''their duly authorized agents,'' which would include the legally appointed guardians or committees of persons incompetent to sign because of age or mental disability.

When a Grant Can be Terminated. Section 203 draws a distinction between the date when a termination becomes effective and the earlier date when the advance notice of termination is served. With respect to the ultimate effective date, section 203(a)(3) provides, as a general rule, that a grant may be terminated during the 5 years following the expiration of a period of 35 years from the execution of the grant. As an exception to this basic 35-year rule, the bill also provides that ''if the grant covers the right of publication of the work, the period begins at the end of 35 years from the date of publication of the work under the grant or at the end of 40 years from the date of execution of the grant, whichever term ends earlier.'' This alternative method of computation is intended to cover cases where years elapse between the signing of a publication contract and the eventual publication of the work.

The effective date of termination, which must be stated in the advance notice, is required to fall within the 5 years following the end of the applicable 35- or 40-year period, but the advance notice itself must be served earlier. Under section 203(a)(4)(A), the notice must be served ''not less than two or more than ten years'' before the effective date stated in it.

As an example of how these time-limit requirements would operate in practice, we suggest two typical contract situations:

Case 1: Contract for theatrical production signed on September 2, 1987. Termination of grant can be made to take effect between September 2, 2022 (35 years from execution) and September 1, 2027 (end of 5 year termination period). Assuming that the author decides to terminate on September 1, 2022 (the earliest possible date) the advance notice must be filed between September 1, 2012, and September 1, 2020.

Case 2: Contract for book publication executed on April 10, 1980; book finally published on August 23, 1987. Since contract covers the right of publication, the 5-year termination period would begin on April 10, 2020 (40 years from execution) rather than April 10, 2015 (35 years from execution) or August 23, 2022 (35 years from publication). Assuming that the author decides to make the termination effective on January 1, 2024, the advance notice would have to be served between January 1, 2014, and January 1, 2022.

Effect of Termination. Section 203(b) makes clear that, unless effectively terminated within the applicable 5-year period, all rights covered by an existing grant will continue unchanged, and that rights under other Federal, State, or foreign laws are unaffected. However, assuming that a copyright transfer or license is terminated under section 203, who are bound by the termination and how are they affected?

Under the bill, termination means that ownership of the rights covered by the terminated grant reverts to everyone who owns termination interests on the date the notice of termination was served, whether they joined in signing the notice or not. In other words, if a person could have signed the notice, that person is bound by the action of the majority who did; the termination of the grant will be effective as to that person, and a proportionate share of the reverted rights automatically vests in that person. Ownership is divided proportionately on the same per stirpes basis as that provided for the right to effect termination under section 203(a) and, since the reverted rights vest on the date notice is served, the heirs of a dead beneficiary would inherit his or her share.

Under clause (3) of subsection (b), majority action is required to make a further grant of reverted rights. A problem here, of course, is that years may have passed between the time the reverted rights vested and the time the new owners want to make a further transfer; people may have died and children may have been born in the interim. To deal with this problem, the bill looks back to the date of vesting; out of the group in whom rights vested on that date, it requires the further transfer or license to be signed by ''the same number and proportion of the owners'' (though not necessarily the same individuals) as were then required to terminate the grant under subsection (a). If some of those in whom the rights originally vested have died, their ''legal representatives, legatees, or heirs at law'' may represent them for this purpose and, as in the case of the termination itself, any one of the minority who does not join in the further grant is nevertheless bound by it.

An important limitation on the rights of a copyright owner under a terminated grant is specified in section 203(b)(1). This clause provides that, notwithstanding a termination, a derivative work prepared earlier may ''continue to be utilized'' under the conditions of the terminated grant; the clause adds, however, that this privilege is not broad enough to permit the preparation of other derivative works. In other words, a film made from a play could continue to be licensed for performance after the motion picture contract had been terminated but any remake rights covered by the contract would be cut off. For this purpose, a motion picture would be considered as a ''derivative work'' with respect to every ''preexisting work'' incorporated in it, whether the preexisting work was created independently or was prepared expressly for the motion picture.

Section 203 would not prevent the parties to a transfer or license from voluntarily agreeing at any time to terminate an existing grant and negotiating a new one, thereby causing another 35-year period to start running. However, the bill seeks to avoid the situation that has arisen under the present renewal provision, in which third parties have bought up contingent future interests as a form of speculation. Section 203(b)(4) would make a further grant of rights that revert under a terminated grant valid ''only if it is made after the effective date of the termination.'' An exception, in the nature of a right of ''first refusal,'' would permit the original grantee or a successor of such grantee to negotiate a new agreement with the persons effecting the termination at any time after the notice of termination has been served.

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 chil-

dren 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.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The recording and priority provisions of section 205 are intended to clear up a number of uncertainties arising from sections 30 and 31 of the present law [sections 30 and 31 of former title 17] and to make them more effective and practical in operation. Any ''document pertaining to a copyright'' may be recorded under subsection (a) if it ''bears that actual signature of the person who executed it,'' or if it is appropriately certified as a true copy. However, subsection (c) makes clear that the recorded document will give constructive notice of its contents only if two conditions are met: (1) the document or attached material specifically identifies the work to which it pertains so that a reasonable search under the title or registration number would reveal it, and (2) registration has been made for the work. Moreover, even though the Register of Copyrights may be compelled to accept for recordation documents that on their face appear self-serving or colorable, the Register should take care that their nature is not concealed from the public in the Copyright Office's indexing and search reports.

The provisions of subsection (d), requiring recordation of transfers as a prerequisite to the institution of an infringement suit, represent a desirable change in the law. The one- and three-month grace periods provided in subsection (e) are a reasonable compromise between those who want a longer hiatus and those who argue that any grace period makes it impossible for a bona fide transferee to rely on the record at any particular time.

Under subsection (f) of section 205, a nonexclusive license in writing and signed, whether recorded or not, would be valid against a later transfer, and would also prevail as against a prior unrecorded transfer if taken in good faith and without notice. Objections were