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 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