

# OF RIGHTS AND MEN: THE RE-ALIENABILITY OF TERMINATION OF TRANSFER RIGHTS IN *PENGUIN GROUP V. STEINBECK*

By Adam R. Blankenheimer

From its inception, United States copyright law has granted authors reversionary interests in their copyrightable works.<sup>1</sup> Because an author's initial bargaining position with a publisher may be relatively weak,<sup>2</sup> Congress has consistently given the author the right to regain his copyright after the work has already been published and exploited on the market.<sup>3</sup> With copyright back in hand and knowledge of its fair market worth, the author has a second opportunity to sell it for a price that better reflects the work's value.<sup>4</sup>

The Copyright Act of 1976 introduced the modern incarnation of the author's reversionary interest in his copyright: the right to terminate a transfer. During the statutory period, the author or his statutory heirs may terminate any prior assignment of his exclusive rights to the work.<sup>5</sup> Whereas an author's reversionary rights prior to the 1976 Act were assignable or waivable,<sup>6</sup> in 1976 Congress mandated that termination of transfer

---

© 2009 Adam R. Blankenheimer. The author hereby permits the reproduction of this Note subject to the Creative Commons Attribution 3.0 License, the full terms of which can be accessed at <http://creativecommons.org/licenses/by/3.0/legalcode>, and provided that the following notice be preserved: "Originally published in the Berkeley Technology Law Journal 24:1 (2009)."

1. See Lee Ford Tritt, *Liberating Estates Law From the Constraints of Copyright*, 38 RUTGERS L.J. 109, 147 (2006) (reviewing the history of copyright recapture rights).

2. See *Stewart v. Abend*, 495 U.S. 207, 218-19 (1990) ("It not infrequently happens that the author sells his copyright outright to a publisher for a comparatively small sum." (quoting H.R. REP. NO. 2222, at 14 (1909))).

3. See Melville B. Nimmer, *Termination of Transfers Under the Copyright Act of 1976*, 125 U. PA. L. REV. 947, 950 (1977) ("[T]he most compelling justification for a reversionary right: an author's property, unlike other forms of property, is by its very nature incapable of accurate monetary evaluation prior to its exploitation.").

4. See *Stewart*, 495 U.S. at 218-19.

5. 17 U.S.C. §§ 203(a), 304(c)-(d) (2006). Section 203(a) gives authors the right to terminate post-1978 transfers, 304(c) gives authors the right to terminate pre-1978 transfers, and 304(d) gives authors a second chance to terminate pre-1978 transfers.

6. See *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643, 656-59 (1943) (upholding an author's assignment of his renewal right under the 1909 Act).