Take That Back: Examining the Use of U.S. Copyright Termination Notices using New Datasets

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Academics, creators and representative organisations have long expressed concerns that creators are often in unequal bargaining positions relative to publishers, record labels, and other intermediaries when negotiating to license or assign their copyright. In particular, creators beginning their careers may feel they should agree to contracts weighted heavily in favour of intermediaries for various reasons (lack of legal advice, lack of information or experience, fear of not receiving another opportunity to ‘break in’ to the industry). As such, creators and their estates may not benefit as much from the future success of their works.

To address these issues, the United States Congress introduced termination laws in the Copyright Act of 1976. These laws permit creators to unilaterally terminate copyright assignments and licences after a particular time by serving termination notices on rightsholders (for example, 35 years after assignment for post-1978 assignments). Congress intended for creators to be able to have a ‘second bite’ at exploiting their works by regaining their rights when their value was clearer. However, there is little empirical research on how the system is operating. Such data will enable a holistic assessment of whether the system is helping to achieve Congress’ goals, and more broadly the goals of copyright in the Anglo-American tradition: incentivising the creation of and investment in the production of works for the public good, and rewarding authors for their creative labour.

This paper fills that gap by introducing new datasets that show the use and operation of the termination right scheme. We used computer code (in the Python programming language) to extract and analyse publicly available termination notice records from the U.S. Copyright Office Catalog, painting the most comprehensive picture of how the system is being used. Here, we present preliminary usage trends on who is filing notices, what works are subject to notices, and how intermediaries are responding to the notices. We then highlight the value of our datasets for future use by academics and policymakers (particularly where similar systems are being seriously considered for implementation to address bargaining power imbalances, like Canada and South Africa).