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PRACTICE GUIDE · ENTERTAINMENT & TALENT

Copyright Issues for Creators

Grand Park Law Group · 2026



A.

Authorship, Joint Works, and Work-for-Hire

Federal copyright law vests initial ownership in the "author" of a work. 17 U.S.C. § 201(a). The "author" is, presumptively, the human being who fixed the original expression in a tangible medium. The two principal exceptions are joint authorship and work made for hire.

A "joint work" is one prepared by two or more authors with the intent that their contributions be merged into "inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. The Ninth Circuit's controlling test is *Aalmuhammed v. Lee* (9th Cir. 2000) 202 F.3d 1227, which requires (1) an independently copyrightable contribution from each putative author; (2) intent to be co-authors, measured objectively (decisional control, billing, written agreements); and (3) a sharing of authorial control, not mere assistance. *Id.* at 1234. Jefri Aalmuhammed's substantial contributions to Spike Lee's *Malcolm X* did not make him a co-author because he lacked authorial control: he was a consultant without final say. *Id.* at 1235–36.

A "work made for hire" arises in two scenarios: (1) a work prepared by an employee within the scope of employment, or (2) a specially commissioned work falling within nine enumerated categories (including motion picture, audiovisual work, contribution to a collective work, compilation, and instructional text) where the parties expressly agree in a signed writing. 17 U.S.C. § 101.

The Supreme Court's controlling employee-status test is *Community for Creative Non-Violence v. Reid* (1989) 490 U.S. 730. *Reid* applies the common-law agency test using factors including skill required, source of instrumentalities, duration of the relationship, control over hours, payment method, and tax treatment. *Id.* at 751–52. Sculptor James Earl Reid was an independent contractor, not an employee; his sculpture was not a work for hire. *Id.* at 753.

The practical lesson: outside of formal employment, a hiring party's safest path to ownership is a written work-for-hire agreement fitting one of the nine categories, paired with a backup assignment of all rights — the assignment survives if the work-for-hire characterization fails.

B. Termination of Transfer Under 17 U.S.C. § 203

Section 203 of the Copyright Act gives authors a non-waivable right to terminate any grant of copyright executed by the author on or after January 1, 1978. 17 U.S.C. § 203(a). The termination right is exercisable during a five-year window beginning thirty-five years from the date of the grant (or, if the grant covered the right of publication, the earlier of forty years from the grant or thirty-five years from publication). *Id.* § 203(a)(3). The statute provides that the termination right exists "notwithstanding any agreement to the contrary." *Id.* § 203(a)(5). That language is the crown jewel: a contract that purports to waive the termination right is unenforceable.

The principal exceptions are works made for hire (which have no author-creator to terminate) and grants made by will. *Id.* § 203(a). The termination affects only U.S. rights; foreign-territory grants survive.

C. The 35-Year Window and Notice Requirements

Termination is not automatic. The author (or statutory successor) must serve a written notice on the grantee, identifying the grant, the work, the effective date of termination, and the basis for termination. 17 U.S.C. § 203(a)(4). The notice must be served not less than two nor more than ten years before the effective date, and a copy must be recorded with the Copyright Office before the effective date. *Id.*; 37 C.F.R. § 201.10.

The most consequential limitation is the so-called "derivative works exception": a derivative work prepared under the authority of the grant before termination may continue to be exploited under the terms of the grant after termination. 17 U.S.C. § 203(b)(1). A film made under a pre-termination novel option may continue to be distributed; new derivative works, however, require a new license from the recaptured copyright.

The Ninth Circuit's decision in *Gardner v. Nike, Inc.* (9th Cir. 2002) 279 F.3d 774 is the leading case on a related issue: the non-assignability (without consent) of exclusive licenses granted by a copyright holder. *Gardner* held that an exclusive licensee may not transfer the license to a third party without the licensor's consent, and that the same rule applies even after termination. *Id.* at 781. The case is a cautionary precedent for sublicensing structures and is regularly invoked in music-publishing M&A.

D. Music Industry Specific Issues (Sound Recordings, § 304(c))

For grants executed *before* January 1, 1978, the operative termination provision is 17 U.S.C. § 304(c), with a parallel provision at § 304(d) for grants whose original termination window lapsed unused. The § 304(c) window runs for five years beginning fifty-six years after the original copyright was secured. *Id.* § 304(c)(3).

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Music presents unique complications. Sound-recording termination claims filed by recording artists against major labels since 2013 have produced settled-out litigation but no controlling appellate guidance on whether sound recordings recorded under a major-label contract qualify as "works made for hire" and thus fall *outside* the termination right. The label position is that sound recordings are works for hire under the "contribution to a collective work" or "compilation" categories of § 101; the artist position is that they are not.

The Second Circuit's decision in *Davis v. Blige* (2d Cir. 2007) 505 F.3d 90 is the most-cited authority on a closely related point: a co-owner of a musical composition cannot retroactively grant a license that defeats the rights of another co-owner. *Id.* at 104. Retroactive transfers and after-the-fact "ratifications" are ineffective to extinguish accrued infringement claims. *Davis* is the structural reason that music co-publishing deals must capture written consents in real time.

Practice	Entertainment & Talent
Topics	Copyright · Termination of Transfer · Music Industry
Publication	Practice guide · Chapter III · 2026

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