



May 21, 2010

Marybeth Peters  
Register of Copyrights  
U.S. Copyright Office  
101 Independence Ave, S.E.  
Washington, D.C. 20559

Dear Ms. Peters:

Reply Comments on Responses to the Notice of Inquiry Regarding a  
Possible Gap in the 1976 Act Termination Provisions

The Society of American Archivists appreciates the extended opportunity to comment on the responses to the Notice of Inquiry issued by your office concerning a possible gap in the 1976 Act termination provisions.

The Society of American Archivists (SAA) is the oldest and largest association of professional archivists in North America. Representing more than 5,500 individual and institutional members, the SAA is the authoritative voice in the United States on issues that affect the identification, preservation, and use of historical records. Archivists have a special interest in policy and legal issues associated with unpublished materials, which form the bulk of the holdings of archival repositories.

As archivists, we recognize that the possible gap in the 1976 Act's termination provisions may have unintended consequences for some authors. As most of the respondents note, it seems unfair that certain authors would not be able to terminate a copyright transfer for a work created after the 1976 Act came into effect merely because those authors had signed an agreement transferring copyright in future works prior to 1978. The archives community, therefore, applauds your office for seeking to find an equitable solution to the problem.

In reading the comments regarding a solution for the "gap" works problem, however, we noted with alarm that some respondents raised another issue that is perhaps even more problematic: the termination provisions for unpublished works created before 1978 that were also transferred prior to 1978. As with the "gap" works, it is not at all clear that copyright transfers for these works can be terminated. Sections 304(c) and (d) do not

apply because these works are not in their renewal term; unpublished works that achieved statutory protection only in 1978 do not have a renewal term. A common-sense reading of 203 would indicate that it does not apply as well, as the copyright transfer agreements would have been signed prior to 1978.

Yet the questions surrounding the copyright transfer termination of these works are at least as complex as those surrounding the “gap” works. Should authors who transferred all rights in works that have remained unpublished have a right to rescind that transfer? If they should have a termination right, after what period should that termination take place? Should it be calculated from the date of creation, the date of transference, or the date on which the work received Federal copyright protection? Is adding another date to the already complex copyright calendar a wise decision? And if copyright transfers are terminated in unpublished material, should compensation be required? Archives, unlike publishers, do not hold material in the expectation of making money. Instead, it is costly to maintain collections of unpublished materials. It is common, therefore, to require payment for past storage and processing for those few occasions on which donors ask that material be returned from a repository. Should a similar model follow with terminations of copyright transfers? And should there be explicit recognition that the procedures for potentially commercial works may need to be different than those for historical works?

As you can tell, the issues associated with the termination of copyright associated with unpublished works created and transferred before 1978 are complex. We hope, therefore, that before you propose any legislative or regulatory changes that would affect these works, you undertake the same type of thoughtful investigation and study to these works that you have applied to the issue of “gap” works. We are optimistic that you will be able to find an equitable solution to the “gap” works problem, but want to make sure that in doing so, you do not inadvertently create bigger problems for most unpublished works.

Sincerely,

A handwritten signature in cursive script that reads "Peter Gottlieb".

Peter Gottlieb  
SAA President, 2009-2010