



March 30, 2010

**Wixen Music Publishing, Inc.**

Marybeth Peters  
Register of Copyrights  
U.S. Copyright Office  
Washington , DC 20559

Dear Ms. Register:

Further to your solicitation of comments (37 CFR Part 201) about the "Gap in Termination Provisions," please accept the following thoughts.

Pre-1978 copyright renewal rights are not validly assignable if the writer doesn't live until the renewal date. This is because the renewal right is only hypothetical to the author and is only his or hers to transfer if he or she in fact lives long enough to be vested in such right.

Likewise, in the issue at hand, the contemplated creation of a work is not the same as the actual creation of a work, and thus the rights in and to that work cannot be transferred until it actually exists. Thus, the transfer takes place not when the creation is hypothetically contemplated, but rather once a work has actually been created. Existence is the salient test, not publication. If creation, existence, and subsequent or immediate transfer takes place on or after January 1, 1978, then the work is clearly subject to the termination provisions for works created after that date.

Consistency in logic demands no other conclusion, and would be contrary to the obvious intent of the statute. Any other interpretation would also inevitably lead to countless claims that works were created and transferred under older agreements, and require authors with the recognized "unequal bargaining positions" to expend time, energy and money to prove their right to recover their own creations.

Thank you very much.

Sincerely,

Randall D. Wixen  
President