CHAPTER 8

Duration of Copyright

"It is good that authors should be renumerated; and the least exceptionable way of remunerating them is by a monopoly. Yet monopoly is evil. For the sake of good we must submit to evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good."
—Lord Macaulay in a speech delivered to the British House of Commons in 1866

From the early 1700s to the present, nothing has sparked a greater degree of debate and criticism of copyright than the question of how long copyright should last. Under the United States Constitution, copyright protection must be limited in duration. In other words, if Congress were to pass a law providing that copyright would last forever, that law would be unconstitutional. When the term of protection for a copyright ends or expires, the work enters the public domain. A work that is in the public domain cannot be owned by anyone, and anyone is free to use it.

The rules governing the duration or term of copyright can be quite complex, primarily due to the fact that there are different terms of protection for different works. In order to determine which rules are applicable to a particular work, you must first know when the work was created. Works created before 1978 are governed by the provisions of the 1909 Copyright Act, while works created beginning in 1978 are governed by the provisions of the 1976 Copyright Act. However, the duration provisions of both the 1909 and 1976 Acts have been amended on several occasions, which makes things even more complicated.

I. Evolution of Copyright Term

In order to understand the rules governing duration of copyright, it is helpful to understand how these rules have evolved in the United States. After discussing this evolution, I will discuss the current rules for copyright duration.

A. THE 1909 COPYRIGHT ACT

Until 1978, a dual system of copyright existed in the United States. Under the 1909 Copyright Act, federal copyright protection began upon publication of a work with proper copyright notice or on the date of copyright registration for certain unpublished works. Unpublished works were not protected under the 1909 Act and instead were protected by common law copyright until published. Common law copyright lasted until the work was published or registered as an unpublished work. If a work was never published or registered, it could be protected indefinitely under common law copyright.

Once a work was published or registered, it became subject to the 1909 Copyright Act. The 1909 Act provided for an initial term of 28 years of protection and a renewal term of an additional 28 years. Consequently, the maximum term of protection under the 1909 Copyright Act was 56 years. However, in order to receive protection during the renewal term, a renewal registration had to be made for the work. If a copyright was not renewed properly during the last year of the initial term, the copyright expired, and the work entered the public domain.

The turning point between common law copyright and federal copyright under the 1909 Act revolved around the concept of publication. Publication is defined as the distribution of copies or phonorecords to the public by sale or other transfer of ownership; by rental, lease, or lending; or the offer to distribute for purposes of further distribution. For example, if a record company distributes records to retailers, who offer them for sale to the public, publication has occurred. On the other hand, if the distribution is restricted as to who receives the work and the use to be made of it, publication would not have occurred. Also, the performance of a work does not constitute a publication.

The main reason for dividing the term of copyright into two periods (initial and renewal) was to protect authors. Often, authors transfer their rights upon or shortly after creation of a work, before the value of the work is known. The renewal term was intended to protect authors from this situation. According to one court:

> These provisions were introduced in response to the problem of unremunerative grants of copyright by authors. Because of the impossibility of predicting the commercial value of a work upon its creation and because of the weak bargaining position of authors, they sometimes assigned their copyrights in return for very little remuneration, such as small lump sum payments or inadequate royalty rates, and were thus prevented from sharing fairly, if at all, in the rewards from works that later became commercial successes. The termination provisions give authors an opportunity to renegotiate in the light of more knowledge as to the value of their works, and thereby obtain a fair share of the rewards from their works.[1]

The renewal right belonged to the author of the work or the author's heirs as specified by the 1909 Copyright Act even if the author had previously transferred copyright ownership to someone else. Although the renewal requirement is no longer of much practical importance, it is still helpful to have a basic understanding of the renewal provisions.

(1) When to Renew?

Under the 1909 Copyright Act, a copyright owner could file the renewal application at any time during the last (the 28th) calendar year of the initial term. It was crucial that the renewal registration be made during the 28th year of the initial

term because the failure to do so ejected the work into the public domain. Many copyrights expired at the end of the initial term due to the failure to renew. In fact, only about 20 percent of works published before 1978 were renewed.

The Copyright Renewal Act of 1992 amended the law and made renewal automatic for works created from 1964 to 1977. However, instead of totally eliminating the renewal system, the Copyright Renewal Act made it optional. Under § 304(a), copyrights in works created from 1964 through 1977 automatically receive a 67-year renewal term. However, works published before 1964 still had to be renewed.

Example 8.1: A work published in 1963 had to be renewed in 1991 to receive the renewal term, while a work published in 1964 is automatically renewed.

Even though renewal is optional for works created beginning in 1964, there is an important benefit afforded to copyrights for which a renewal registration is filed. If a renewal registration is filed within one year of the expiration of the initial term, the registration certificate constitutes evidence of validity of the copyright and the facts stated in the renewal certificate during the renewal term.[2] This means that a copyright owner who has renewed won't need to call witnesses to prove all of the facts stated in the renewal registration if there is ever a dispute over ownership.

Tip: *In the music publishing field, when a publisher has an arrangement or translation of a song made, the resulting work will normally be a work made for hire, and the publisher rather than the arranger or translator would be the proper party to file a renewal registration.*

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(2) Assignment of Renewal Rights

The renewal provision was largely ineffective at achieving its purpose because the Supreme Court held that authors could transfer their rights to the renewal term during the initial term. In *Fred Fisher Music Co. v. M. Witmark & Sons*,[3] the songwriters of "When Irish Eyes Are Smiling" transferred the copyright in the song as well as their renewal rights to a publisher. The Court held that the songwriters' assignment of their renewal rights was valid and that the publisher therefore had the right to renew. After this decision, it became a common practice in publishing contracts for publishers to require that authors assign their right to the renewal term to them.

An author can make a promise to transfer his renewal rights at any time. However, transfers of renewal rights that are made before the time for renewal (i.e., in the 28th year of the initial term) will be conditioned upon the author's surviving until the time for renewal. Similarly, an author's successors may also promise to transfer their renewal right, but their promises are also conditioned upon their surviving until the time for renewal. If an author or an author's successors promise to transfer their renewal rights, but die before the 28th year of the initial term, the transferee does not have the right to renew. Instead, the renewal right will belong to the next succeeding successor specified by § 304(a).

Example 8.2: A songwriter wrote a song in 1950 and transferred all of his rights to the song, including the renewal right, to a publisher. If the songwriter died before 1978, leaving a wife and children, the wife and children rather than the publisher would own the renewal right. The rationale for this result is that the songwriter's transfer of the renewal right was conditioned upon his living until 1978.

(3) Termination of Transfer of Renewal Term

An author or the author's heirs have the right to get back copyright ownership for the last 39 years of the copyright term by terminating any pre-1978 transfers of the renewal term. This termination right can be exercised during a five-year period beginning 56 years after first publication of the work or January 1, 1978, whichever comes later. The provisions for termination are otherwise essentially the same as the provisions for termination of transfer under section 203 of the 1976 Copyright Act (discussed in Chapter 4).

Tip: *Because the provisions for termination are somewhat complex, it is a good idea to consult with a copyright attorney no later than 54 years after the work's publication (earlier if possible) in order to ensure that the termination of pre-1978 works is carried out properly.*

B. THE 1976 COPYRIGHT ACT

Duration of copyright under the 1976 Copyright Act differs substantially from duration under the 1909 Act. Under the 1976 Act, copyright protection begins upon creation of the work and is not dependent upon publication. Creation occurs when an original work is fixed in tangible form.

Congress did away with the renewal term and instead decided to base copyright duration on the author's lifetime. The 1976 Act provided that copyright lasts for the life of the author plus an additional 50 years[4] (this period has since been increased to the life of the author plus 70 years). There were several reasons behind Congress' decision to make this change. First, due to increased life expectancies, the 1909 Act's maximum term of 56 years was not sufficient to compensate authors throughout their lives. Second, the renewal requirement often resulted in the inadvertent loss of copyright for many works due to the failure to file a renewal registration. Third, most foreign countries based their term of copyright on the author's lifetime plus a period after death. Finally, with a term based on the author's life, all works of an author enter the public domain at the same time.

Tip: *It is important to note that a copyrighted work's duration never changes regardless of any transfers of ownership in the work. The term is based on the original author's life regardless of who owns the copyright.*

II. Determining Copyright Duration

In order to determine how long copyright lasts for a particular work, it is helpful to divide works into three categories: (1) works created beginning in 1978; (2) works created but not published before 1978; and (3) works published before 1978. Table 8.1 summarizes the copyright duration rules for works created and published during these time periods.

A. WORKS CREATED FROM 1978 TO PRESENT

For most works created on or after January 1, 1978 (other than anonymous works, pseudonymous works, and works made for hire), the term of copyright begins with the work's creation and ends 70 years after the death of the work's author.

Example 8.3: If a songwriter wrote a song in 1990 and died in 2000, the song's copyright will last through 2070 (i.e., 2000 plus 70 years).

TABLE 8.1 - COPYRIGHT DURATION

Date of Work	Protection Begins	Duration
Created 1/1/78 and after	On date of fixation in tangible form	**General Rule**: Life of author plus 70 years **Joint Works:** Life of last surviving author plus 70 years **Works for Hire, Anonymous and Pseudonymous Works:** 95 years from publication or 120 years from creation, whichever is shorter
Created before 1978, but published between 1/1/78 and 12/31/2002	Upon creation under common law; 1/1/78 under 1976 Copyright Act	Life of author plus 70 years or 12/31/2047, whichever is longer
Created before 1978, but not published	Upon creation under common law; 1/1/78 under 1976 Copyright Act	Life of author plus 70 years or 12/31/2002, whichever is longer
Published from 1964 to 1977	Upon publication with copyright notice (if published without notice, may be in public domain)	28 year initial term plus 67 year automatic renewal term
Published from 1923 to 1963	Upon publication with copyright notice (if published without notice, may be in public domain)	28 year initial term plus 67 year renewal term (if renewal registration filed during 28th year of initial term)
Published before 1923	In public domain	Expired

If a work is created by two or more authors (i.e., joint authorship), the term of copyright will last for the life of the last surviving author plus 70 years after the last surviving author's death.[5]

Example 8.4: If two songwriters write a song in 1990, and one of the songwriters dies in 2000 while the other dies in 2010, the song's copyright will last through 2080.

(1) Anonymous Works, Pseudonymous Works, and Works Made for Hire

There are three types of works involving authors who are either unknown or not an individual. An anonymous work is a work whose author is not identified in the copyright registration for the work. A pseudonymous work is a work whose author is identified by a fictitious name in the copyright registration. Works made for hire are created by an individual on behalf of an employer or hiring party. For these types of works, the term of copyright cannot be based upon the life of the author. Instead, the 1976 Copyright Act provides that copyright protection will last for 95 years from the work's first publication or 120 years from the work's creation, whichever expires first.[6] The rationale for having a dual period based on either creation or publication is to have a specific time period for all works, even if unpublished.

Example 8.5: A song written as a work made for hire is composed in 1995 and released on records (i.e., published) in 2000. The song's copyright will expire in 2095 (95 years from first publication). If, on the other hand, the song was not published until 2025, the copyright would expire in 2115 (120 years from creation).

In the case of anonymous works and pseudonymous works, the term of copyright can be converted to the life of the author plus 70 years by making the author's identity known to the Copyright Office before the expiration of the 95- or 120-year term.[7] Any person having an interest in a copyright may notify the Copyright Office of the actual author's identity in one of three ways: (1) registering under the author's true name; (2) filing a supplementary registration if the work has already been registered; or (3) recording a statement that specifies the name of the person filing the statement, the nature of that person's interest in the copyright, the title of the work, and the registration number if known.

Tip: *If an author believes that he or she is not likely to live longer than 25 years, the author could register works under a pseudonym, thereby potentially receiving a longer term of copyright protection. For instance, if a chain-smoking, heavy-drinking, highly overweight 65-year-old author who does not expect to live to age 80 writes a song in 2000, he might choose to register the song under a pseudonym, and the copyright would quite possibly last longer than if the song were registered under the author's actual name. A similar result might also be accomplished if the author formed a corporation and wrote songs under work made for hire agreements with the corporation.*

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(2) How Do You Know if a Copyright Owner Is Dead?

Because copyright duration is based upon the author's life under the 1976 Copyright Act, it is helpful to know whether an author is still living and, if not, the author's date of death. The Copyright Act provides for recordation in the Copyright Office of information concerning the lives and deaths of authors. Section 302(d) provides that:

> Any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date.

The Register of Copyrights is required to maintain current records on the deaths of authors of copyrighted works derived from statements recorded by copyright interest holders. There is also an incentive for copyright owners to provide the Copyright Office with statements allowed under section 302(d). Under section 302(e), if after 95 years from a work's first publication or 120 years from its creation, whichever expires first, a prospective user obtains a certified report from the Copyright Office that the Office' records disclose nothing to indicate that the work's author is still living or died less than 70 years before, the prospective user is entitled to the benefit of a presumption that the author has been dead for at least 70 years. This creates a presumption that a work is in the public domain if the Copyright Office records show nothing indicating that the author is alive or has been alive during the past 95 years. A certified report can be obtained from the Copyright Office, and if a person relies on such a report in good faith, that reliance constitutes a complete defense to an action for copyright infringement. This defense will not be applicable if the copyright owner can prove that the user had notice that less than 70 years had elapsed from the year of the author's death.

Tip: *It is advisable for copyright owners of commercially valuable works to file statements regarding the author's status with the Copyright Office from time to time. For example, a copyright owner can file a statement saying that the author is still alive as of a certain date or giving the date of the author's death, thereby preventing people from relying on the presumption that a work is in the public domain.*

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(3) Copyright Actually Lasts Longer than Life Plus 70 Years

Section 305 of the 1976 Copyright Act provides that all terms of copyright run to the end of the calendar year in which they expire. In other words, all copyrighted works will expire on December 31st of the year 70 years after the author's death.

Example 8.6: A song written on January 1 of any year would receive an actual copyright term of the author's life plus 70 years, 11 months, and 30 days because it would expire on December 31st of the year occurring 70 years after the author's death.

B. WORKS CREATED BUT NOT PUBLISHED BEFORE 1978

Works that were created but had not been published prior to 1978 were protected by state common law copyright, which lasted indefinitely. The 1976 Copyright Act abolished common law copyright for works fixed in a tangible medium. Section 303 of the Copyright Act provides that works that were protected by common law copyright on the effective date of the 1976 Act (i.e., January 1, 1978) became subject to the term of protection specified by the 1976 Act (i.e., life plus 70 years) or until December 31, 2002, whichever expires later. The second potential expiration date (i.e., 12/31/02) protects works created by authors who have been deceased for more than 70 years by 1978 (which otherwise would not have received any federal copyright protection). Additionally, if such works are published before December 31, 2002, the copyright will not expire before December 31, 2047, thereby encouraging publication.

Example 8.7: Sally Songwriter wrote a song in 1950 that was not published. If Sally died in 1980, when does the copyright expire? The song was protected by common law copyright until 1978, at which time it became subject to federal copyright protection for the life of Sally plus 70 years, or until 2050.

Example 8.8: Sammy Songwriter wrote a song in 1872 that was not published. If Sammy died in 1898, when does the copyright expire? The song was protected by common law copyright until 1978, at which time it became subject to federal copyright protection lasting until 12/31/2002 because that period is longer than Sammy's life plus 70 years or 1948. However, if Sammy's song is published before December 31, 2002, the copyright term would be extended to December 31, 2027.

As a result of the 1976 Copyright Act, the concept of common law copyright has lost most of its importance. There are however, two categories of works that may still be protected under common law copyright. These are (1) works that have not been fixed in any tangible form, such as unrecorded improvisations; and (2) sound recordings fixed before February 15, 1972, which are protected until February 15, 2047.

C. WORKS PUBLISHED BEFORE 1978

The most confusing rules governing duration of copyright are for works that were published or registered prior to 1978. These works are governed by the 1909 Copyright Act, which provided for an initial term of 28 years from first publication with proper copyright notice. The 1909 Act also provided for a renewal term of an additional 28 years, resulting in a maximum term (initial plus renewal) of 56 years. In order to get the renewal term, a renewal registration had to be filed during the last year of the initial 28 year term.

Example 8.9: A song published in 1951 would have an initial term that expired in 1979. If the copyright to the song was renewed during 1979, it would have received an additional 28 years under the 1909 Act. The copyright would therefore have expired in 2007 (1951 plus 56 years).

(1) First Extension of Renewal Term

The 1976 Copyright Act extended the duration of the renewal term for an additional 19 years, making the total renewal term 47 years. With this extended renewal period, works published before 1978 received a maximum of 75 years of copyright protection. The rationale for this extension was to give copyrights existing under the 1909 Act protection of approximately the same length as copyrights under the 1976 Act.

Example 8.10: The copyright to the song from Example 8.10 would now expire in 2026 rather than 2007 (1951 plus 75 years).

(2) Second Extension of Renewal Term

The Sonny Bono Term Extension Act of 1998 amended the 1976 Copyright Act, extending the previous 47 year renewal term by an additional 20 years (as well as adding 20 years to works created beginning in 1978). Consequently, the renewal term now lasts for 67 years, and the maximum term for works in the initial or renewal term as of 1999 is 95 years (i.e., 28 plus 67 years) of copyright protection.

Example 8.11: The copyright to the song from the previous example would now expire in 2046 rather than 2026 (1951 plus 95 years).

The 1998 Term Extension Act was one of the most controversial amendments made to U.S. copyright law. It was passed largely at the instigation of copyright owners of some extremely valuable works that would have entered the public domain if the term had not been extended. Both the Disney Corporation and the Gershwin family estate lobbied vigorously for passage of the Term Extension Act; its passage assured that copyrighted works such as the original Mickey Mouse character and "Rhapsody in Blue" by George Gershwin will continue to earn substantial income over the additional 20 years of protection. However, the Term Extension Act was also heavily lobbied against and was challenged shortly after its enactment by several publishers of public domain works, who contended that Congress exceeded its authority under the Constitution. Ultimately, the Supreme Court affirmed two lower court decisions upholding the term extension because the Constitution gives Congress the power to determine how long copyright protection should last subject only to the restriction that it must be for "limited times."[8] Although the current term consisting of the author's lifetime plus 70 years is a long time, it is a limited time. The Supreme Court also concluded that Congress did not decide on the 20-year extension arbitrarily. Instead, Congress specified several reasons for doing so, including that some other countries had previously gone to a life-plus-70 term and that it did not make sense for the United States to have a lesser term of protection than what appeared to be emerging as the new international standard.

Critics of copyright term extension have made some valid points, most notably that the additional 20 years of copyright does little (if anything) to motivate authors to create and prevents works from entering the public domain for an additional 20 years. However, some of the main criticisms of term extension are exaggerated. First, critics' portrayals of the public domain as a free source of works for people to use and build upon are somewhat misleading. Although public domain works are not protected by copyright, this does not always mean they are free. In fact, there are publishing companies that specialize in selling public domain works. Shakespeare's plays and Beethoven's symphonies are certainly in the public domain, but if you want a copy of either, you'll likely have to pay for it. Ironically, copies of public domain works (e.g., books, sheet music, etc.) often sell for about the same price as copyrighted works. The only difference is

that none of the price is paid to the former copyright owner, the author, or the author's heirs. In fairness, there are some online publishers of free public domain works,[9] but these seem to be a small minority compared to publishers that sell public domain works. In reality, whether a work is sold or made available for free often depends much more on economic considerations (whether there's a sizeable enough market willing to pay for the work) than whether the work is in the public domain or not.

Another criticism of term extension is that the extra term of copyright protection only benefits big businesses that end up owning copyrights rather than benefiting authors. This criticism plays well in some academic circles and the media but is inaccurate under current law. Although commercially valuable works often end up being owned by major entertainment or technology companies that acquire them from authors, unless created as works made for hire, they are subject to the author's termination rights.[10] Especially for highly valuable works, authors are very likely to exercise their right to terminate the initial transfer of copyright they made and regain ownership. In such situations, the author will clearly benefit from the extra 20 years of copyright. Even without considering termination rights, authors that transfer copyright do so according to some type of publishing contract that will almost always entitle the author to some type of royalty based on sales of the copyrighted work. In this situation, the author would not own the copyright for the 20 years of added protection but would still benefit financially from the copyright. Most works will have limited if any commercial value during the last 20 years of copyright protection, but for the few that do, the additional period of time certainly benefits the authors of these works or their heirs.

D. DETERMINING WHETHER A WORK IS IN THE PUBLIC DOMAIN

Because public domain works are free for all to use, anyone can freely copy them. However, it is often difficult to know whether a particular work is in the public domain. In order to determine whether a work is in the public domain, it is helpful to know when the work was first published. The date of first publication is usually specified in the copyright notice for copies or phonorecords of the work that have been distributed to the public. For works published prior to 1964, you will also need to know whether a renewal registration for the work was filed. To find out whether a renewal registration was filed, it is normally necessary to conduct a search of the Copyright Office records in one of the following ways:

1. Perform your own search by looking up the title of the work in the Catalog of Copyright Entries ("CCE"). The CCE is a series of annual catalogs listing and cross-referencing all registrations and renewals filed with the Copyright Office. The CCE is available at the Copyright Office as well as at certain libraries. Registrations and renewals made beginning with 1978 are also available online at the Copyright Office website at http://www.copyright.gov/records/. Although there is no charge to perform your own search, it may be advisable to use one of the following methods instead if you are not sure of what you are doing.

2. Have the Copyright Office search its records for you. The Copyright Office charges a $75 per hour fee, and most simple searches will not take longer than one hour. Fill out a search request form and send it (along with a $75 check) to Reference & Bibliography Section, LM-451, Copyright Office, Library of Congress, Washington, DC 20559. The only disadvantage to having the Copyright Office perform a search is that it can take a fairly long time to receive the search results (i.e., 1–3 months).

3. You could hire a professional search firm or a copyright attorney to conduct a search for you. This may be more expensive than having the Copyright Office perform a search, but you will obtain a quicker result (i.e, 1–5 days).

Many works that one might believe to be in the public domain are still protected by copyright. For instance, the song "Happy Birthday to You" was written in the 1890s. The copyright in a version with new lyrics was registered in 1935 by Warner-Chappell, a music publishing company. This copyright will not expire until 2030. Although it can be difficult to determine when a particular work will enter the public domain, the following are some general rules:

- Any work published in 1922 or earlier is in the public domain.
- The Copyright Term Extension Act of 1998 delayed works published in 1923 or after from entering the public domain. For instance, a work published in 1923 will be protected through 2018 rather than 1999.
- No work created from 1978 on will enter the public domain until at least 2069.

E. RESTORATION OF COPYRIGHT IN FOREIGN WORKS

In general, once a work has entered the public domain, it remains in the public domain forever. This rule is always true for works copyrighted in the United States. However, there is an exception for certain foreign works. The copyrights in some foreign works that were published in the United States before 1964 entered the public domain in the United States due to the copyright owner's failure to file a renewal registration. Because most foreign copyright laws did not follow a renewal system, many foreign works lost protection in the United States, although they were still protected in their country of origin.

The General Agreement on Trade and Tariffs ("GATT") remedied this situation by restoring the copyright in certain of these foreign works effective as of January 1, 1996. In order for copyright in a foreign work to be restored, the following three conditions must be satisfied:

1. The work must have been created by an author who is a citizen or resident of a member country of the Berne Convention, World Trade Organization, or another copyright treaty with the United States.
2. The work must have been first published in the foreign country and not published in the United States within 30 days after foreign publication.
3. The work's copyright must not have expired under the foreign country's copyright law.

Restoration only applies to foreign works and is intended to compensate for the inadvertent loss of copyright due to failure to renew, which was not required under foreign copyright laws. Restored works receive the same term they would have received if a renewal registration had been filed.

Example 8.12: A song was published in Germany in 1949 and in the U.S. in 1950. If the copyright owner failed to file a renewal registration in 1978, the work entered the public domain in the United States in 1979, although it was still protected under German copyright law. Under GATT, the copyright is automatically restored as of January 1, 1996, and lasts through 2045.

The copyright owner of a restored work cannot recover for infringements that occurred before 1996 when the work was in the public domain. Additionally, the copyright owner must give notice to people who continued to use the work after 1996 before filing an infringement suit against them.

Example 8.13: If a record company released a recording of the song from the previous example in 1980, the copyright owner could not recover damages from the record company for any records sold from 1980 to 1996 because the song was in the public domain during that time period. The copyright owner could, however, provide notice to the record company that the copyright has been restored in the United States and then recover for any infringements that occur after the record company's receipt of the notice.

F. DURATION OF ASSIGNMENTS

It is important to understand the difference between the term of copyright as specified by law and the term of copyright ownership under a contract. A contract may limit a person's ownership of a copyrighted work to a period less than the full term of copyright protection. If an assignment of copyright does not clearly indicate the term of its duration, it will be deemed effective for the remainder of the copyright term, subject to the author's termination rights.

Example 8.14: A contract between a songwriter and a music publisher provides that the songwriter assigns the copyright in a song to the publisher for 10 years. At the end of the 10-year period, the ownership of the song reverts to the songwriter. The songwriter would then own the song for the remaining period of copyright protection or could assign it to someone else.

Endnotes

1. *Harry Fox Agency, Inc. v. Mills Music, Inc.*, 543 F. Supp. 844 (1982).
2. 17 U.S.C. § 304(a)(4)(b).
3. 318 U.S. 643 (1943).
4. 17 U.S.C. § 302(a).
5. 17 U.S.C. § 302(b), as amended by the Copyright Term Extension Act of 1998.
6. 17 U.S.C. § 302(c).
7. 17 U.S.C. § 302(c).
8. *Eldred v. Ashcroft*, 537 U.S. 186 (2003).
9. For example, Eldritch Press (owned by Eric Eldred, who was the lead plaintiff in *Eldred v. Ashcroft*) is an online publisher of free public domain books. See http://www.eldritchpress.org/.
10. See Chapter 4 for a discussion of termination rights.