

Nothing contained in this section or elsewhere in this legislation is intended to extend the duration of any license, transfer or assignment made for a period of less than thirty-five years. If, for example, an agreement provides an earlier termination date or lesser duration, or if it allows the author the right of cancelling or terminating the agreement under certain circumstances, the duration is governed by the agreement. Likewise, nothing in this section or legislation is intended to change the existing state of the law of contracts concerning the circumstances in which an author may cancel or terminate a license, transfer, or assignment.

Section 203(b)(6) provides that, unless and until termination is effected under this section, the grant, “if it does not provide otherwise,” continues for the term of copyright. This section means that, if the agreement does not contain provisions specifying its term or duration, and the author has not terminated the agreement under this section, the agreement continues for the term of the copyright, subject to any right of termination under circumstances which may be specified therein. If, however, an agreement does contain provisions governing its duration—for example, a term of fifty years—and the author has not exercised his or her right of termination under the statute, the agreement will continue according to its terms—in this example, for only fifty years. The quoted language is not to be construed as requiring agreements to reserve the right of termination.

AMENDMENTS

2002—Subsec. (a)(2)(A) to (C). Pub. L. 107-273, in subpars. (A) to (C), substituted “The” for “the” and, in subpars. (A) and (B), substituted period for semicolon at end.

1998—Subsec. (a)(2). Pub. L. 105-298, §103(1), struck out “by his widow or her widower and his or her children or grandchildren” after “exercised,” in introductory provisions.

Subsec. (a)(2)(D). Pub. L. 105-298, §103(2), added subpar. (D).

§ 204. Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2570.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 204 is a somewhat broadened and liberalized counterpart of sections 28 and 29 of the present statute [sections 28 and 29 of former title 17]. Under subsection (a), a transfer of copyright ownership (other than one brought about by operation of law) is valid only if there exists an instrument of conveyance, or alternatively a

“note or memorandum of the transfer,” which is in writing and signed by the copyright owner “or such owner's duly authorized agent.” Subsection (b) makes clear that a notarial or consular acknowledgment is not essential to the validity of any transfer, whether executed in the United States or abroad. However, the subsection would liberalize the conditions under which certificates of acknowledgment of documents executed abroad are to be accorded prima facie weight, and would give the same weight to domestic acknowledgments under appropriate circumstances.

§ 205. Recordation of transfers and other documents

(a) CONDITIONS FOR RECORDATION.—Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) CERTIFICATE OF RECORDATION.—The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE.—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(e) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if—

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2571; Pub. L. 100-568, §5, Oct. 31, 1988, 102 Stat. 2857.)