

Termination Rights Under Scrutiny in Harper Lee Adaptation Cases as USCO Steps In

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It's said: "you never really understand a person until you consider things from his point of view," but the Dramatic Publishing Company ("DPC") is not so interested in considering the point of view of the Harper Lee Estate in the disputes over the rights to produce stage adaptations of Lee's seminal work, *To Kill a Mockingbird*. The suits center on the exercise of termination rights under Sections 203 and 304 of the U.S. Copyright Act, invoked by Harper Lee in 2011 to terminate the exclusive right granted to DPC in 1969 to create and license amateur stage adaptations of the novel, and whether a derivative work created prior to such a termination may continue to be licensed by the licensee. The Lee Estate seeks to terminate Lee's 1969 grant of dramatic rights, however DPC argues that its adaptation constitutes a lawful derivative work created prior to the effective date of termination, thereby preserving its continued exploitation rights under the derivative works exception to Sections 203 and 304. This conflict places the parties at odds, in both the Second and Seventh Circuits, over the scope of the termination right and the durability of licenses which permit the creation of derivative works, pre-termination.

The U.S. Copyright Office ("USCO") weighed in on April 15, 2025, by amicus brief, saying "Terminate all the rights you want, but it's a sin to expand a derivative post-termination." Addressing the core legal issue, the USCO supported a narrow reading of the derivative works exception, warning that an expansive interpretation would erode the statutory policy underpinning termination rights. The brief emphasizes that post-termination exploitation of derivative works should be confined to uses that do not alter or expand upon the original derivative work, and that new derivative post-termination uses should remain unauthorized. The brief thus urges the courts to adopt an interpretation that protects the integrity and utility of Sections 203 and 304. This position reinforces the principle that termination rights are intended to give authors and their heirs a meaningful opportunity to renegotiate or reclaim control of their works. Note that Section 203 of the Copyright Act does not cut off the right of a former licensee to exploit lawfully created derivative works. Instead, the law specifically allows the continued use of derivative works prepared before the termination date. The termination only reverts the licensed rights to the original copyright owner and prevents the creation of new derivative works after the termination date.

The result of these suits may drastically limit an author's ability to control the use of derivatives versions of their works, provided such works were created during the original grant period. While we do not know when we can expect the Seventh and Second Circuits to issue their decisions, rest assured we will provide an update at that time.

The USCO's amicus brief echoes the rationale they employed when confirming their final rule regarding termination rights of songwriters under the Music Modernization Act in July 2024, which further reinforces the narrow interpretation of the derivative works exception advocated in the brief. While the rule addresses royalty distributions for, specifically, musical works (as opposed to other copyright-protected works), its underlying principle, that post-termination exploitation must not expand upon pre-existing derivative works, applies in this Harper Lee dispute. Here, DPC's continued licensing of stage adaptations arguably constitutes an expansion of the original derivative work, especially if new productions introduce changes or

reinterpretations. The Office's rule affirms that termination rights are meant to restore meaningful control to authors and their heirs, and that derivative works created under an original grant should not serve as a perpetual license to innovate or profit post-termination. The principle underlying the USCO's July 2024 rule lends weight to the Lee Estate's position and may influence how courts assess the scope of permissible post-termination uses.