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U.S. Copyright Termination Notices 1977–2020: Introducing New Datasets

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Copyright termination laws in the United States allow creators to end their copyright assignments and licences after various time periods and regain their rights. These laws are designed to protect authors and their heirs by giving them a second opportunity to profit from their works, where they might have assigned them initially for relatively little. Similar laws are in force and being recommended for implementation around the world. However, there is little data on how these laws are being used. Such data is vital because it provides insights into the pros and cons of different systems. We fill this gap by providing the first large-scale study of copyright termination notice records from the U.S. Copyright Office. Utilising data scraping and manipulation techniques in the Python programming language, we have created two brand new datasets for scholars, copyright experts, creators, publishers, and other industry stakeholders to examine. In our accompanying paper, we

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document some preliminary trends from the data and how it might be used for further analysis.

Keywords: copyright; termination; reversion; § 203; § 304

I. INTRODUCTION

Of all the core intellectual property rights—copyright, patent, trademark, and designs—copyright is the most empirically elusive, because it is the only one not subject to registration. International treaties prohibit formalities being imposed as a condition of the copyright's use and enjoyment (Berne Convention, WTO agreement on trade-related aspects of intellectual property rights (TRIPS)) and, while voluntary registration is permissible, few countries have set up the infrastructure for this to occur. The primary exception is the United States, which has long offered a registration process via its Copyright Office, and which encourages registration by streamlining litigation and offering more favorable remedies where registered works are infringed (Copyright Act of 1976, §§ 411, 412).

Increasingly sophisticated datasets now exist to enable researchers to analyze what is being patented, trademarked, and design protected (and by whom, where, and how that is evolving over time). But copyright lags well behind. There have been some notable researcher efforts to construct workable databases from the limited copyright registration data that are available (Oliar et al., 2014; Oliar & Matich, 2013), but the Copyright Office's database is elderly and frail, making it difficult to extract, arrange, and analyze the data it contains. As a result, it has long been challenging to address empirical research questions about copyright's operation.

Data around copyright reversion is particularly elusive. Reversion rights—mechanisms for returning those copyrights to their progenitors—are well established, predating modern copyright law itself (Yuvaraj & Giblin, 2021, p. 384). Reversion clauses are commonly negotiated into contracts between creators and investors, and on top of that, more than half the world's nations grant creators statutory reversion rights in one form or another (Yuvaraj, 2019). That includes the United States, which, since 1978, has entitled creators to reclaim their rights by terminating transfers after a set time (Copyright Act of 1976, §§ 203, 304). Unfortunately, while reversion rights are widespread, many reflect industry realities from a predigital world, and few take advantage of the opportunities to enliven older works offered by digital technologies and the internet. In some countries that have them on their statute books, there is virtually no awareness they even exist (Jaworski & Malik, 2020; Kazakevich, 2020).

Recently, however, there has been a notable surge of interest in reversion rights, with creator advocates, user groups (including the gallery, library, archive, and museum sectors), and policymakers all beginning to recognize their potential. Creators are regularly obliged to transfer all or most of their rights for the entirety of the copyright as a condition of getting their work produced and distributed, typically before anyone knows what they are worth. Rights return mechanisms promise to help creators secure a fairer

share of the fruits of their labor. For those interested in preserving and accessing culture, reversion has intriguing potential too. Rightsholders (such as book and music publishers and record labels) typically lose interest in works at the end of their commercial life, which can be many decades before the copyright expires. As a result, they become unavailable to cultural institutions and the broader public. Appropriately drafted reversion mechanisms could free up rights to creators and investors who want to make them accessible again, beneficially reclaiming lost culture for society at large. This puts reversion rights in the slim group of copyright interests shared by both “creator” and “user” interests, who are usually in opposition during reform debates. That polarization has made it very difficult to pass copyright reforms in recent years, so the unusual unity provides a rare opportunity to create meaningful change.

Policymakers are beginning to jump at the chance. In 2019, the European Union mandated that member states implement reversion rights to benefit creators whose rights are controlled by a rightsholder who no longer exploits them (E.U. Directive, art. 22). Its 27 member states are now in the process of implementing that requirement (CREATE, n.d.). Also, in 2019, the South African Parliament passed a new Copyright Act with a provision to automatically revert rights to authors 25 years after transfer, though they have now been forced back to the drawing board after the President refused to sign it into law (Nicholson, 2020a; Ramaphosa, 2020, cited in Nicholson, 2020b). Canadian lawmakers have also recommended introducing a new time-based reversion right entitling creators to terminate 25 years after transfer, with preliminary proposals analogous to existing U.S. law (House of Commons, Parliament of Canada, 2019a).

In formulating all these new laws, however, stakeholders and policymakers are largely flying blind. Empirical evaluation of existing reversion rights is scant and difficult. Many reversion rights are contained within private contracts, making them difficult to systematically find, collate, and analyze. Where statutory reversion rights do exist, they rarely have registration requirements, making them difficult to empirically evaluate. To our knowledge, the U.S. termination rights are the only ones that have both a registration element and make the relevant notices publicly available.

The growing importance of rights reversion and momentum around reform make the unique U.S. termination data an important resource, not only for analyzing how that law is working, but also for drawing broader conclusions about how those findings should influence the development of reversion laws elsewhere. This article introduces two new datasets that make available virtually complete data on termination notices filed in the United States between its institution in 1978 and 2020. Links to the datasets and supporting files may be found in the reference section under Yuvaraj et al. (2021a, 2021b, 2021c). The article also sets out findings from our preliminary analysis of these data and suggests how they might be put to further use by scholars, policymakers, and industry.

II. THE U.S. TERMINATION LAW

U.S. law contains two statutory termination rights. For works assigned or licensed from January 1, 1978, 17 U.S.C. § 203 entitles creators to terminate those transfers 35 years

later (for rights to publish works, the earlier of 35 years from publication or 40 years from the dates of the assignments or licenses: Copyright Act of 1976, § 203(a)(3)). For works assigned or licensed before January 1, 1978, § 304 grants them or other parties that made the grants a 5-year period to terminate those transfers, which begins the later of 56 years from when “copyright was originally secured,” or January 1, 1978 (Copyright Act of 1976, § 304(c)(1), (3)). If creators do not exercise the right within time, it is lost forever (Copyright Act of 1976, §§ 203(a)(3), 304(c)(3)).¹ The intention of both provisions was to improve creator remuneration, recognizing that creators are very often obliged to transfer all or most of their rights before their work’s value becomes known (*Mills Music v Snyder*, 1985, cited in Loren, 2010).

As alluded to above, there are far more opportunities to actually achieve this today than when the legislation was enacted, since digital technologies make it possible to distribute most works instantaneously, globally, at remarkably little cost. Those developments also make it possible for the law to further another of copyright’s primary aims: to incentivize investments in making works available on an ongoing basis, so society can benefit from widespread access to knowledge and culture.

Termination rights do not apply to works made for hire or grants of copyright made by will (Copyright Act of 1976, §§ 203(a), 304(c)). Derivative works based on terminated works can continue to be used as long as they were created before termination (Copyright Act of 1976, §§ 203(b)(1), 304(c)(6)(A)). Termination may be effected by the author or, if deceased, their statutory successor.² Except in cases of works made for hire, parties cannot contract out of the right (Copyright Act of 1976, § 203(a)(5)).

To effect termination, a notice of intention must be served on the grantee and recorded with the Copyright Office, stating the date on which termination will take effect (Copyright Act of 1976, §§ 203(a)(4), 304(c)(4)).³ Strict compliance with the statutory requirements is essential: failing to include key information can render the notice invalid, meaning that the rights would stay with the party against whom the notice was filed (Compendium, 2021, p. 44, para 2310.1).⁴ In the case of properly filed, noncontested

¹Note, however, that under § 203(a)(3), 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.” Further, when the U.S. copyright term was extended by 20 years in 1998, authors and their estates were granted a further ability to terminate pre-1978 grants that had not already been terminated by 1998. This termination could be exercised “at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured” (Copyright Act of 1976, § 304(d)(2)).

²These individuals include the author’s widow or widower, their surviving children, or an executor, administrator, trustee, or personal representative if there are no surviving family members (Copyright Act, 17 U.S.C. § 203(a)(2), 304(c)(2)).

³Notices cannot be served less than 2 or more than 10 years before the operative termination date: Copyright Act, 17 U.S.C. §§ 203(a)(4)(A); 304(c)(4)(A).

⁴Errors that do “not materially affect the adequacy of the information required” do not render notices invalid (Compendium, 2021, p. 67, para 2310.12). However, they must be legible, complete, signed, and accompanied by the filing fee (Compendium, 2021, pp. 62–64).

notices, rights automatically revert to the author or their statutory heirs once the effective date of termination is reached—no further documents need be filed.

Once filed, the Copyright Office posts records of termination notices to its online Catalog, a searchable database containing data about all documents filed with the Copyright Office since 1978 (Brauneis, 2014).⁵ The full notices can be hundreds of pages in length (*Siegel v Warner Bros Entertainment*, 2009, cited in Goldstein, 2020),⁶ but the abbreviated online records contain a wealth of data, including the names of parties filing the notices, the names of parties receiving the notices, the dates on which notices are recorded with the Copyright Office, the registration number of the works in the notices (if provided by the filing party), and the type of work to which the notices relate. The Copyright Office also posts records of any counter-notices or revocation notices filed by the parties. The Catalog is the only publicly available source in the world that contains such information about the exercise of statutory copyright termination/reversion rights by creators and investors.

III. EXISTING EMPIRICAL EVIDENCE ON REVERSION

As introduced above, reversion laws have been little studied—creating an evidence gap that is becoming problematic as new enthusiasm for reversion's potential is reflected in law reform around the globe (Copyright Review Commission, 2011; House of Commons, Parliament of Canada, 2019a,b). Globally, statutory reversion rights apply in a variety of circumstances, including after passage of time, where the publisher fails to publish the work, where the work is out of print, or where the publisher goes into liquidation (Yuvaraj & Giblin, 2021). Although various reports and studies have ascertained the scope of these provisions (Dusollier, 2018; Dusollier et al., 2014; Furgal, 2020; Guibault & Hugenholtz, 2002), there have been few attempts to empirically analyze their use or effects.

In Europe, where such laws are widespread, the most notable is a 2016 study by Europe Economics, Guibault, and Salamanca investigating the main European author-protective mechanisms (Europe Economics et al., 2017). Their analysis found that ex post measures to address contractual imbalances (including some reversion rights and rights to seek the alteration of remuneration in some circumstances) did not impact author remuneration as strongly as ex ante measures, such as legislation limiting the scope of copyright assignments and licenses. A factor limiting the positive impact of ex post measures was the requirement, in most cases, for the author to commence legal proceedings against a publisher (as authors may not wish to exercise these provisions for fear of damaging their relationships with publishers). Of course, time limits themselves

⁵The full documents are accessible only by visiting the Copyright Public Reading Room at the Copyright Office (Brauneis, 2014, p. 28).

⁶For further examples of termination notices, see, for example, *Johansen et al. v. Sony Music Entertainment Inc. et al.* (2020).

can effectively operate as reversion rights, because they restrict how long publishers can hold rights (after which they return to authors). Effectively then, this study suggests reversion may benefit author remuneration both by applying limits to contracts *and* by enabling authors to regain their rights outside contractual mechanisms.

Canada also has a time-based reversion right, which automatically returns rights to an author's estate 25 years after the author's death (Copyright Act, 1985, s 14(1)). As part of a study on the potential implementation of a proposed new time-based reversion right in Canada, Heald analyzed the effect of that existing right on book availability (Heald, 2021). He looked at 288 books and collections of short stories by 41 Canadian authors who had died between 1977 and 1982, finding that approximately 10% of those were back in print after 25 years or more from the death of the author, and had been brought back into print by independent presses. Heald has also conducted similar research into the operation of this provision in South Africa and the United Kingdom (Heald, 2019, 2021). However, there have been no other empirical studies on the potential effect of this reversion right in Canada. Other common law countries such as Australia and New Zealand used to have the reversion right in force in Canada, but repealed their laws before any empirical evaluation took place (Yuvaraj & Giblin, 2019).

In the United States, we identify just three studies empirically evaluating the use of the termination provisions to date. In 2016, Given analyzed termination notices filed under § 304 for pre-1978 grants in the year 2000, using data provided by R. Anthony Reese.⁷ He found that termination notices were mainly being filed by “heirs of single author songwriters ... terminating grants made to music publishers as soon as they possibly can” (Given, 2016, p. 831).

In the same year, Bogdan reported searching the U.S. Copyright Office Catalog to identify the number of authors who have filed to terminate under § 203 as of mid-2015, finding that fewer than 300 creators had done so (Bogdan, 2016). This study was highly scope-limited, focused only on identifying the number of terminating authors. Although acknowledging that some had issued multiple notices over multiple works, the study did not quantify the number of works affected or analyze them by type.

Most recently, Heald analyzed the impact of the U.S. termination right on book availability (Heald, 2018). From a sample of 1909 titles, Heald compared the availability of books terminable under §§ 203 and 304 with closely equivalent books that were not. He also considered the impact on book availability of a U.S. court decision (the *Rosetta* case), which effected a reversion of ebook rights to authors in 2002. Ultimately, he found “an estimated 20% to 23% of the titles are currently in print due to statutory reversion/termination statutes or the *Rosetta* case” (Heald, 2018, p. 47).

Professor R. Anthony Reese (University of California, Irvine) has also been conducting research into the use of the termination provisions since the mid-2000s (Center for Technology, Innovation, and Competition, 2010–2011; Rub, 2013, p. 61, fn. 40). His investigations focus on the full notices (rather than their online Catalog records) and, at time of writing, his data and analysis have not yet been published (Given, 2016, p. 830, fn. 44). We hope our datasets and analysis will complement Professor Reese's work once it is.

⁷At the time of writing, Professor Reese's research does not appear to be published.

This review shows that, while there is growing support for adopting new statutory reversion rights for authors, there is little empirical research on the effects of reversion laws that are currently in force. This evidence gap is particularly notable in the United States, the only country that has a mandatory recordation requirement and makes termination records publicly available (via the online Catalog or by visiting the Library of Congress).

The paucity of empirical research on the U.S. termination right may be a product of the difficulty of accessing and analyzing the data. The Catalog is contained within an aging system that can be difficult to use to locate relevant information (Brauneis, 2014). Moreover, the Catalog search page does not permit users to download multiple records at once. As Brauneis and Oliar noted, in a study of copyright registration (rather than termination) records, the Catalog search page itself “is suitable for researching rights in a particular title but not for conducting statistical analyses of millions of records” (Brauneis & Oliar, 2018, p. 107).

Collecting, cleaning, and converting data from the Catalog into a format suitable for meaningful analysis require considerable time and skill (Oliar et al., 2014; Oliar & Matich, 2013). Opportunities for research beyond the online Catalog are limited: researchers can visit the Copyright Office in Washington, DC to find and copy the physical documents, but this would be costly, and they would then still have to invest enormous resources into converting them to a manipulable form. They could alternatively seek to obtain the data directly from the Copyright Office. We initially took this route, enquiring about accessing the data on a fee-for-service basis, but were advised that the Office lacked the resources to provide it on any terms (email from Records Research & Certification Section of the Copyright Office, 2018).

We are aware of only one study in which the Copyright Office directly provided its Catalog data to researchers for analysis (Brauneis & Oliar, 2018; cf. Brauneis, 2014, pp. 9–10). This involved a formal collaboration between the Copyright Office and the authors’ institutions, and over 27 million records (Brauneis & Oliar, 2018; U.S. Copyright Office, n.d.-a). Even with the Copyright Office’s assistance, however, the authors describe the process of cleaning and converting the data—necessary to enable statistical analysis—as “laborious and time-consuming” (Brauneis & Oliar, 2018, p. 107). Other studies using Catalog registration data report similar difficulties (Oliar & Matich, 2013, pp. 1132–1133, Oliar et al., 2014, pp. 2248–2250). However, the end products of such efforts represent important contributions to the literature: now that these data are publicly available, they can be used to shine a welcome light on copyright’s use and operation (Brauneis & Oliar, 2020).⁸

IV. CONSTRUCTING THE DATASETS

To fill this gap, we have created two new datasets of copyright termination notice records under §§ 203 and 304 spanning their full histories—1977–2020. As noted above, we

⁸For examples of how registration data are used to support legal analysis, see, for example, Posner and Landes (2003) and Rosen and Schwinn (2020).

initially sought to access records from the Copyright Office upon payment of a search fee, but the Office advised that it did not have the resources to provide them (email from Records Research & Certification Section of the Copyright Office, 2018). That made the Catalog the only feasible source of these data. These datasets will provide a valuable new tool for evaluating the use and effects of the U.S. termination right, which will contribute to fierce ongoing debates about how to adequately safeguard creator rights both in the United States and globally.⁹

Below, we explain how we constructed our datasets, their key features, and their limitations. To illustrate the data's potential use and value, we present findings from analyses addressing a number of initial research questions, which have until now remained unanswered in the literature. These include how many works are subject to termination notices over time, the different types of works being subject to termination notices over time, and who is filing for termination.

Last, we highlight some of the policy implications of the initial trends we found and the potential future uses of this dataset for research relevant to this hotly debated issue.

A. *Scraping and Filtering the Data*

We used a web scraping program written in Python to search the Catalog for and collect data from records of termination notices. After consulting with the Copyright Office, we constructed search strings intended to extract all records related to §§ 203 and

⁹We note that as part of the Copyright Modernization initiative, the Copyright Office has launched a new Public Records System Pilot alongside the Catalog. Although searches on the new system can be conducted and it has far more features than the Catalog (e.g., the ability to filter search results for types of records and types of work by registration number), the following disclaimer appears whenever the page is visited:

PLEASE NOTE: This pilot is a demonstration and is not the final version of the Copyright Public Records System (CPRS).

The purpose of the CPRS pilot is to develop a single, easy to navigate, highly searchable database of U.S. Copyright Office public records. The CPRS offers both a simple search interface and an advanced search interface with a query builder and filters to more easily discover U.S. Copyright public records. This system will eventually display public records from all current publicly accessible systems and, in the future, paper-based records that are being converted to digital formats. During the pilot, the Office will be updating and improving the overall functionality with future software releases. As part of this process, your feedback on the system's functionality and features is essential to improving the system.

This pilot release does not replace or supersede the online public catalog or existing search practices established by the Copyright Office. Any results obtained during the course of your search are not reliable for legal matters. For information on searching copyright records, please refer to Circular 22 "How to Investigate the Copyright Status of a Work". For information regarding requests to remove personal information from Copyright Office public records, please refer to Circular 18 "Privacy: Copyright Public Records".

There is no indication as to when the new search system will replace the existing Catalog, although the Copyright Office will "continue iterative development of internal and external search functionality" throughout 2021 (U.S. Copyright Office, n.d.-c, n.d.-d).

Figure 1: Example of a copyright termination notice record on the Copyright Office Catalog. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com)]

#1 in your eyes & 73 other titles.

Type of Work: Recorded Document
Document Number: V9948D782
Date of Recordation: 2018-01-11
Entire Copyright Document: V9948 D782 P1-12

Title: #1 in your eyes & 73 other titles.
Notes: Notice of termination of grant under 17 USC Section 203; date and manner of service of the notice: 27Dec17; by federal express priority overnight.

Party 1: Dennis W. Morgan.
Party 2: Sony/ATV Acuff Rose Music, a division of Sony/ATV Songs, LLC, successor in interest to Accuff Rose Publications, & Tom Collins Music Corporation.

Links: [List of Titles](#)

Names: [Morgan, Dennis W.](#)
[Sony/ATV Acuff Rose Music](#)
[Sony/ATV Songs, LLC](#)
[Accuff Rose Publications](#)
[Tom Collins Music Corporation](#)

304 termination notices.¹⁰ An example of a termination notice record as it appears in the Catalog is shown in Figure 1.

Records often relate to multiple works. For example, a musician might file one termination notice in relation to all 12 songs on a particular album. If so, the record of that termination notice will link to a “List of Titles.” For the record at Figure 1, an extract from the “List of Titles” is shown (Figure 2).¹¹

Each Catalog search result record has a URL comprising its position relative to other results and the search terms and parameters used. Our scraping program ran the searches to identify the total number of results. It then constructed URLs for the results of these searches based on the number of results, our search phrases, and parameters.¹² This enabled us to go directly to those records rather than rely on the Catalog search (which could be unreliable and had a limit of 10,000 results

¹⁰However, the Copyright Office is not able to “provide specific research assistance or guarantee comprehensivity”: email from Regan Smith, General Counsel and Associate Register of Copyrights, U.S. Copyright Office (January 7, 2019).

¹¹This list contains titles in document V9948D782, Copyright Office Catalog, <https://cocatalog.loc.gov/cgi-bin/doctitles.cgi?V9948D782>

¹²For example, <https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?v1=107&SAB1=Notice+of+termination+of+grant+under+17USC+Section+203&BOOL1=as+a+phrase&FLD1=Keyword+Anywhere+%28GKEY%29+%28GKEY%29&GRP1=AND+with+next+set&SAB2=&BOOL2=as+a+phrase&FLD2=Keyword+Anywhere+%28GKEY%29+%28GKEY%29&CNT=100&DATE=>. For more information, see Consortium of Academic and Research Libraries in Illinois, 2015.

Figure 2: Example of a list of titles linked to a copyright termination notice record on the Catalog.

This list contains titles in document **V9948D782**

Document title: **#1 in your eyes & 73 other titles.**

The complete document is: **V9948 D782 P1-12**

List of titles:

- 001 #1 in your eyes : a.k.a. Number 1 in your eyes, a.k.a. Number one in your eyes / Reg. PA325482 (1987); Termination date provided: 20Mar22.
- 002 Baby you're gone / Reg. PA328847 (1986); Termination date provided: 8Jul21.
- 003 Baton Rouge / Termination date provided: 16Jul24.
- 004 Blue umbrella / Termination date provided: 2Mar24.
- 005 Call home / Termination date provided: 4Oct24.
- 006 Can't get enough of you / Termination date provided: 1Nov23.
- 007 Carolina's calling me : a.k.a. Carolina's callin' me / Reg. PA343638 (1987); Termination date provided: 2Jun22.
- 008 Dangerous / Termination date provided: 1Nov23.
- 009 Don't love me if your heart isn't in it / Termination date provided: 16May24.
- 010 Emotional persuasion / Termination date provided: 13Jan24.
- 011 Everything's wrong all right (since I lost you) / Termination date provided: 1May24.
- 012 Give it to the wind / Termination date provided: 8Dec23.

per search). Figure 3 shows an example of the search phrases we used (under “SAB1” and “SAB2”) and the Boolean parameters (e.g., “as a phrase”) to populate the URLs.

Our scraper extracted the data from these records and their corresponding lists of titles, compiling the results in a table ($n = 74,756$). Many of these appeared to be duplicates due to the way in which the online Catalog is constructed and the overlap in results across different search phrases, and we removed 60,967 duplicate records as part of the cleaning process. We also filtered out records which did not relate to either recorded termination notices under §§ 203 or 304, or counter-notices to, withdrawals or revocations of those notices (0.7%, $n = 498$, corresponding to 2478 titles).¹³ The excluded data are

¹³For example, notices which may have been filed as termination notices but which the Copyright Office filed under another section of the Copyright Act (e.g., § 205), notices relating to the termination and release of security interests in copyright, or notices with termination dates (likely indicating they were intended to be termination notices) but which did not specify whether they were applicable to §§ 203 or 304. Note that counter-notices or withdrawal notices *can* be filed as notices under § 205 of the Copyright Act (Compendium, 2021, pp. 64–65). However, none of the excluded records were for such documents.

Figure 3: Screenshot of search phrases table.

sequential_id	search_id		SAB1	SAB2	date1	date2	BOOL1	BOOL2	GRP1
0	1	notice of termination of grant under 17 USC 203					as a phrase	as a phrase	AND with next set
1	2	notice of termination of grant under 17 USC Se...					as a phrase	as a phrase	AND with next set
2	3	notice of termination of grant under 17USC203					as a phrase	as a phrase	AND with next set
3	4	Notice of termination of grant under 17USC Sec...					as a phrase	as a phrase	AND with next set
4	5	Notice of termination of grant 17 USC Section 203					as a phrase	as a phrase	AND with next set
5	6	6	203	termination	1900	2011	as a phrase	as a phrase	AND with next set
6	7	6	203	termination	2011	2011	as a phrase	as a phrase	AND with next set
7	8	6	203	termination	2012	2012	as a phrase	as a phrase	AND with next set
8	9	6	203	termination	2013	2013	as a phrase	as a phrase	AND with next set
9	10	6	203	termination	2014	2014	as a phrase	as a phrase	AND with next set
10	11	6	203	termination	2015	2015	as a phrase	as a phrase	AND with next set

available on request. In total, we were left with 13,291 unique records, corresponding to 109,899 titles.¹⁴

Advice from the Copyright Office indicated they were uploading records about 3 months behind receipt (email from General Counsel and Associate Register of Copyrights, 2018; U.S. Copyright Office, 2020). Accordingly, we estimate that our data cover up to June 2020 (approximately the first seven and a half years of § 203's operation, and the first 41 and a half years of § 304's operation).

B. Key Features

From the remaining data, we produced two datasets: `titles_203` and `titles_304`. Both datasets include titles subject to withdrawal/revocation and counter-notices in response to termination notices under the relevant sections. Table 1 sets out the number of titles and records in each dataset by type of notice:

Each dataset has 24 variables (Table 2). Variables 1–3 and 5–9 contain data directly extracted from the Catalog records.¹⁵ Variables 10–19 contain the string patterns scraped from Columns 2 and 7–9 which we used to identify the type of work subject to a

¹⁴For this study, we used the document number of a record to determine whether it was unique, removing records with duplicate document numbers (“When a document is recorded, the Office will assign a unique identifying number to the document”; Compendium, 2021, p. 11). Note some document numbers may be unique because the Copyright Office may have split records with large numbers of titles into multiple records with different document numbers (Brauneis, 2014). Subsequent references in this paper to “termination notices” from the Catalog should be read to mean termination notice *records* from the Catalog, accounting for the possibility that some notices could be split across multiple distinct document numbers, appearing multiple times in our datasets, if they had too many titles (an inherent limitation of the Catalog and the Copyright Office’s recordation processes).

¹⁵For more information about the headings used by the Copyright Office, see Compendium (2021), pp. 13 (titles), 13–15 (registration numbers), 15–16 (parties). There is no description of the “notes” category in the Compendium.

Table 1: Number of Records and Titles in Each Dataset

Description/dataset	Titles_203	Titles_304
Termination notice records	3306	9808
Counter-notice records	134	13
Withdrawal notice records	29	1
Total number of records	3469	9822
Termination notice titles	42,280	65,457
Counter-notice titles	1720	65
Withdrawal notice titles	376	1
Total number of titles	44,376	65,523

termination notice.¹⁶ Variables 20–23 contain True/False values based on the category to which we have assigned that title: performing arts, literary works, sound recordings, or works of art.¹⁷ Variable 24 specifies whether the data are from a termination notice, a counter-notice, or a revocation notice.

C. Classifying the Data

For these data to be useful, it is important for users to be able to identify the different types of work at issue. In previous research on copyright registrations using Catalog data, researchers were able to categorize works because registration records list the “Type of Work” and their class (literary work, sound recording, etc.) (Oliar et al., 2014). Termination records also contain this field, but it was never populated.¹⁸ We were able to enrich the dataset by gleaning the work type for most records from elsewhere, but were challenged by inconsistencies in recordation methods and poor metadata hygiene.

§ 203 Termination Notice Records

Our scraper captured 3306 § 203 termination notice records, corresponding to 42,280 distinct titles. To classify them by type of work, we began by looking for registration numbers, which are type specific and identifiable by prefix. For § 203 notices (applicable to

¹⁶See discussion at sections 4.3.1–4.3.3.

¹⁷See discussion at sections 4.3.1–4.3.3.

¹⁸In our data, the only string in this column was “Entry Not Found.” Manually searching the Catalog for termination notice records suggests this string is populated by the phrase “Recorded Document.” This difference does not materially affect our research because neither string signifies the type of works covered by the termination notice. We hypothesize the difference arises due to our approach of constructing standalone URLs for records rather than having our code use the Catalog’s infrastructure (which can be unreliable), although there is no explanation for the difference in Copyright Office literature. Searches of the Copyright Office using the phrases “203” and “termination,” and “304” and “termination,” filtering out any records which were categorized as “Recorded Document[s]” in the “Type of Work” field, revealed no termination notice records.

Table 2: Variables in the Termination Datasets

Number	Column name	Description	Source
1	document_number	“When a document is recorded, the Office will assign a unique identifying number to the document, such as V9920D781 [sic]. The letters ‘V’ and ‘D’ refer to the volume and document numbers that have been assigned to the document” (Compendium, 2021, p. 11)	Catalog
2	registration_number_not_verified	The registration number listed in the document recorded with the Copyright Office (however, registration numbers were often recorded elsewhere in the record)	Catalog
3	date_of_recordation	The date on which the document was recorded with the Copyright Office and the filing party paid the appropriate filing fee	Catalog
4	year_of_recordation	The year on which the document was recorded with the Copyright Office	Extracted from date_of_recordation using Python code
5	party_1	The party/parties filing the document	Catalog
6	party_2	The party/parties against whom the document is being filed	Catalog
7	title	The title of the work referred to in the document, or the first work if multiple works are referred to	Catalog
8	notes	Information about the termination such as when the document was filed, the manner of service, and when the termination is scheduled to take place	Catalog
9	titles	Each specific title referred to in a record	Catalog
10	music_reg_304	String patterns indicating a registration number	Generated using string matching
11	dramatic_reg_304	String patterns indicating a registration number	Generated using string matching
12	literary_reg_304	String patterns indicating a registration number	Generated using string matching
13	sound_recording_reg_304	String patterns indicating a registration number	Generated using string matching
14	art_reg_304	String patterns indicating a registration number	Generated using string matching
15	descriptors	String patterns specifying the type of work	Generated using string matching
16	pa_reg_203	String patterns indicating a registration number	Generated using string matching
17	tx_reg_203	String patterns indicating a registration number	Generated using string matching
18	sr_reg_203	String patterns indicating a registration number	Generated using string matching

Table 2: *Continued*

<i>Number</i>	<i>Column name</i>	<i>Description</i>	<i>Source</i>
19	va_reg_203	String patterns indicating a registration number	Generated using string matching
20	is_performing_art	Category to which the title has been mapped	Generated using string matching
21	is_literary	Category to which the title has been mapped	Generated using string matching
22	is_sound_recording	Category to which the title has been mapped	Generated using string matching
23	is_art	Category to which the title has been mapped	Generated using string matching
24	notice_type	Whether the notice is a termination notice, counter-notice, or revocation notice	Generated using string matching

post-1978 grants of copyright in creative works), these are determined by the Copyright Office’s administrative classification framework, which designates four different categories of work (U.S. Copyright Office, n.d.-b):¹⁹

1. **TX:** Nondramatic literary works, including books, periodicals, poetry, and catalogs.
2. **PA:** Works of the performing arts, including music and lyrics, dramatic works, choreographic works, and films.
3. **VA:** Works of the visual arts, including drawings, graphics, sculptures, paintings, and maps.
4. **SR** (sound recordings): Notably, when an individual copyright claimant is seeking to register both the sound recording as well as any musical, dramatic or literary works embodied within it, it may have a single SR number rather than a separate PA designation (U.S. Copyright Office, n.d.-b).

Unfortunately, records for just 8% ($n = 3358$) of titles subject to § 203 termination notices contained data in the “registration_number_not_verified” field.²⁰ However, registration numbers could additionally be found within the “title,” “notes,” and “titles” columns. Using string pattern matching, we were able to confidently classify 73% ($n = 30,638$) of titles subject to § 203 termination notices,²¹ via post-1978 registration

¹⁹We relied on classifications in this document to guide our classification process.

²⁰These corresponded to 38% of the § 203 termination notice records ($n = 1240$).

²¹Of these, 792 titles appeared in one or more categories.

numbers ($n = 26,310$), pre-1978 registration numbers ($n = 3581$),²² or other identifiers (“screenplay,” “literary work,” “sound recording,” “composition,” “musical score,” “musical work,” “musical play,” “artwork,” and “dramatic work”) ($n = 3810$).²³

§ 304 Termination Notice Records

Our scraper captured 9808 records of § 304 termination notices, corresponding to 65,457 titles. Again using string pattern matching, we were able to confidently classify 89% of these titles ($n = 58,321$) based on whether they had a pre-1978 registration number ($n = 56,636$), a post-1978 registration number ($n = 1041$),²⁴ or self-identifier ($n = 9521$).²⁵ In the dataset, we included their original categorization (under the pre-1978 typology) and additionally mapped them to the post-1978 equivalents to facilitate comparison across the two termination schemes. For example, a work with a registration number EU12345 was listed as a musical work under the pre-1978 typology and also mapped to performing arts under the post-1978 typology.

Unclassified Titles that were Subject to Termination Notices

We were unable to classify 28% of § 203 titles ($n = 11,642$) and 11% ($n = 7136$) of § 304 titles subject to termination notices because they either lacked the identifiers as to

²²The Copyright Office used various complex schema in their registration number prefixes before 1978. Different schema applied during different time periods: see generally U.S. Copyright Office (n.d.-b). For consistency, we categorized works with pre-1978 registration numbers using the Copyright Office’s classification typology in operation from 1909 onward, and then mapped them to their post-1978 counterparts. We also mapped works with an “EO” prefixed registration number (not listed in the classification document) to the performing art category, as they appeared to relate to musical works.

²³There will necessarily be some identifiers which are not included (e.g., “book,” “novel,” “short story”) due to the potential for them to be part of a work’s title rather than as a description of the type of work. Furthermore, the size of the dataset means there may be some identifiers that were not captured, although this group contains the phrases we have identified over many reviews of the data.

²⁴We note an apparent inconsistency in the Catalog’s data here. Section 304 notices correspond to copyright grants made before 1978: as such, any registrations of works subject to these notices should have been prior to 1978. However, we identified 1041 titles with post-1978 registration numbers using our string matching code. These were mainly from notices filed by the heirs of *Superman* creator Jerome Siegel in respect of *Superman*-related comics ($n = 897$, 86%). We have retained this data for completeness in our analysis, but note that § 304 termination notices cannot generally be filed in respect of works registered after 1978: those should instead be filed under § 203. The Copyright Office Compendium suggests such an error may prevent the notice from taking effect. This may be an “untimely” notice which could invalidate it (Compendium, 2021, p. 66, para 2310.9). Similarly, “harmless errors” do not invalidate a notice, but an error in the date of execution that means the notice should have been filed under another section may not be harmless: (Compendium, 2021, p. 67, para 2310.12).

²⁵Twenty-four titles had both pre-1978 and post-1978 registration numbers. These were *Superman*-related comics ($n = 16$) and songs by musician and composer David Porter ($n = 8$). Four titles had both post-1978 registration numbers and self-identifiers: comic artwork for the *Superboy* character, the song “What’ll we do for dough?” by Ben Gordon, the English lyrics for the song “Delicado” (written by Jack Lawrence), and the “vocal score” for the musical play “On borrowed time” by playwright Paul Osborn. Another 8849 titles had pre-1978 registration numbers and self-identifiers.

the type of work listed above or a registration number indicating the type of work. Unclassified titles can be identified by filtering both `titles_203` and `titles_304` for “False” values across variables 20–23 after filtering variable 24 to only return termination notices.

To compare the proportions of work types in the classified titles with the proportions we might expect to see across the entirety of the two datasets, we manually coded two random samples of all titles in `titles_203` (sample size = 381) and `titles_304` (sample size = 382). The sample sizes needed for achieving a given level of precision, measured in terms of the width of a 95% confidence interval, were determined using the Australian Bureau of Statistics’ Sample Size Calculator (Australian Bureau of Statistics (n.d.).²⁶ Using these sample sizes means that for an estimate of a proportion based on a random sample, the width of the uncertainty margin will be at most 0.05. We manually categorized the titles using content analysis: reading the data and then coding it using the registration number schema and identifiers/descriptors referred to above.²⁷ Where neither were present, we used the names of the authors/estates and the publishers/record labels/film companies to identify the work type, including by conducting additional research where the answers were not clear in the data. We refer to the results of the manual coding below as we report on our analyses of the classified titles.

Classifying Counter-Notices and Withdrawal Notices

We used the same classification process to classify works subject to counter-notices and withdrawal notices. Due to the relatively low numbers of both types of notices, we set out the results of this process below.²⁸

D. Limitations

These datasets make it newly possible to understand how U.S. termination rights are being used, when, and by whom. However, they have some limitations for future users to be aware of.

First, a termination does not necessarily take place just because a termination notice is issued. Recipients may file a counter-notice to challenge the notice’s sufficiency. Applicants are also permitted to revoke their notices, and might choose to do so, for example, where their notice enables them to satisfactorily renegotiate their deal. It is not

²⁶The samples were generated in Python without replacement. We thank Sue Finch at the University of Melbourne’s Statistical Consulting Centre for contributing to the wording of this paragraph.

²⁷Drisko and Maschi define content analysis as “a family of research techniques for making systematic, credible, or valid and replicable inferences from texts and other forms of communication” (Drisko & Maschi, 2015, p. 7).

²⁸This includes analysis of titles we were not able to categorize using string matching.

mandatory for such notices to be filed with the Office, although applicants can opt to do so (Compendium, 2021). Thus, these datasets tell researchers and policymakers a great deal about the types of works that are subject to the termination process (and when and by whom) but users should not assume that just because a termination notice has been issued that termination has actually occurred.

Second, recordation on the Catalog does not make a termination notice legally binding (Compendium, 2021). The filing parties may have made critical errors in the notices that render them unenforceable. For example, a person may file a termination notice before they are legally permitted to do so. Courts have struck down such attempts (*Archie Comics Publications v. DeCarlo*, 2001). In such instances, notices will not result in termination even if they are not withdrawn, and this may not be ascertainable from document records in our datasets.

Third, Catalog records contain flaws and inconsistencies (Brauneis, 2014). We observed records with typographical and grammatical errors in the names of parties, dates of recordation, termination dates, titles, and other variables. We have also observed inconsistencies in the data itself, such as when a title has a registration number that does not appear to correspond to the parties or the type of title. String pattern matching relies on consistent patterns: it is limited by errors in the data itself. Accordingly, there will necessarily be some unique variations whose nuances were not captured by the string matching process we used. The size of the dataset also means there is a possibility the string matching code categorized some works incorrectly,²⁹ although we ameliorated this risk by reviewing the data multiple times.

Fourth, while we followed the search advice provided by the Copyright Office, our program may not have captured every single relevant record or filtered out every irrelevant record. We believe these datasets to be virtually whole-of-universe until the cut-off date but cannot guarantee them to be.

Finally, we note the Catalog only documents situations in which termination notices have been filed. It casts no light on how creators are using the *existence* of termination rights to unofficially negotiate return of their rights or a better deal from existing rightsholders. As documented by the Authors' Alliance (n.d.), such negotiations are certainly taking place.³⁰ Given the expense and complexity of a formal termination, we hypothesize that most of those who file to terminate transfers via the § 203 or 304 processes did so because attempts to do so informally were rebuffed.

Despite these limitations, the dataset enables us to garner valuable new insights into how the termination rights in §§ 203 and 304 are being used so far, when, and by whom. Below, we document some of the trends we identified from the dataset. We then discuss the potential uses of the dataset in future research and some policy implications.

²⁹See, for example, Document No. V9967D271, "M-16" (which is a string pattern we used to search for dramatic work registration numbers registered before 1978). This was eventually classified as a work of performing art, as it should have been, and does not materially alter our results.

³⁰Although these accounts do not specify whether the termination right was indirectly used as a negotiating tool.

V. RESULTS OF PRELIMINARY ANALYSIS

In this section, we present findings from our preliminary descriptive analyses of the §§ 203 and 304 data. We report on the following characteristics and features of the datasets:

1. The number of notices filed and how that has evolved over time.
2. The different types of works being subject to termination notices over time.
3. Characteristics of the creators or heirs filing for termination.

In all time series analyses, we limit the datasets to notices filed by the end of 2019. This is to facilitate year-on-year comparison given that the complete datasets reflect data to mid-2020.

A. Number of Notices and Time Trends

In Figure 4, we present the annual number of termination notices recorded with the Copyright Office under each termination provision between 1977 and 2019. Since most notices list multiple titles, in Figure 5 we display the total number of works subject to these records each year. These data appear to show spikes in filings of § 203 termination notices (and the number of works affected) in 1978, 1988, and 2000. For § 203 notices and works, we observe a gradual increase per year from 2003 (the first year in which those notices could be validly filed) until they began increasing much more rapidly in 2010.

Interestingly, we observe a substantial drop-off in the number of both § 203 notices issued, and the number of titles subject to them, from 2016 to 2019. Further

Figure 4: Number of termination notices recorded per year: 1977–2019. [Color figure can be viewed at wileyonlinelibrary.com]

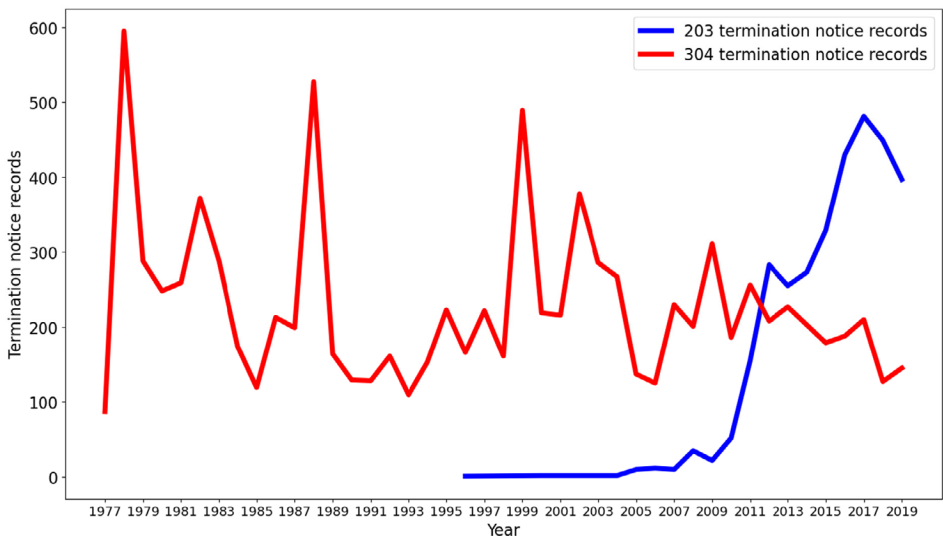
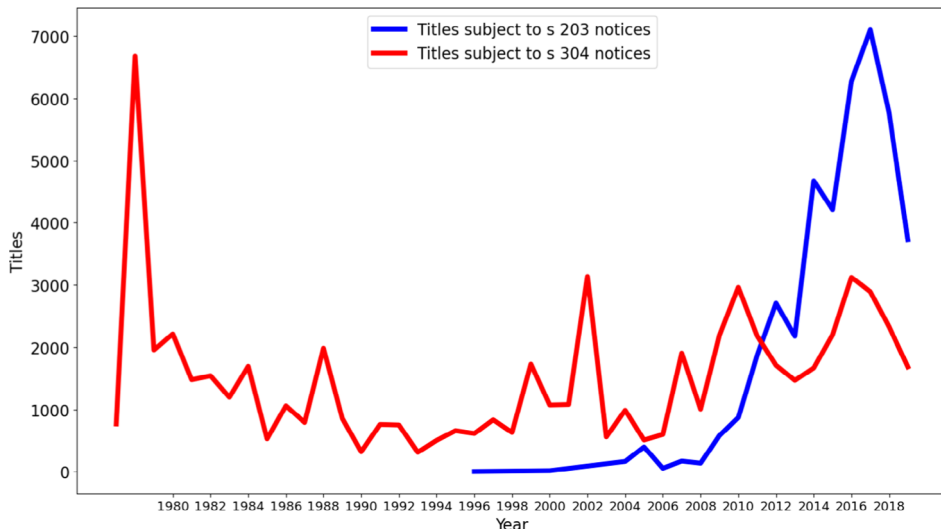


Figure 5: Number of titles subject to termination notices per year: 1977–2019. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/jels.12310)]



interrogation of the dataset would be helpful to understand the explanations for these developments.

We identified 3306 distinct termination notices affecting 42,280 titles under § 203. Under § 203, notices of termination must be served between 2 and 10 years prior to the effective termination date (notices can be recorded before the effective termination date; Compendium, 2021). Our data reflecting notices filed until mid-2020, thus contains *all* notices for transfers intended to be terminated between 2013 and mid-2020. In addition, it contains *at least some* notices of intention to terminate beyond mid-2020 (but not all of them, because they do not have to be served and recorded yet—for all 2030 termination notices to be included, we would need to wait until 2030, that is, the latest they can be validly recorded).

To put these figures in context, we note that for the 8 years between 1978 and 1985, there were 2,570,908 copyright registrations, an average of 321,364 per year.³¹

³¹Robert Brauneis and Dotan Oliar kindly provided these data to us based on the dataset available at Brauneis and Oliar (2020). We used a 35-year period for corresponding years of registration data as the termination data did not appear to specify the dates of grants, nor whether the grants included rights of publication (in which case termination could take effect at the earlier of 35 years from publication or 40 years from when the grants were executed: Copyright Act of 1976, § 203(a)(3)). See also note 34 for the use of registrations. To achieve a proxy figure for comparison to the 7.5 years of termination data, we divided the registration data from the eighth year (1985, $n = 371,915$) in half. That data may not have been normally distributed across the year, but it enables us to reasonably compare the proportions of works subject to termination notices with registrations.

Copyright registration is optional in the United States, but there are robust incentives to do so: it is a prerequisite to filing an infringement claim, and, done early enough, can entitle the rightsholder to statutory damages and attorney's fees (Posner & Landes, 2003). Thus, book and music publishers, movie studios, and record labels routinely register their works.

We were able to identify that 13% of the titles subject to notices ($n = 5299$) likely had an effective termination date from January 1, 2021 onward, which means a maximum of 36,981 titles were affected by termination notices for the whole period of 2013 to mid-2020, that is, 7.5 years. This translates to a maximum of 4931 works being the subject of a termination notice each year, barely 1.6% of the works we estimate were registered in the period corresponding to 35 years prior.

We also discovered that, for at least 24 titles (corresponding to 9 records), the effective dates of termination were stated to occur *before* January 1, 2013, which is not legally valid. We hypothesize that this may be due to errors by the filing parties or recordation mistakes by the Copyright Office. If author error, this may be indicative of filing parties struggling to navigate the complexity of the law. This hypothesis is supported by a U.S. district court ruling against the filers of some of these notices on the grounds that they were premature (*Archie Comic Publications v. DeCarlo*, 2001). Researchers may wish to use this dataset to identify faulty notices and explore the reasons for those deficiencies in future analyses.

Although we were always able to successfully identify the recordation date for notices, so far we have only been able to identify likely termination dates for 40% of the titles subject to termination notices under § 203 ($n = 16,872$). The remaining 60% either did not list an effective termination date—a mistake that can render the termination notice invalid (Compendium, 2021)—or had too many phrase variations for us to reliably identify and filter using string matching techniques. This is not injurious to the data quality because, as explained above, we can deduce that at the very least we have every notice affecting works that could be terminated up until mid-2020. Future researchers wishing to drill further into termination dates could use other methods to extract additional dates and further enrich these datasets.

B. What Type of Works are Subject to Termination Notices?

In this section, we break down the titles subject to termination notices under each of §§ 203 (30,638, 73%) and 304 ($n = 58,321$, 89%), based on our string pattern categorization process. We also draw on a complementary registration dataset to develop a profile of the relative proportions of registered works across different types that are subject to termination notices under §§ 203 and 304.

Table 3: Termination Notices Under § 203 by Number of Titles^a

Category	Number of titles	Percentage of titles
PA—works of the performing arts	20,745	66.0%
SR—sound recordings	9832	31.3%
TX—nondramatic literary works	840	2.7%
VA—works of visual art	13	0.04%
Total	31,430	100%

^aThese figures generally follow results from a manually categorized random sample of works subject to § 203 termination notices: performing art: 78% ($n = 296$); sound recording: 18% ($n = 68$); literary work: 3% ($n = 10$); performing art and sound recording: 2% ($n = 7$).

1. Types of Works Subject to Termination Notices Under § 203

We were able to classify 73% of § 203 titles based on patterns in the data ($n = 30,638$). As 792 titles appeared in both categories, adding the titles in each category provides a total of 31,430 (Table 3).³²

In Figure 6, we graph the number of titles subject to § 203 termination notices per year.

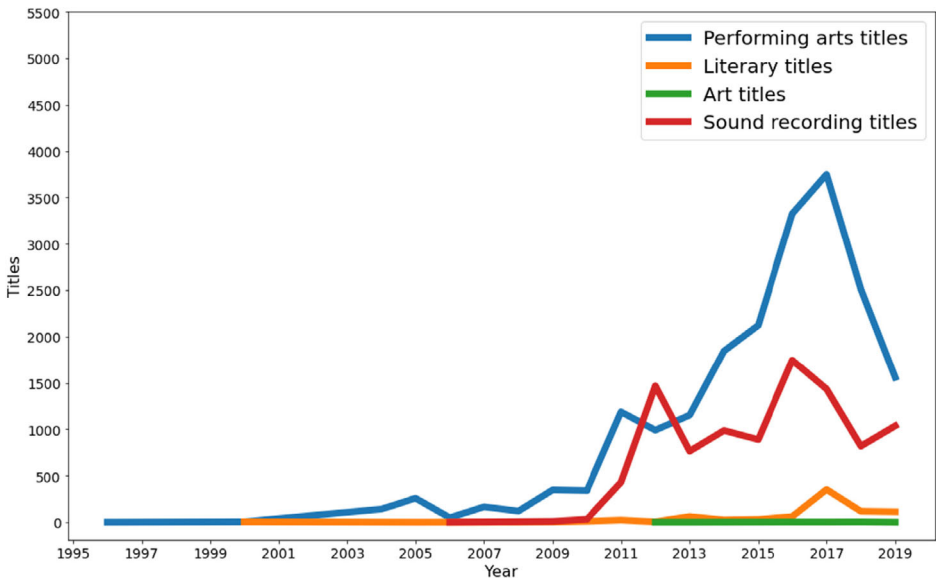
To better understand the works subject to termination notices as a proportion of all copyright registrations, we drew on a recent dataset of copyright registration constructed by Brauneis and Oliar (2020).³³ We then calculated the annual number of registrations for each of the four categories of work for the 10 years from 1978 as a proxy for the relative proportions of each type of work created.³⁴ Works of Performing Arts (mostly musical works) and texts accounted for the greatest share of registered works in the registration database. We then compared those proportions to those in the termination data. These results show that there is little correlation between the proportion of registrations and termination notices for each kind of work. Sound recordings made up less than 5% of registrations, but more than 31% of the total works subject to termination notices. Works of performing arts were also over-represented (42% of registrations; 66% of works subject to § 203 termination notices). In the other direction, text works made up almost

³²The vast majority ($n = 788$) appeared in both the performing arts and sound recording categories. Two titles appeared in the literary and performing art categories (*Reid Fleming: World's Toughest Milkman*, comic by David Boswell, and *The Bonfire of the Vanities* by Thomas K. Wolfe), and two appeared in the performing art and art categories (songs by the artist Jerry Chesnut which had “musical compositions” in the “title” field but had visual art registration numbers: VA46311 and VA57194).

³³Robert Brauneis and Dotan Oliar kindly provided these data to us based on the data set available at Brauneis and Oliar (2020). Registrations are a useful proxy for the number of creative works, although they do not account for creative works that have not been registered outside of copyright law (Ku et al., 2009). See also Oliar et al. (2014) for the limitations of using registration numbers as a proxy for the number of creative works. Note we grouped Brauneis and Oliar’s data according to the four post-1978 registration prefix categories using information in their accompanying paper and further information provided by email.

³⁴Not all works subject to § 203 termination notices listed a post-1978 registration number, and some listed a pre-1978 registration number, indicating they were registered before 1978. However, comparing the numbers of titles subject to § 203 termination notices to post-1978 registration data provides a reasonable sense of how works subject to termination compare to works that have been registered.

Figure 6: Titles subject to § 203 termination notices per year: 1996–2019. [Color figure can be viewed at wileyonlinelibrary.com]



40% of registrations but less than 3% of works subject to termination notices. Works of visual arts accounted for 13% of registered works (13%) but almost never subject to termination notices (0.04%) (Table 4).

The sound recording and visual art categories are relatively well defined in terms of the works they cover. However, the performing arts and literary works categories are very broad, and do not inform us about the different types or genres of work within them (e.g., whether works are fictional or nonfictional). To better understand the types of works subject to termination notices within these categories, we manually categorized a random sample of titles from both categories of the dataset, based on registration numbers, identifiers, and the parties against whom notices were filed.³⁵ The entire performing arts sample consisted of musical works. Meanwhile, the vast majority of works in the literary work category ($n = 750$, 89%) appeared to be books, which we manually categorized into the following genres (Table 5).

Young adult had the highest number of books, though they were all by a single author, Francine Pascal, who wrote the *Sweet Valley High* series ($n = 305$). Adult fiction had a much broader mix of authors, including Nora Roberts and Linda Howard (general adult fiction including romance and suspense), Stephen King (horror/science fiction/fantasy, etc.),

³⁵See section 4.3.3 for a description of the sample size calculation method. Where the data were inconclusive, we consulted Catalog registration records.

Table 4: Comparison of 1978–1987 Registrations with Works Subject to § 203 Termination Notices

Category	Registrations 1978–1987	Percentage of total registrations	Titles subject to § 203 termination notices	Percentage of titles subject to § 203 termination notices
PA (performing art)	1,418,893	42.14%	20,745	66.00%
SR (sound recordings)	153,486	4.56%	9832	31.28%
TX (nondramatic literary works)	1,323,608	39.31%	840	2.67%
VA (visual art)	452,734	13.44%	13	0.04%
Multimedia	18,640	0.55%	0	0.00%
Total	3,367,361	100%	31,430	100%

Table 5: Genres of Books Subject to § 203 Termination Notices

Genre	Number of books subject to § 203 termination notices
Young adult fiction	305
Adult fiction	248
Children	82
Educational/academic	68
Nonfiction	44
Poetry	2
Unknown	1
Total	750

and George R. R. Martin and David Eddings (fantasy). Children’s books (including books from the *Babysitters Club* series by Ann M. Martin and picture books by Leo Lionni) were the next most common, followed by educational and academic texts (e.g., management and calculus textbooks) and other nonfiction books like collections of essays by Isaac Asimov, religious books and a cookbook. Two poetry collections also featured.³⁶ Below, we conduct further analysis on the authors filing § 203 termination notices for books.³⁷

Termination notices for a further 57 titles (7%) were filed against audiovisual production companies. The authors of these works likely granted adaptation rights in respect of books to these companies and sought to terminate them later. Nearly half the works

³⁶The only book for which we could not determine the genre was *The Kingdom of L* by Suzanne Dennis. A Google search for the title and author (each in quotation marks) only brings up one relevant result: an Amazon page for the book but without sufficient detail to determine what it is about (Amazon, n.d.) A search on the Copyright Office Catalog on May 4, 2021, using the provided registration number also does not provide further information about the book’s genre.

³⁷See section 5.3.1.

were by Stephen King ($n = 26$), including *The Running Man* (premiere: 1987), *Children of the Corn* (premiere: 1984, further installments from 1992 to 2011), and *Firestarter* (premiere: 1984). Others included a book series by writer Sara Paretsky (which inspired the movie *VI Warshawski* in 1991),³⁸ *Gorky Park* by Martin Cruz Smith (premiere: 1983), and *The Bonfire of the Vanities* by Thomas K. Wolfe (premiere: 1990).

Beyond these there was a range of nonbook titles. Data for 10 titles represented various types of text-based works: plays ($n = 4$), comics ($n = 2$), articles ($n = 2$) a script, and a lecture. We note three plays by August Wilson, *Fences*, *Ma Rainey's Black Bottom*, and *Joe Turner's Come and Gone*, were subject to a termination notice recorded in July 2017. This may have been motivated by a desire to capitalize on the commercial success of the Denzel Washington-directed and produced adaptation of *Fences* in 2016, and the December 2020 release of *Ma Rainey's Black Bottom* on Netflix (directed by Denzel Washington and starring Viola Davis and Chadwick Boseman) (IMDB, n.d.-a, n.d.-b).

Data for another 21 titles were inconclusive as to the type of work: they could have been the actual literary works or audiovisual adaptations, or in one case, either a book or a play.³⁹ Last, there were two songs in this dataset: *Together: Reprise* by the band The Ohio Players, and *Sensitive Heart* by Benny Hester. The former had a text-based registration number according to the pre-1978 registration schema, while there was a typological error in the latter record.⁴⁰

These results suggest that few text-based works beyond books and, in some instances, movie/TV adaptations of books have enough enduring value for authors and estates to pursue recovering their rights. However, a contributing factor could be authors regaining their rights by private renegotiation or through the exercise of contractual reversion rights. Further qualitative research (e.g., interviews with authors) would enable more in-depth investigations of the reasons why so few book authors have been filing to terminate under § 203.

2. Types of Works Subject to Termination Notices Under § 304

Table 6 shows the breakdown of works subject to s termination notices into four categories: works of the performing arts, literary works, works of art, and sound recordings. As with the § 203 results, these data combine works registered under a pre-1978 registration number, works with descriptors allowing us to clearly identify the work, and works with post-1978 registration numbers.

Figure 7 shows the number of titles subject to § 304 termination notices, per category of work from 1977 to 2019.

³⁸Four books within the series were in this subset: *Indemnity Only*, *Deadlock*, *Killing Orders*, and *Bitter medicine*.

³⁹*The Disenchanted* by Budd Schulberg (A48955).

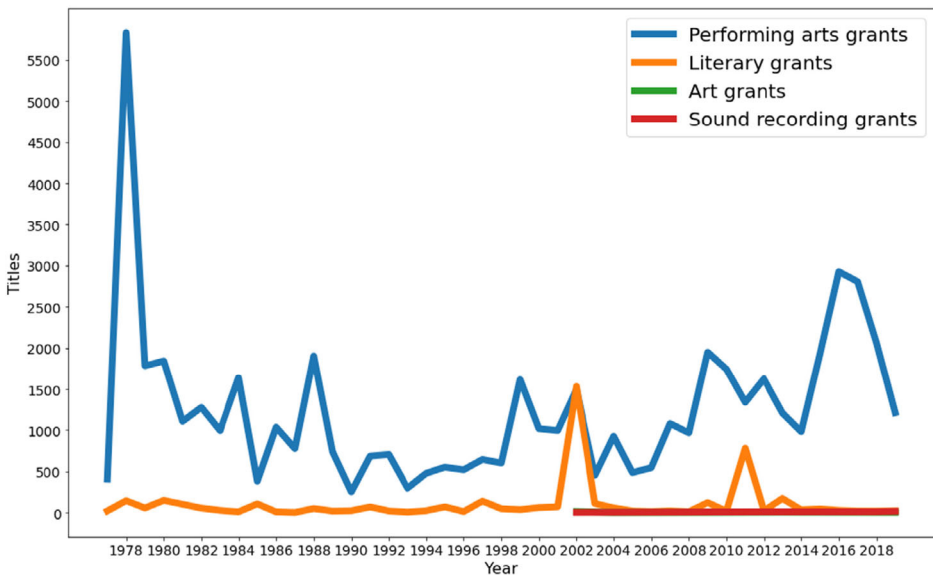
⁴⁰C31431; A190059. In the case of the latter, we note there appears to be an error in the data whereby there is a “[” character before the “A.” A review of the titles suggests this was meant to be a “P” such that the registration number would in fact be “PA190059”: see this list contains titles in document V9929D275, Copyright Office Catalog, <https://cocatalog.loc.gov/cgi-bin/doctitles.cgi?V9929D275>. This indicates the limitations of the string matching process when faced with incorrectly recorded data.

Table 6: Titles Subject to § 304 Termination Notices, by Type of Work^a

Category	Number of titles	Percentage of titles
Works of the performing arts	54,096	92.6%
Literary works	4244	7.3%
Sound recordings	37	0.1%
Art	22	0.04%
Total	58,399	100%

^aThese figures generally follow results from a manually categorized random sample of works subject to § 304 termination notices: performing arts: 90% ($n = 345$); performing literary work: 9% ($n = 34$); performing art and literary work, and audiovisual/literary work/art: 1% ($n = 3$).

Figure 7: Titles subject to § 304 termination notices per year: 1977–2019. [Color figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com)]



For works of performing arts, the data show a surge of titles being subject to termination notices filed soon after § 304 came into effect in 1978—5830 in total. Termination notices for 86 per cent of those works ($n = 5007$) were filed by the American Guild of Authors and Composers (AGAC, now the Songwriters Guild of America) on behalf of various claimants. This suggests that the AGAC may have prepared its members to file for termination as soon as it became possible to do so, resulting in a high initial number of termination notices being issued. This is unsurprising, given the role of the AGAC/Songwriters Guild in agitating for the termination right to be introduced.⁴¹ Creators do

⁴¹See the description of the Songwriters Guild of America (n.d.).

not necessarily have the resources or expertise to exercise these complex rights, so the involvement of guilds or unions may be an important piece in facilitating their use.

Termination notices for literary works were filed at far lower levels than works of performing arts. However, there were spikes in 2002 ($n = 1530$) and 2011 ($n = 781$). The 2002 spike can be explained by a large number of works ($n = 1395$, 91%) subject to notices filed by the heirs of Jerome Siegel, co-creator of *Superman*.⁴² The 2011 spike can similarly be explained by a large number of works ($n = 756$, 97%) subject to notices filed by the heirs of renowned musicologists Alan and John Lomax.⁴³

Before 1978, there were specific registration numbers for music and other numbers for dramatic works. However, after 1978, these were all given the “PA” prefix. Using the pre-1978 numbers alone, we determined the vast majority of works subject to § 304 termination notices, in the performing art category were musical works ($n = 52,667$, 97%). This is consistent with our findings from the PA sample of works subject to § 203 termination notices, and suggests musical compositions remain the most popular type of work to be the subject of a termination notice under either §§ 203 or 304.

As with literary works under § 203, we sought to better understand the different types of literary works subject to § 304 termination notices by manually categorizing a random sample of those titles. We also sought to understand the different types of literary work subject to § 304 termination notices using a random sample ($n = 353$, Table 7).⁴⁴

We found 33 songs/song lyrics in the sample (9.3%). These data all included registration numbers with an “A” or “C” prefix, which we matched to the literary category using the Copyright Office’s guidance for post-1909 registrations (U.S. Copyright Office, n.d.-b).⁴⁵ Some songs with a “C” registration number appeared to be registered prior to 1909, when “C” prefixes were given to songs: this is a necessary limitation on our research given the complexity of the Copyright Office’s pre-1978 schema. However, it is not clear why other songs were registered with an “A” prefix: the Copyright Office has consistently used an “A” prefix for books since 1901 (U.S. Copyright Office, n.d.-b, p. 4).

There were also eight paintings by artist Norman Rockwell (2.3%). Although we might expect these works to be mapped to the art category, they all included registration numbers for literary works rather than artworks (periodicals, designated by a “B” prefix). Another work, the jacket for the book *East of Eden* (John Steinbeck), was classified as “artwork” because the corresponding termination notice was filed by the estate of artist Elmer Hader. This work also used a registration number for a book, rather than artwork (books, designated by an “A” prefix). The inclusion of songs and artwork in this sample highlights the difficulty of using pre-1978 registration number categories, which varied across time periods, to identify the type of work in a termination notice record. This was

⁴²For more information, see Reynolds (2013).

⁴³For more details about the works of Alan and John Lomax, see The American Folklife Center (n.d.).

⁴⁴See above at section 4.3.3 for a description of the sample size calculation method.

⁴⁵See description of method above at sections 4.3.1–4.3.3.

Table 7: Sample of Titles in the Literary Category Subject to § 304 Termination Notices, by Category

<i>Category of works</i>	<i>Titles in sample</i>	<i>Percentage of titles in sample</i>
Comic	113	32.0%
Adult fiction	88	24.9%
Sheet music	68	19.3%
Song	33	9.3%
Poetry	9	2.5%
Painting	8	2.3%
Article	8	2.3%
Nonfiction	6	1.7%
Magazine	4	1.1%
Play	3	0.8%
Children	3	0.8%
Verses	2	0.6%
Unknown	2	0.6%
Letter	2	0.6%
Young adult fiction	1	0.3%
Speech	1	0.3%
Quote	1	0.3%
Artwork	1	0.3%
Total	353	100%

far less of an issue with the § 203 titles, due to the simpler four-category system used for most titles in the § 203 dataset.

Beyond songs and paintings, the rest of the sample was populated by works including written works, quotes, speeches, verses, poetry, letters, and sheet music, the notices for which were filed against a variety of parties including book publishers and movie companies.⁴⁶ The most common works in the § 304 sample were comics ($n = 113$), almost all of which were filed by the heirs or estates of *Superman* creators Jerome Siegel and Joe Shuster ($n = 112$). Siegel assigned his share of the copyright in *Superman* to Disney in 1938 for \$130 with co-creator Joe Shuster: the termination right gave his estate leverage to eventually renegotiate a new deal with DC Comics that gave them a fairer share of its value (Kratzer, 2013).

With the exception of sound recordings (most likely due to copyright protection only commencing in 1972), we see a similar trend in works subject to termination notices under §§ 203 and 304: musical compositions dominate, with literary works lagging far behind.

C. Who is Filing Termination Notices?

One interesting avenue of exploration made possible by the data concerns *who* is filing termination notices. What kind of creators are taking advantage of these laws? Are they

⁴⁶Data for two works were inconclusive as to their type: “Only lonely little me” (C202962) and “Consolation” (C180105). Searches of the Catalog did not reveal further data about the type of works these titles were.

Table 8: Top 10 Creators Whose Works are Subject to Termination Notices Under § 203, by Number of Titles Affected

<i>Creators whose works are subject to termination notices under § 203</i>	<i>Description</i>	<i>Titles subject to § 203 termination notices</i>	<i>Percentage of all titles subject to § 203 termination notices</i>
George Clinton	Musician (funk)	1413	2.49%
Kenneth Gamble and Leon Huff	Production and songwriting team and founders of Philadelphia International Records	1136	2.69%
Harlan Perry Howard	Songwriter (country)	669	1.58%
Daryl Hall and John Oates	Members of Hall & Oates (pop rock band)	433	1.02%
Sid Tepper	Songwriter (rock “n” roll)	388	0.92%
Gary Burr	Musician/songwriter/record producer (country)	346	0.82%
George Byron Hill/ Byron Hill	Songwriter/producer (pop, country)	320	0.76%
Francine Pascal	Author of the <i>Sweet Valley High</i> series of young adult books	290	0.69%
Frederick Knight	Singer (R&B)	288	0.68%
Don Schlitz	Songwriter (country)	286	0.68%
	Total	5569	12.32%

being used by a wide variety of stakeholders, or are most terminations being issued by relatively few?

To begin investigating these questions, we present the top 10 creators by number of titles affected by termination notices under each of §§ 203 (Table 8) and 304 (Table 9).⁴⁷

These results suggest musicians and songwriters (or their heirs/representatives) file termination notices in respect of the largest number of works. The exceptions are Francine Pascal (the *Sweet Valley High* books), Jerome Siegel (*Superman*), and Albert Fedstein (a writer and artist, and editor of *Mad* magazine).

1. Preliminary Analysis of Book Authors Filing § 203 Termination Notices

These data can also be used for further analysis by comparing them with external data. Below, we present a preliminary analysis of the profile of authors filing § 203 termination

⁴⁷George Clinton appeared twice in the top 10 for § 203 due to a typographical inconsistency. We consolidated the two entries and included the 11th artist, Don Schlitz, as number 10.

Table 9: Top 10 Creators Whose Works are Subject to Termination Notices Under § 304, by Number of Titles Affected

<i>Creators whose works are subject to termination notices under § 304</i>	<i>Description</i>	<i>Titles subject to § 304 termination notices</i>	<i>Percentage of all titles subject to § 304 termination notices</i>
Jerome Siegel	Creator of <i>Superman</i> comic book character	1613	2.46%
Albert B. Fedstein	Writer/artist (EC Comics, editor of <i>Mad</i> magazine)	801	1.22%
Pat Boone	Singer/composer (pop) Also appeared on television	643	0.98%
Buddy DeSylva	Songwriter/executive of a record company/movie producer	609	0.93%
Grace LeBoy Kahn (filed with Donald G. Kahn and Irene Kahn Atkins)	Composer	558	0.85%
Mack David	Songwriter/lyricist (pop)	481	0.73%
Jerome Kern	Composer (pop, musical theater)	455	0.70%
Lew Brown	Lyricist	448	0.68%
Dallas Frazier	Musician/songwriter (country)	417	0.64%
Barry Mann and Cynthia Weil	Songwriters (pop/country)	390	0.60%
	Total	6415	9.80%

notices in relation to books as an example of the kinds of deeper research that these datasets could facilitate.

Just 840 text-based works were subject to § 203 termination notices, the vast majority of which appeared to be books ($n = 750$, 89%). To put this number into context, we identified 2,344,908 registrations of literary works between 1978 and 1994.⁴⁸ This means works subject to termination notices in the literary category ($n = 840$) accounted for approximately 0.04% of corresponding copyright registrations, which reduces to 0.03%

⁴⁸This number was the number of copyright registrations in the “literary” category in the data provided by Brauneis and Olier. Note these correspond to the years of the latest effective termination date in the literary dataset, rather than the months: the registration data could not be divided further. The year 1978 was the earliest year in which termination under § 203 could take effect. The year 1994 is 35 years before 2029, the latest year in which termination was stated to take effect in the literary dataset. Notices recorded in 2019 and 2020 listed termination effective dates in 2029. Termination can take place between 2 and 10 years after a notice is served: therefore, notices recorded in 2018 or earlier could not validly list an effective termination date beyond 2028. See note 34, regarding the use and limitations of registrations. See also note 31, regarding the use of a 35-year period to identify a range of corresponding copyright registrations. Although grants of copyright in respect of literary works may convey rights to publish, we used a 35-year period from registration for comparison given the termination data does not always appear clear on the dates of the grants or the dates of publication.

Table 10: Top 10 Creators Whose Works are Subject to Termination Notices Under § 203 (books) by Number of Titles

<i>Creators whose works are subject to termination notices under § 203</i>	<i>Description</i>	<i>Titles subject to § 203 termination notices</i>	<i>Percentage of literary works subject to § 203 termination notices</i>
Francine Pascal	Author (young adult fiction, <i>Sweet Valley High</i>)	305	36.3%
Debbie Macomber	Author (romance, women's fiction)	48	5.7%
Stephen King	Author (horror, science fiction, fantasy)	38	4.5%
Nora Roberts	Author (romance)	36	4.3%
Soo Tang Tan	Author (mathematics textbooks)	33	3.9%
Ann M. Martin	Author (children's fiction, <i>Baby-Sitters Club</i>)	30	3.6%
Ralph Henley and Karyn Henley	Karyn Henley: Author (children's fiction, children's nonfiction, children's educational) Ralph Henley: Collaborator with Karyn Henley, book producer and publisher)	16	1.9%
Piers Anthony	Author (science fiction, fantasy)	16	1.9%
Linda Howard	Author (romance, suspense)	16	1.9%
Jayne Krentz	Author (romance)	15	1.8%
	Total	553	65.8%

when we only consider books ($n = 750$). If we assume authors and estates will take action to regain their rights where possible as a means of protecting their copyright, this suggests most books have little value to authors and estates 35 years after the rights are granted.⁴⁹ This may again suggest that a reversionary period of 35 years is too long (although it is possible, more reversion is taking place informally or by contractual negotiation, which this study does not examine).

Our analysis identified 120 unique authors in the literary works category, including 93 unique authors of books. As Table 10 shows, the top 10 parties account for over 65% of literary works (and over 70% of books) subject to § 203 termination notices.

As Table 10 shows, many of the parties filing notices for the most number of books were household names. These spanned romance/adult fiction (Nora Roberts, Debbie Macomber, Linda Howard, and Jayne Krentz), children's/young adult (Francine Pascal and Ann M. Martin), and science fiction/fantasy (Piers Anthony). Strikingly, over 40% of all books subject to termination notices in this category were authored by a single person, Francine Pascal ($n = 305$). Outside the top 10 authors,

⁴⁹However, authors may not act rationally in an economic sense: see, for example, Hickey (2017, pp. 432–434).

some of the most notable writers filing termination notices included Anne Rice,⁵⁰ Ken Follett,⁵¹ George R. R. Martin,⁵² and Stephen King.⁵³ Other bestselling authors (or their heirs/representatives) to have issued termination notices include Philip Roth,⁵⁴ Isaac Asimov,⁵⁵ and Truman Capote.⁵⁶

These findings suggest that the law has been put to remarkably little use in relation to books. They also suggest that the termination laws, in their current form, disproportionately benefit only a small handful of the most commercially successful writers.⁵⁷ Future interrogation of this dataset can help determine whether this pattern holds for other forms of creative work, such as songs.

These data can also help us understand what is happening to works after the effective termination date has passed: whether they go out of print, are republished by the same or a different publisher, or whether there are new adaptations. Below, we examine works by Stephen King and Nora Roberts (who featured prominently in the § 203 literary works dataset) as an example of this type of deeper analysis.

The dataset contained five entries related to Stephen King's novel *The Stand*. Three were filed against the book publishers (Knopf Doubleday, Doubleday and Company) and CBS Films jointly. The other two were filed against Knopf Doubleday and CBS Films, respectively. This indicates that Mr King sought to terminate both the book publishing and audiovisual adaptation rights for *The Stand*, with termination scheduled to take effect between May 17, 2015 and May 1, 2025. The most recent paperback version of *The Stand* was published by Anchor (an imprint of Knopf Doubleday) in December 2020 as a tie-in to the new CBS TV series adaptation (which premiered in December 2020) (Goodreads, n.d.; IMDB, n.d.-c). As Mr King's notices were recorded between 2015 and 2018, we hypothesize the termination notices encouraged the publishers and film production company to negotiate new distribution agreements with him, enabling King to share more fully in the proceeds of *The Stand*.⁵⁸

⁵⁰Over 100 million copies sold (Brockes, 2010).

⁵¹Over 170 million copies sold (Chandler, 2021).

⁵²Over 70 million copies of *A Song of Ice and Fire* novels (Flood, 2016).

⁵³Approximately 350 million copies (South China Morning Post, 2019).

⁵⁴For more information, see Homberger (2018).

⁵⁵For more information, see Leslie (2020).

⁵⁶For more information, see Heitman (2017).

⁵⁷For more on the ongoing success of book backlists, see Gapper (2019, 2020).

⁵⁸Mr King has also filed termination notices in relation to some of his most famous works, including *The Dead Zone*, *Children of the Corn*, and *Cat's Eye*: see Zerner (2017), Miska (2017), and Salemme (2017).

Similarly, Nora Roberts issued a termination notice for her novel *Storm Warning* against Harlequin Books with an effective termination date of February 1, 2019.⁵⁹ A new ebook edition of the text, published by St Martin's Paperbacks, was published on March 3, 2020. We hypothesize that Ms Roberts successfully regained her rights by operation of the termination provision on February 1, 2019, which she then relicensed to St Martin's.⁶⁰ If this is the case, it shows termination operating as it was designed to: an author regaining their rights and then negotiating another distribution deal at a time when the value of the work is better known.

These are just two examples of how the termination provision may grant new exploitation opportunities for authors after 35 years. Future research could compare the re-exploitation (or lack thereof) of these and other works to gain a clearer understanding of the effects of the termination provisions on new investment in knowledge and culture.

D. When are Counter-Notices and Withdrawals Being Filed, and by Whom?

Lastly, we explore what happens *after* a termination notice is filed. The recipient might choose to file a counter-notice contesting the termination notice. The filing party might also file a withdrawal/revocation notice, suggesting they have subsequently renegotiated a new agreement with the recipient. These notices do not need to be filed with the Copyright Office, so our data does not tell us how many termination notices are contested or withdrawn. However, it gives us an understanding of the types of works that termination notice recipients consider valuable enough to contest the termination of. It may also suggest how common it is for creators to revoke a termination notice and renegotiate a deal with their publisher.

1. Counter-Notices Under §§ 203 and 304

Under § 203, 134 counter-notice records were filed, corresponding to 1720 titles. Using the same categorization process as we did for termination notice records, we were able to confidently categorize 74% of these records ($n = 1277$) as shown in Table 11. One hundred twenty-two titles appeared in both the sound recording and the performing arts categories, suggesting the termination notices applied to both the musical compositions and sound recordings.

Notices for the remaining 443 titles which we could not categorize using string matching were all filed by record companies (predominantly UMG and Capitol Records), suggesting those works were also likely sound recordings. Even if they were not, however,

⁵⁹Document Number: V9939D648. Registration Number: TX1363413.

⁶⁰Although we note the possibility that her original agreement did not include eBook rights. In *Random House v Rosetta Books*, the Second Circuit Court found that an agreement for the grant of rights “in book form” did not likely include eBooks: Heald (2018), p. 22. As Heald writes:

Rosetta was likely a surprise and shock to the market, and the case worked a functional reversion of rights to authors, a chance for them to renegotiate, switch publishers, self-publish, or revive their back catalogs, exactly as predicted by advocates of aggressive statutory reversion schemes.

Table 11: Categories of Titles Subject to Counter-Notices Filed in Response to § 203 Termination Notices

<i>Category</i>	<i>Number of titles subject to counter-notices filed in response to § 203 termination notices</i>
Sound recording	1249
Performing art	149
Literary	1
Art	0
Total	1399

sound recordings still dominated every other type of work when it came to counter-notices under § 203.

This is not surprising. Record companies have long argued that sound recordings should be considered “works for hire” under the Copyright Act, because enumerated classes of works for hire are exempt from the termination provisions (Henslee & Henslee, 2011; Holland, 2000b, 2001; Law Journal Newsletters, 2008; Mags, 2020; Masnick, 2011, cited in Johnson, 2013; Starshak, 2001). One of those classes is “compilations,” and record companies routinely argue that albums fall within this category. The RIAA has also lobbied for “sound recordings” to be more broadly listed as a category of work for hire, going so far as to surreptitiously procure an illegitimate “technical amendment” to the law to achieve this after their formal efforts failed to bear fruit (Holland, 2000a; Starshak, 2001). This was embarrassingly rolled back in 2000 after artists mobilized to protest the theft of their rights (Hall, 2002). An interesting avenue for future researchers to investigate via our new § 203 dataset is whether labels are confining their counter-notices to albums affected by termination notices, which may at least arguably be valid,⁶¹ or whether they are also objecting to the recovery of rights over singles (which is on much shakier legal ground).

By contrast, relatively few counter-notices are issued in relation to musical compositions, which we hypothesize to be because there is less scope for “work for hire” arguments to be made.

Just 13 counter-notice records were issued under § 304, corresponding to 65 titles. Sixty-three were works of performing arts (which appear to be musical compositions). The remaining two were literary works. We hypothesize the low numbers of counter-notices under § 304 is because sound recordings did not receive federal copyright protection until 1972, and the application of the statutory termination rights to other works is not as contested as in the case of sound recordings (because of the work-for-hire issue discussed above).

⁶¹On the basis that albums can be considered works for hire because they “are specially ordered or commissioned by record labels for use as contributions to a collective work [Copyright Act, 17 U.S.C. § 101]” (Johnson, 2013, p. 664); see also Gould (2007) and LaFrance (2002).

2. Revocation Notices Under §§ 203 and 304

Revocation notices were less common than counter-notices under both §§ 203 and 304. We identified 29 revocation notices under § 203, corresponding to 376 works. We categorized the vast majority ($n = 334$, 89%) as sound recordings. Eleven literary works were also subject to revocation notices (3%). The revocation notices corresponding to the remaining 31 works which we could not categorize using string matching were filed by musicians or their heirs.⁶² For 12 works, the revocation notices were filed together with record and music companies,⁶³ suggesting the revocations were filed in relation to sound recordings (or if not, musical compositions). This suggests that record labels and music publishing companies are actively seeking to renegotiate copyright grants even after receiving termination notices from artists, highlighting the importance they place on retaining the rights in sound recordings and songs well after 35 years. There was only one revocation record under § 304, in respect of a termination notice for the comic *Casper the Friendly Ghost*.⁶⁴ Given the relatively small numbers involved, future researchers may find it fruitful to investigate what happened to these works after the termination process was initiated and revoked, to further explore the law's operation.

VI. DISCUSSION

A. Future Analyses and Lessons for Dataset Development

Our preliminary descriptive analyses merely scratch the surface of what is possible with these datasets. Future analyses will be of interest to researchers not only in law, but also economics, cultural studies, communications, and other disciplines. Researchers could use this dataset in a number of ways, including:

1. Comparing sales of works that are the subject of termination notices against those that are not, to assess causal effects on new investment, creator remuneration, and availability (this may involve deeper analysis of effective termination dates, building on our existing work to identify them).
2. Examining the sales and publication status of works subject to a revocation of termination notices.
3. Examining litigation and/or settlements arising from counter-notices issued in response to termination notices (particularly by record companies, given the live

⁶²David Coverdale, Robert E. Bell, Ronald Bell, Dennis Ronald Thomas, George Melvin Brown and August Smith Williams (heir of Claydes Charles Smith) (members of the band Kool & the Gang), Tom Petty, Jill Croston (known as Lacy J. Dalton), Anita Ward, and Pat Travers.

⁶³For example, Geffen Records and Capitol Records.

⁶⁴The termination notice was filed by the heirs of illustrator Joseph Oriolo, although the actual story was written by Seymour V Reit: Nash (2001).

- issue of whether sound recordings are “works-for-hire” under the Copyright Act).
4. Determining whether record companies are contesting termination notices over albums or singles.
 5. Identifying trends in the parties filing termination notices for nonliterary works, to see whether they are predominantly the most successful creators (building a fuller picture of who benefits under the law and who does not).
 6. Investigating potential reasons for spikes and drop-offs in termination notice filings.
 7. Identifying notices that may have been filed incorrectly, for example, before the statutory 2- to 10-year termination window, to help understand the rates at which claimants struggle to navigate the law’s technical requirements.

In addition, the datasets and the research they make possible may also be beneficial to investors, such as book and music publishers and record labels, who are interested in understanding which works may be coming onto the market—information that is very difficult to ascertain using the existing Copyright Office Catalog. And, as we have demonstrated, there is further value in linking and comparing the data we have assembled with other datasets to achieve deeper insight.

Our account of the methods we used to construct the datasets also provide a practical, worked example of the use of computational techniques for exploiting digitally held administrative data in empirical legal research. The Copyright Office Catalog records are administrative data: “found data” in the form of information and records routinely collected in the course of the administration of systems, programs or services, as distinct from “made data” generated for a specific research purpose (Connelly et al., 2016, p. 3). Through the application of common computational techniques—a custom web scraping program written in Python and classifications based on string pattern matching—we have transformed a large volume of data that was otherwise inaccessible for research into a reusable resource (Frankenreiter & Livermore, 2020; Whalen, 2020). Though the field of computational legal studies is growing, there is a mismatch between the skills required in this kind of research and the capabilities and disciplinary backgrounds of most legal scholars (Frankenreiter & Livermore, 2020). Examples such as ours can help provide guidance for legal scholars engaging with other administrative data sources about the kinds of computational techniques that can facilitate and expedite their research.

The benefits of using administrative data for research in the way we have demonstrated include its low cost, speed, efficiency, and longitudinal qualities (Connelly et al., 2016; see also Jones et al., 2019). There are, however, challenges with this kind of data: in particular, it is limited to the scope and quality of the routinely collected information. A range of data quality issues may compromise effective use of administrative data, such as data entry errors, incomplete records, and inconsistencies over time (Connelly et al., 2016; Jones et al., 2019). In our development of the termination datasets, we have clearly articulated the way the data were collected, collated, classified,

and tested, enabling other researchers to understand and evaluate the quality and accuracy of the data when using it in their own analyses.

B. The U.S. Termination Laws Are of Limited Use to Creators

The Copyright Office had initially proposed that the U.S. termination law should operate automatically 25 years after transfer (Copyright Law Revision, 1964, pp. 15–16, 278).⁶⁵ After determined lobbying from record labels, movie studios, and book and music publishers, the draft law was substantially amended in ways that made it far less useful to creators: operating only after 35 years, requiring complex and costly procedures to be followed, and the risk that creators would lose their entitlements if they got it wrong (Bently & Ginsburg, 2010; Reese, 2016). Rightsholders also managed to secure substantial carve-outs preventing the creators of “works for hire” from terminating them at all, and even though sound recordings are not included in that category, compilations are. Record labels argue that albums are “compilations” and therefore excluded from the law’s operation as works made for hire.⁶⁶

Now that these laws have been in operation for some time, we can start to understand the effect of those regulatory compromises.

The black letter literature has widely criticized these laws for being difficult for creators to navigate, raising costs by forcing them to hire lawyers to deal with the complexity (Bartow, 2020; Van Houweling, 2016). Though our analysis did not expressly set out to identify deficiencies in termination notices, we identified enough obvious problems while studying other questions to suggest that these concerns are valid.

Our data also suggest a problematic lack of clarity. Though rights have been terminable under § 203 for years now, it remains unclear whether record labels can lawfully exclude albums from the termination provisions on the grounds that they fall within the “compilation” category of “works for hire.” Until this is definitively resolved, recording artists face uncertainty about their rights, and potentially astronomical costs if they seek to enforce them.

The datasets we have constructed suggest that these laws have been subject to remarkably little use, with our preliminary analysis suggesting that in relation to books, § 203 is primarily benefiting a small handful of successful and wealthy creators and estates.

More research is needed into the extent to which the existence of these rights facilitates informal rights reversions or renegotiated deals without claimants needing to formally exercise their rights. Regardless of that, however, it is clear that such arrangements are not wholly successful in linking copyrights to those who wish to exploit them. Most

⁶⁵See also a preliminary proposal for a 20-year limitation on lump sum copyright transfers (that “do not provide for continuing royalties”): Copyright Law Revision (1961).

⁶⁶See discussion at section 5.4.1.

termination-eligible books are out of print and unavailable in digital form.⁶⁷ Many are “orphaned”: schools, universities, libraries, galleries, archives, or others regularly desire to use them, but cannot make contact with the copyright owner to negotiate access.⁶⁸ Orphaning also plagues other forms of creation, including sound recordings and songs.⁶⁹ These realities, combined with the paucity of attempted terminations of books under the statutory provisions, suggest that adoption of a U.S.-style termination right may do little to facilitate rights recapture. Policymakers keen to take advantage of reversion’s potential to help creators better share in the fruits of their labor, and to ensure that society can benefit from widespread access to knowledge and culture, should consider alternatives to this “one-size-fits-all” approach.

C. Potential Reforms

One reform option is to reduce the amount of time after transfer before termination can occur. The proposed Canadian law, which would permit reversion after 25 years, would still maintain the necessary incentives for investment while making rights available again while they still have some value to creators.

Serious consideration should also be given to streamlining the reversion process and clarifying the scope of the law to encourage additional claimants.

A more radical possibility is to mandate *automatic* reversion after an initial fixed term (say 25 years), with rights that are not reclaimed by creators then being licensed by an independent cultural steward and revenues put toward directly supporting creators via grants, fellowship, and prizes (Giblin, 2018). Such proposals should be considered as a way of better furthering copyright’s twin aims of recognizing and rewarding creators and promoting widespread access to works than the U.S. law is achieving.

Finally, the U.S. law’s deficiencies and lack of use to date suggest that “use-it-or-lose-it” rights of the type currently being implemented in the European Union as a result of the 2019 Digital Single Market Directive, are well worth considering as a supplement to any time-based right. By focusing on whether the work is being exploited, rather than time since transfer, such rights have the potential to generate new revenues for creators and return works to the public much earlier. As always, however, their efficacy will

⁶⁷Due to most works going out of print before 35 years from publication: see, for example, Falgoust (2014), citing Boyle (2008).

⁶⁸For an overview of the difficulties experienced by individuals and institutions seeking to use orphaned works, see, for example, Pallante (2015), Hansen et al. (2013), and Meeks (2013).

⁶⁹For an overview of the orphan works problem as it pertains to sound recordings and musical compositions, see, for example, Dahlberg (2011), Brooks (2009), Baker (2008), Bradrick (2012), Seidenberg (2011), and McBride (2006).

The orphan works may affect musical works less because under the recent Musical Works Modernization Act, users of orphan musical works may be entitled to a “blanket license” by which royalties are collected and held by the Mechanical Licensing Collective “in hopes that the copyright owners will surface and claim their ownership interests” (Loren, 2019, pp. 2546–2547).

depend on the way that they are drafted. If creator interests end up being as compromised as they were in the case of the U.S. time-based rights, it may be that reversion's potential will never be fully realized.

VII. CONCLUSION

This article introduces two new datasets of copyright termination notice records under 17 U.S.C. §§ 203 and 304 from 1977 to 2020. These open datasets show who has filed termination notices, how recipients like publishers have responded to those notices, and the different types of works subject to termination notices. The United States has long been the only country to record formal uses of its copyright termination provisions and make those records publicly available; however, research using these records has been difficult because of the infrastructure undergirding the online database. Using computational methods to extract data from the Catalog and categorize them for the purpose of deeper analysis, we have provided researchers and policymakers with valuable new data to enable them to assess the efficacy of the termination rights. Our preliminary analysis also highlights usage trends and proposes potential reforms and areas of further investigation using this data. The data and our analysis are especially relevant given ongoing, heated debates about how similar provisions might be implemented elsewhere to address declining creator incomes.

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