension

IV. Pre-1978 Works Not Previously Published or Copyrighted

A. Duration

1. works subsist from 1/1/78, and protected for same period as new works under § 302, § 303.
2. In no case, however, shall terms of copyright in non-published work expire before 12/31/2002; and, if work published on/before 12/31/2002, term of copyright shall not expire before 12/31/2027. § 303

B. Examples

1. Work non-published before 12/31/2002

6/1/1900-----	7/1/1910-----	7/1/1980
Work	author	copyright
created	died	obtained

12/31/2002  
copyright cannot  
expire before  
this date

2. Work published after 1/1/1978, before 12/31/2002

3/1/1900-----	4/1/1925-----	5/1/1980
Work	author	copyright
created	dies	obtained

5/10/1980-----12/31/2027  
work  
published  
copyright cannot  
expire before this  
date

## ASPECTS OF TERMINATION OF EXTENDED RENEWAL TERM

### I. Who Can Renew

#### A. Author living

1. Author § 304(a)
2. Assignee, if author still alive at time right of renewal accrues.

In any case, renewal must be in name of original copyright owner

#### B. Author died at time right of renewal accrues

1. Widow(er), or children of author § 304(a)
2. If no widow(er) or child surviving, executor named in author's will § 304(a)
3. If no widow(er) or child surviving and author left no will, next of kin of deceased author § 304(a)

C. NB - where copyright in first term on 1/1/1978 -- if renewal not applied for within one year prior to expiration of original term, copyright does not terminate at expiration of 28 yrs. from original copyright. (automatic renewal with loss of certain rights)

### II. Who Can Terminate

#### A. Author living

1. Author
2. In case of grant executed by person(s) other than author, by surviving person(s) who executed it § 304(c)(1).
3. In case of grant executed by one or more authors, termination may be effected to extent of particular author's share in ownership of renewal copyright, by author who executed it or, if such author is dead, by person(s) who, under § 304(c)(2), own/are entitled to exercise a total of over 1/2 of that author/s termination interest § 304(c)(1).

#### B. Author dead - interest owned as follows:

1. Widow(er) owns author's entire termination interest unless there are surviving children/grandchildren of author -- then widow(er) owns 1/2 § 304(c)(2)(A).
2. Author's surviving children, and surviving children, of any deceased child of author, own author's entire termination interest unless there is widow(er) -- then children, etc., and widow(er) split 1/2 - 1/2 § 304(c)(2)(B).

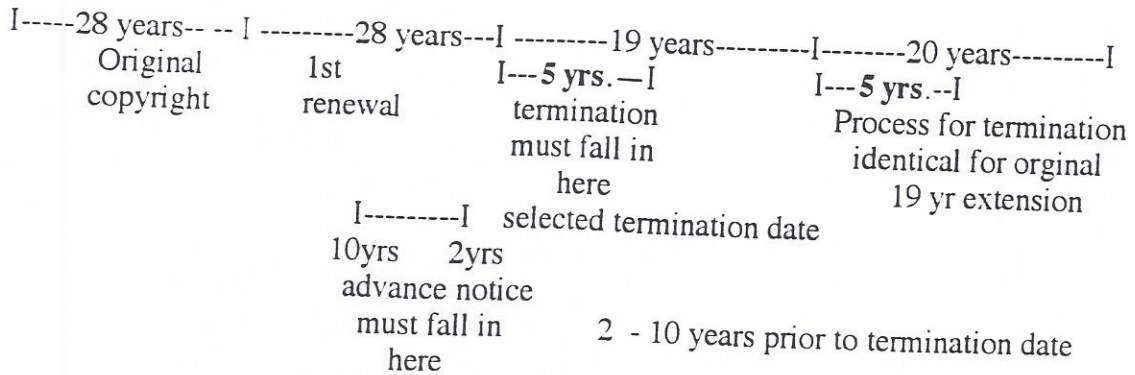
3. Rights of author's children/grandchildren divided among them - exercised for stirpes (NB - share of children of deceased child can be exercised only by action of a majority of them) § 304(c)(2)(c).

### III. Mechanics of Termination

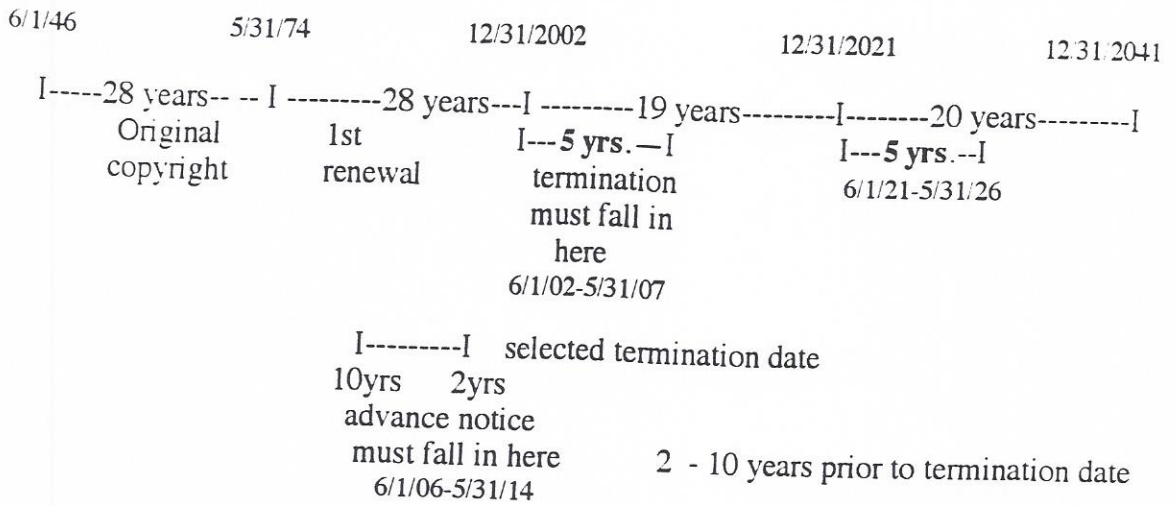
- A. Object - to cut out last 19 years of extension or additional Sonny Bono 20 years extension (28 + 28 + 19 + 20 yrs)
- B. Termination may be effected at any time during period of 5 years, beginning at end of 56 years (28+28), or beginning on 1/1/1978, whichever is later. § 304(c)(3).
- C. Advance notice of intent to terminate § 304(c)(4)(A) must be served -- must state effective date of termination (within period specified by § 304(c)(3)), i.e., within 5 years from date of expiration (anniversary date) of copyright must be served 2 to 10 years before date selected for termination.
- D. NB -- measurement of 56 or 75 years from date copyright was first served if from actual date of copyright -- no prolongation to 12/31.

NB -- 2-10 year notice periods are also measured without reference to year-end expiration of copyright terms.

#### E. Diagram

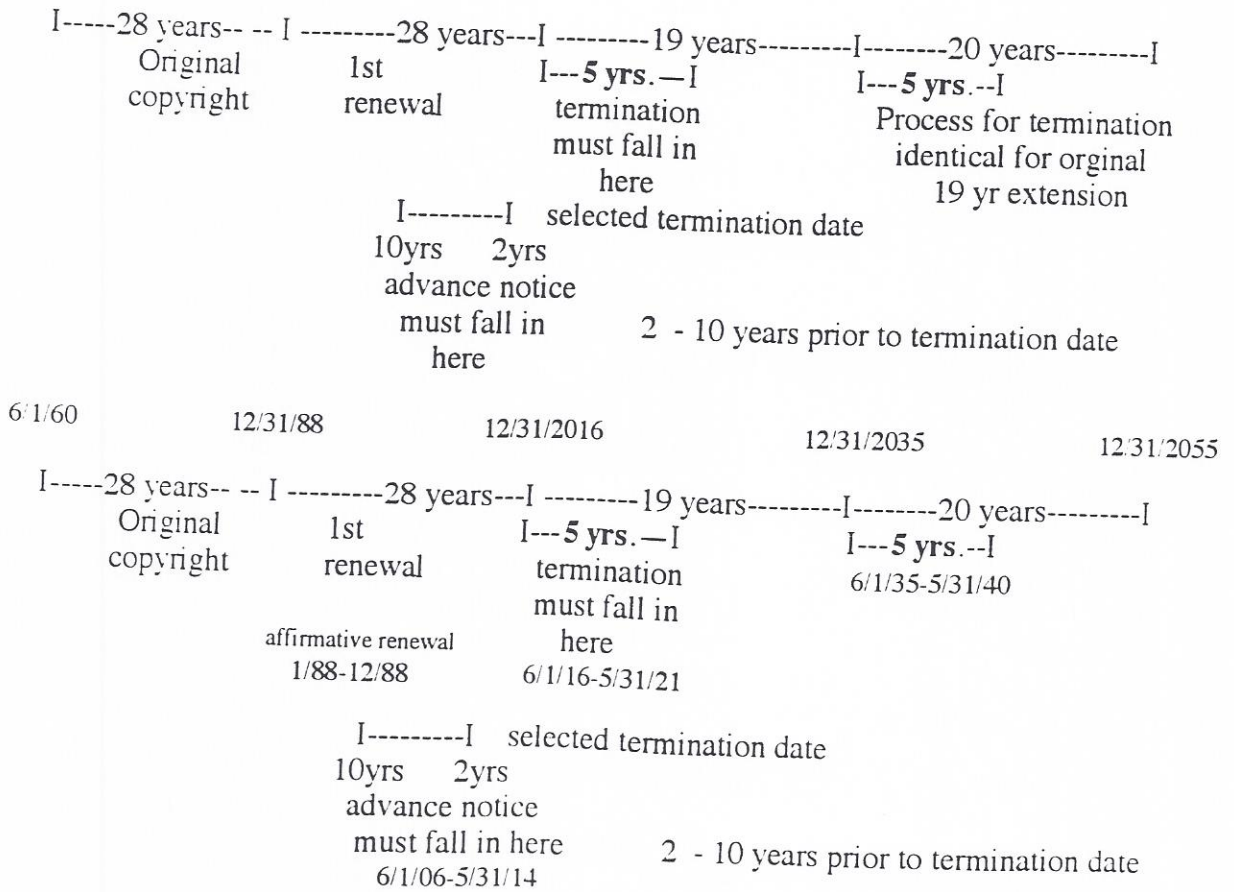


Example 1. Original Copyright secured June 1, 1946



Example 2. Original Copyright secured June 1, 1960.

E. Diagram



- Must be affirmatively renewed between 1/1/88 and 12/31/88 to cut off derivative rights
  - Renewal extends copyright 67 years (28 + 19 + 20) Copyright expires on 12/31/2035
  - Anniversary Expiration Date: 5/31/2016 .((original 28 year grant plus 28 year renewal)
- The anniversary expiration date must be taken into account to recapture last 19 years or the Sony Bono 20 year extension.

**Original 19 year extension**

- Termination Dates - Must terminate from 6/1/2016 to 5/31/2021 to recapture last 19 years
  - Earliest Termination Notice Date to recapture copyright at earliest possible time  
6/1/2006 (10 years advance notice)
  - Latest Termination Notice Date to recapture copyright at earliest possible time  
6/1/2014 (2 years advance notice)
  - Latest Termination Notice Date 6/1/2019 - must give at least 2 years advance notice
- Termination may be effected between June 1, 2016 and May 31, 2021

**Sonny Bono 20 year extension**

- Termination Dates - Must terminate from 6/1/2035 to 5/31/2040 to recapture last 20 years
  - Earliest Termination Notice Date to recapture copyright at earliest possible time  
6/1/2025 (10 years advance notice)
  - Latest Termination Notice Date to recapture copyright at earliest possible time  
6/1/2033 (2 years advance notice)
  - Latest Termination Notice Date 6/1/2038 - must give at least 2 years advance notice
- Termination may be effected between June 1, 2035 and May 31, 2040

- IV. § 304(c) controls termination of subsisting copyright  
Termination of grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant
- V. § 203 - controls termination of transfer or license of copyright executed on/after 1/1/1978.
- A. Termination under § 203 may be effected at any time during period of 5 years beginning at end of 35 years from date of execution of grant, if grant does not cover right of publication.
- B. If grant covers right of publication, period begins at end of 35 years from date of publication under grant, or at end of 40 years from date of execution, whichever term ends earlier.

C. Advance notice -- shall state effective date of termination, which shall fall within 5 year period specified by A. and B. and notice shall be served 2 - 10 years before that date.

D. Examples of § 203 termination

1. 6/1/1979-----6/1/2014-----6/1/2019  
Transfer of copyright executed (no right of publication)      earliest available termination date      latest available termination date

NB -- earliest available advance notice period is 6/1/2004 -----6/1/2012  
2 - 10 years prior to 6/1/2014.

Latest available advance notice period is 6/1/2009 -----6/1/2017

2. 5/1/1980 -----5/1/1992-----5/1/2020-----5/1/2025  
Transfer of copyright executed (cover right of publication)      work published      earliest available termination date (40 yrs. from execution)      latest available termination date

NB -- earliest available advance notice period is 5/1/2010 ----5/1/2018; latest available period is 5/1/2015-----5/1/2023

3. 9/1/1985-----9/1/1985-----9/1/2020-----9/1/2025  
Transfer of copyright executed (covers right of publication)      work published      earliest available termination date (35 yrs. from publication)      latest available termination date

NB -- earliest available advance notice period is 9/1/2010 -----9/1/2018; latest is 9/1/2015-----9/1/2023

NB -- Termination can be effected only by the author or the widow(er), children or grandchildren of the author.

NB -- Co-author no longer has right to terminate his interest; termination must be by a majority of the co-authors

NB -- The author cannot enter into an agreement with a new publisher until the effective date of the termination; the author may, however, enter into a new agreement with the old publisher during the period between the service of the termination notice and the effective date of the termination.

**If a termination notice is not given, the new grant continues and the old assignee retains its rights**