

**LIMITATION WHERE AUTHOR IS FIRST OWNER OF COPYRIGHT:
REVERSIONARY INTEREST IN THE COPYRIGHT**

SOME COMMENTS ON SECTION 14 OF THE CANADIAN *COPYRIGHT ACT*

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LIMITATION WHERE AUTHOR IS FIRST OWNER OF COPYRIGHT

14. (1) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will, after June 4, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of the estate of the author, and any agreement entered into by the author as to the disposition of such reversionary interest is void.

RESTRICTION

(2) Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) [Repealed S.C. 1997, c. 24, s. 11]

(4) [Repealed R.S.C. 1985, c. 10 (4th Supp.), s. 3]

LIMITATION DANS LE CAS OÙ L'AUTEUR EST LE PREMIER POSSESSEUR DU DROIT D'AUTEUR

14. (1) Lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre, aucune cession du droit d'auteur ni aucune concession d'un intérêt dans ce droit, faite par lui — autrement que par testament — après le 4 juin 1921, n'a l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, à l'égard du droit d'auteur sur l'œuvre, pendant plus de vingt-cinq ans à compter de la mort de l'auteur; la réversibilité du droit d'auteur, en expectative à la fin de cette période, est dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui concernant la disposition d'un tel droit de réversibilité est nulle.

RESTRICTION

Le paragraphe (1) ne doit pas s'interpréter comme s'appliquant à la cession du droit d'auteur sur un recueil ou à une licence de publier une œuvre, en totalité ou en partie, à titre de contribution à un recueil.

[Abrogé S.C. 1997, ch. 24, art. 11]

[Abrogé L.R.C. (1985), ch. 10 (4e suppl.), art. 3]

R.S.C. 1985 c. C-42, s. 14; R.S.C. 1985 (4th Supp.), c. 10, s. 3; S.C. 1997, c. 24, s.11

§1.0 Related Sections

Section 2—Definitions: “Collective work”, “copyright”, “Legal representatives”, “Work”; section 2.2 – Definition of “publication”; section 3 – Copyright in works; section 13—Ownership of copyright; section 36—Protection of separate rights.

§2.0 Related Regulations

None.

§3.0 Prior Legislation

§3.1 Corresponding Section in Prior Legislation

Subsections 11(2) part & 11(3) from 1924.01.01 to 1928.01.31; subsections 12(3), (4) from 1928.02.01 to 1953.09.14; subsections 12(5), (6) from 1953.09.15 to 1988.12.11; section 14 from 1988.12.12 to present.

Note: Section 14(4) in R.S.C. 1985, c. C-42 was abrogated by section 3 of S.C. 1988, c. 15 and was replaced by sections 14.1 and 14.2 in R.S.C. 1985 (4th Supp.), c. 10.

§3.2 Legislative History

§3.2.1 S.C. 1921, c. 24, s. 11(2) part and 11(3).

LIMITATIONS IN CASE THE AUTHOR IS FIRST OWNER OF COPYRIGHT

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of the Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that

LIMITATIONS DANS LE CAS OÙ L'AUTEUR EST LE PREMIER POSSESSEUR DU DROIT D'AUTEUR

Toutefois, lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre, aucune cession du droit d'auteur ni aucune concession d'une faculté inhérente à ce droit, faite par lui (autrement que par testament) après l'adoption de la présente loi, n'aura l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, compris dans le droit d'auteur sur l'œuvre, au delà du terme de vingt-cinq ans, à compter de la mort de l'auteur; la

period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as in the disposition of such reversionary interest shall be null and void; but nothing in this provision shall be construed as applying to the assignment of the copyright in a collective work or a license to publish a work or part of a work as part of a collective work.

OWNERSHIP IN CASE OF PARTIAL ASSIGNMENT

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright and the provisions of this Act shall have effect accordingly.

réversibilité du droit d'auteur, encore valable à la fin de cette période, sera dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui en vue de disposer d'un tel droit de réversibilité sera nulle et non avenue; cependant, la présente réserve ne devra pas être interprétée comme s'appliquant à la cession du droit d'auteur sur un recueil ou à la licence de publier une œuvre, en totalité ou en partie, à titre de contribution à une œuvre collective.

POSSESSION DANS LE CAS DE CESSIION PARTIELLE

(3) Lorsque, en vertu d'une cession partielle du droit d'auteur, le cessionnaire est investi d'un droit quelconque compris dans le droit d'auteur, on traitera comme titulaire de ce droit, pour les effets de la présente loi, le cessionnaire en ce qui concerne le droit ainsi cédé, et le cédant en ce qui concerne les droits non cédés, et les dispositions de la présente loi reçoivent leur application en conséquence.

§3.2.2 R.S.C. 1927, c. 32, s. 12(3) and (4).

LIMITATION IN CASE THE AUTHOR IS FIRST OWNER OF COPYRIGHT

3. Where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him, otherwise than by will, after the fourth day of June, one thousand nine hundred and twenty-one, shall be operative to vest in

LIMITATION DANS LE CAS OÙ L'AUTEUR EST LE PREMIER POSSESSEUR DU DROIT D'AUTEUR

3. Lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre, aucune cession du droit d'auteur ni aucune concession d'une faculté inhérente à ce droit, faite par lui (autrement que par testament) après le quatrième jour de juin mil neuf cent vingt

the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void; but nothing in this subsection shall be construed as applying to the assignment of the copyright in a collective work or a license to publish a work or part of a work as part of a collective work.

OWNERSHIP IN CASE OF PARTIAL ASSIGNMENT

4. Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

§3.2.3 R.S.C. 1952, c. 55, s. 12(5) & (6).

LIMITATION IN CASE THE AUTHOR IS FIRST OWNER OF COPYRIGHT

(5) Where the author of a work is the first owner of the copyright therein, no

et un, n'aura l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, compris dans le droit d'auteur sur l'œuvre, au delà du terme de vingt-cinq ans, à compter de la mort de l'auteur; la réversibilité du droit d'auteur, encore valable à la fin de cette période, sera dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui en vue de disposer d'un tel droit de réversibilité sera nulle et non avenue; cependant, le présent paragraphe ne devra pas être interprété comme s'appliquant à la cession du droit d'auteur sur un recueil ou à la licence de publier une œuvre, en totalité ou en partie, à titre de contribution à une œuvre collective.

POSSESSION DANS LE CAS DE CESSIION PARTIELLE

4. Lorsque, en vertu d'une cession partielle du droit d'auteur, le cessionnaire est investi d'un droit quelconque compris dans le droit d'auteur, on traitera comme titulaire de ce droit, pour les effets de la présente loi, le cessionnaire en ce qui concerne le droit ainsi cédé, et le cédant en ce qui concerne les droits non cédés, et les dispositions de la présente loi reçoivent leur application en conséquence.

LIMITATION DANS LE CAS OÙ L'AUTEUR EST LE PREMIER POSSESSEUR DU DROIT D'AUTEUR

(5) Lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette

assignment of the copyright, and no grant of any interest therein, made by him, otherwise than by will, after the 4th day of June, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest is null and void; but nothing in this subsection shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

OWNERSHIP IN CASE OF PARTIAL ASSIGNMENT

(6) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

œuvre, aucune cession du droit d'auteur ni aucune concession d'un intérêt dans ce droit, faite par lui (autrement que par testament) après le 4 juin 1921, n'a l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, à l'égard du droit d'auteur sur l'œuvre, pendant plus de vingt-cinq ans, à compter de la mort de l'auteur; la réversibilité du droit d'auteur, en expectative à la fin de cette période, est dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui concernant la disposition d'un tel droit de réversibilité est nulle et non avenue; cependant, le présent paragraphe ne doit pas s'interpréter comme s'appliquant à la cession du droit d'auteur sur un recueil ou à une licence de publier une œuvre, en totalité ou en partie, à titre de contribution à un recueil.

POSSESSION DANS LE CAS DE CESSIION PARTIELLE

(6) Lorsque, en vertu d'une cession partielle du droit d'auteur, le cessionnaire est investi d'un droit quelconque compris dans le droit d'auteur, on traite comme titulaire de ce droit, pour les objets de la présente loi, le cessionnaire en ce qui concerne le droit ainsi cédé, et le cédant en ce qui concerne les droits non cédés, et les dispositions de la présente loi reçoivent leur application en conséquence.

§3.2.4 R.S.C. 1970, c. C-30, s. 12(5) & (6).

LIMITATION WHERE AUTHOR IS FIRST OWNER OF COPYRIGHT

LIMITATION DANS LE CAS OÙ L'AUTEUR EST LE PREMIER

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POSSESSEUR DU DROIT D'AUTEUR

(5) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him otherwise than by will after the 4th day of June, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest is void; but nothing in this subsection shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

OWNERSHIP IN CASE OF PARTIAL ASSIGNMENT

(6) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly.

(5) Lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre, aucune cession du droit d'auteur ni aucune concession d'un intérêt dans ce droit, faite par lui (autrement que par testament) après le 4 juin 1921, n'a l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, à l'égard du droit d'auteur sur l'œuvre, pendant plus de vingt-cinq ans, à compter de la mort de l'auteur; la réversibilité du droit d'auteur, en expectative à la fin de cette période, est dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui concernant la disposition d'un tel droit de réversibilité est nulle cependant, le présent paragraphe ne doit pas s'interpréter comme s'appliquant à la cession du droit d'auteur sur un recueil ou à une licence de publier une œuvre, en totalité ou en partie, à titre de contribution à un recueil.

POSSESSION DANS LE CAS DE CESSION PARTIELLE

(6) Lorsque, en vertu d'une cession partielle du droit d'auteur, le cessionnaire est investi d'un droit quelconque compris dans le droit d'auteur, on traite comme titulaire de ce droit, pour les objets de la présente loi, le cessionnaire en ce qui concerne le droit ainsi cédé, et le cédant en ce qui concerne les droits non cédés, et les dispositions de la présente loi reçoivent leur application en conséquence.

§3.2.5 R.S.C. 1985, c. C-42, s. 14(1) & (2).

LIMITATION WHERE AUTHOR IS FIRST OWNER OF COPYRIGHT

14. (1) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will, after June 4, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of the estate of the author, and any agreement entered into by the author as to the disposition of such reversionary interest is void.

RESTRICTION

(2) Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

§3.3 Transitional

§3.3.1 S.C. 1999, c. 24, s. 55(3)

(3) Where an assignment of copyright or a grant of any interest therein

- (a) was made before the coming into force of Part II of the *Copyright Act*, as enacted by section 14 of this Act, and
- (b) was made by the maker of a sound recording who was a natural person, subsections 14(1) and (2) of the *Copyright Act* continue to apply in

LIMITATION DANS LE CAS OÙ L'AUTEUR EST LE PREMIER POSSESSEUR DU DROIT D'AUTEUR

14. (1) Lorsque l'auteur d'une œuvre est le premier titulaire du droit d'auteur sur cette œuvre, aucune cession du droit d'auteur ni aucune concession d'un intérêt dans ce droit, faite par lui — autrement que par testament — après le 4 juin 1921, n'a l'effet d'investir le cessionnaire ou le concessionnaire d'un droit quelconque, à l'égard du droit d'auteur sur l'œuvre, pendant plus de vingt-cinq ans à compter de la mort de l'auteur; la réversibilité du droit d'auteur, en expectative à la fin de cette période, est dévolue, à la mort de l'auteur, nonobstant tout arrangement contraire, à ses représentants légaux comme faisant partie de ses biens; toute stipulation conclue par lui concernant la disposition d'un tel droit de réversibilité est nulle.

RESTRICTION

(2) Le paragraphe (1) ne doit pas s'interpréter comme s'appliquant à la cession du droit d'auteur sur un recueil ou à une licence de publier une œuvre, en totalité ou en partie, à titre de contribution à un recueil.

(3) Les paragraphes 14(1) et (2) de la *Loi sur le droit d'auteur* continuent de s'appliquer, avec les adaptations nécessaires, à la cession du droit d'auteur ou à la concession d'un intérêt dans ce droit effectuées, avant l'entrée en vigueur de la partie II de la *Loi sur le droit d'auteur*, édictée par l'article 14 de la présente loi, par le producteur d'un enregistrement

respect of that assignment or grant, with such modifications as the circumstances require, as if the sound recording was the work referred to in those subsections and the maker of the sound recording was its author.

sonore qui est une personne physique comme si l'enregistrement sonore était l'œuvre et le producteur, l'auteur de celle

§4.0 Purpose

Subject to certain conditions, section 14 provides for the reversal of the full ownership of the copyright to the legal representatives of the author, 25 years after the author's death.

§5.0 Commentary

§5.1 History

Section 14, which has remained relatively unchanged since coming into force in 1924, had its equivalent in subsection 5(2) of the United Kingdom *Copyright Act*, 1911 which was commented on as follows:

The provision to section 5(2) of the Act of 1911 was of course, inserted in the interests of an author's family, to prevent, if possible, a successful author from making improvident contracts to the detriment of his dependants. In practice the benefits to the author's family or dependants have been found to be somewhat illusory.

See SKONE JAMES (Edmund P.) et al., *Copinger and Skone James on Copyright*, 13th ed. (London, Sweet & Maxwell, 1991), at p. 116; see similar comments at p. 271 of the 14th edition.

The reversionary interest provision was not maintained in the United Kingdom *Copyright Act*, 1956. In Canada, this reversionary provision has not yet been repealed despite several recommendations: see for instance, KEYES (Andrew A.) et al. *Copyright in Canada: Proposals for a Revision of the Law* (Ottawa, CCAC, 1977), at p. 76; *From Gutenberg to Telidon – A White Paper on Copyright* (Ottawa, CCAC, 1984), at p. 56. In a biting attack, TORNO (Barry), *Term of Copyright Protection in Canada: Present and Proposed* (1980), 46 Canadian Patent Reporter (2d) 257, once wrote:

Thus, as demonstrated earlier in s. B(x) hereof, not only is the reversionary interest provision subject to a multitude of qualifications which limit its application, when applicable it appears to be of limited value. Finally, and perhaps most importantly s. 12(5) [now s. 14]

reflects an unacceptable paternalistic approach to the treatment of authors on the part of a benevolently disposed Legislature. Such provisions perpetuate the stereotypical image of the author as the gifted but “congenitally irresponsible” [see *Fisher Music Co. v. Witmark*, 318 US 643 (1943)] artiste who cannot be expected to assume full responsibility for the consequences of his actions and must be guarded against himself. It is submitted that such a perception: (a) constitutes an insult and a disservice to authors. (b) is not in keeping with the societal value placed on treating each citizen as responsible for his own acts, and (c) constitutes an inequitable intrusion into the ability of the parties to agree to expiration terms of their own choosing, unrestricted by artificial limitations which may, in fact, not be in an author’s best interest in so far as they may serve to reduce the consideration paid for the copyright.

It is therefore recommended that the reversionary interest provisions of s. 12(5) should be repealed. [at p. 288]

§5.2 General

Subsection 14(1) is not the best example of legislative clarity. According to this section, subject to certain conditions where the author of a work is the first owner of the copyright therein, no assignment of the said copyright nor grant of any interest made by him, is operative to vest in the assignee or grantee rights relating to the copyright for more than 25 years after the author’s death. Upon the termination of this 25-year period, the title or interest in the copyright devolves on the author’s legal representatives as part of his estate. See subsection 2 1(6), definition of “Legal representatives”.

§5.3 Applicability

In order for section 14 to have the effect of cancelling copyright assignment, certain conditions must be met:

- a) the deceased author must have been the first owner of the copyright;
- b) the assignment of copyright must have been made after June 4, 1921;
- c) the assignment of copyright must have been made otherwise than by will.

§5.3.1 Author first owner

By virtue of subsection 13(1) of the *Copyright Act*, the author of a work is deemed to be the first owner thereof. However, this rule suffers certain exceptions where the provisions of section 14 will not apply. These exceptions are either absolute or contingent.

The absolute exceptions are:

- a) *Work made in the course of employment.* As provided by section 13, where the author of a work was employed by another person under a contract of services or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright as provided by subsection 13(3) of the Act.
- b) *Ordered engraving, photograph or portrait.* Under subsection 13(2), in the case of such works, where the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, in the absence of any agreement to the contrary, the person by whom the plate or other original was ordered shall be the first owner of the copyright.
- c) *Where copyright belongs to Her Majesty.* By virtue of section 12, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty.

The exceptions that are contingent (*i.e.*, that might apply or not, depending on external circumstances) are:

- a) *Posthumous work.* Section 7 provides that the term of copyright in a posthumous work is the remainder of the calendar year of publication or public performance of the work plus 50 years thereafter.
- b) *Mechanical contrivances.* Section 11 [as this section stands prior to 1997-09-01] provides that the term of copyright is the remainder of the calendar year from the making of the original plate plus 50 years thereafter. The author may be a body corporate.
- c) *Photographs.* Section 10 provides that the term for which copyright shall subsist shall be the remainder of the calendar year from the making of the initial negative thereof (or of initial photograph if there is no negative) plus 50 years thereafter. The author may be a body corporate.
- d) *Cinematograph.* Section 11.1 provides that the term of copyright is the remainder of the calendar year of first publication plus 50 years thereafter (or, if not published, the remainder of the calendar year of its making plus 50 years thereafter).

§5.3.2 “After June 4, 1921”

The reversionary effect contemplated by this section will only be operative if the assignment of the copyright or the grant of any interest therein is made after June 4, 1921 (the date of adoption of the *Copyright Act*) and not January 1, 1924 (the date of its coming into force).

§5.3.3 “Otherwise than by will”

The assignment of the copyright or the grant of any interest therein must not be made by will for section 14 to operate. It would appear that gifts in contemplation of death (Art. 820 of the *Civil Code of Lower Canada*; Art. 812 of the *Civil Code of Québec*) or *ab intestate* successions do not constitute a bar to the operation of the reversionary interest provided for by section 14.

This section is silent about assignment which may result from application of the provisions of a marriage contract. If the provisions can be assimilated under provincial law to a will, then no reversionary effect should take place. In other cases, section 14 should have full effect.

§5.4 Public Order

§5.4.1 Agreement to the contrary

When all the conditions concerning the applicability of section 14 are met, the said section will apply notwithstanding any agreement to the contrary. Therefore, an author cannot waive in favour of his assignee the limitation imposed by this section. It would however seem possible for an author to obviate this provision by will or legacy by particular title, in favour of the assignee, with the inherent uncertainty resulting from the revocability of such mode of devolution.

For the same reasons of public order, it would also seem that the reversionary interest cannot be assigned during the lifetime of the author. Compare with the United Kingdom *Copyright Act*, 1988, Schedule I, subsection 27(2), which allows such an assignment after 1989-08-01. However, nothing prevents the legal representatives of a deceased author to assign this reversionary interest anytime, either during or after the first 25 years after the death of the author: see *Chappell & co. Ltd. v. Redwood Music Ltd.* (1980), [1981] R.P.C. 337 (H.L.), Salmon J., at p. 347.

§5.4.2 Contrary agreement void

Any agreement entered into by the author as to the disposition of the reversionary interest is void. However, mechanisms could be resorted to that traverse such legal prohibition as, for instance:

- a) Copyright assignment agreement which provides for royalty- free exclusive licence to be granted to the assignor at the end of 25 years after the death of the author;
- b) Stipulation by the author that his legal representatives will assign back

the copyright to the assignor, 25 years after the death of the author (see Art. 1443 of the *Civil Code of Québec*).

These alternatives have never been judicially tested. See also ROBERTSON (John Stuart), *The Law of Copyright* (Oxford, Clarendon, 1912), at pp. 97-98: “this provision can probably be circumvented” and related examples.

§5.4.3 Asset of the author’s estate

The illusory nature of the benefits conferred by the reversionary provision is further illustrated by Skone James (Edmund P.) et al. *Copinger & Skone James on Copyright*, 13th ed. (London, Sweet & Maxwell, 1991), at no. 5.3 [citations omitted]:

This reversionary interest, unassignable during the author’s lifetime, therefore became an asset of the author’s estate and assignable immediately upon his death by his personal representatives or by a beneficiary after assent. It was consequently liable to be sold by his executors for the payment of his debts, and, even if not required for that purpose, it was frequently the duty of the executors to realise the interest for the purpose of winding up the author’s estate. Supposing the author made a specific bequest of his reversionary interest in his copyright, the specific legatee would probably be ready to sell that interest forthwith, rather than wait for a chance of income 25 years later. The only possible purchaser, at any rate in the case of a literary work, would, save in exceptional cases, be the author’s publisher, and the amount which he would be prepared to give for a reversionary interest in a copyright falling into possession 25 years later would not be likely to be very large, particularly having regard to the fact that, even if he declined to purchase the reversion, he would be entitled to continue to publish the work, if he thought it worth while to do so, upon payment of a royalty to the owner of the copyright, and that, if he did purchase, he could not acquire an exclusive copyright.

See similar comments in the 14th edition, at §5.120 under the title *Illusory nature of the benefits conferred by the reverter*.

§5.4.4 Permanent Damage to Reversionary Interest

When the reversion provided for by subsection 14(1) of the *Copyright Act* applies, it may be said that for the legal representatives of an author, the possession of the copyright remains suspended until 25 years after the death of the author. To paraphrase KLAR (Lewis N.), *Tort Law* (Toronto, Carswell, 1991), at p. 71, what would happen if, during that period of time the copyright (considered here as a mere chattel) over which the legal representatives have a reversionary interest were lost or

permanently damaged (e.g. voluntary abandonment by the *pro tanto* owner or adverse ruling under section 32 of the *Competition Act*)? Are the reversioners/legal representatives required to wait until regaining the right to immediate possession (*i.e.*, 25 years after the death of the author) before being allowed to take action against the wrongdoer?

It would appear that until the legal representatives have the right to the possession, an action for conversion will not be open to them until the expiration of the term of reversion. As put by FLEMING (John G.), *The Law of Torts*, 8th ed. (Sydney Law Book, 1992):

But although a reversionary owner cannot sue in trover [*i.e.* he can recover neither the value of the chattel nor the value of his interest], he has an action on the case for such damage as he may sustain from being deprived of the benefit of his reversionary interest. *Thus, he may sue if the chattel has been destroyed or permanently damaged, or so disposed of that a valid title thereto has become vested in a third party*, as a sale in market overt. But he cannot complain if the chattel is merely being wrongfully taken or detained from its temporary possessor, because it is holy speculative whether his own reversionary interest will thereby be impaired. [Our emphasis.] [at p. 65]

See the analogy with *Mears v. The London and South Western Railway Company* (1862), 11 C.B. 850 (C.P.) Earle J., at pp. 853-854 and Williams J., at p. 854.

§5.5 Exception

§5.5.1 Collective work

Subsection 14(1) does not apply to a) the assignment of the copyright in a collective work or b) a licence to publish a work or part of a “collective work” as defined in section 2 of the *Copyright Act*.

In case law dealing with the United Kingdom equivalent of subsection 14(2), the expression “collective work” was defined as “one which as such attracts its own copyright distinct from any components”: see *Redwood Music Ltd. v. Francis, Day & Hunter Ltd.* (1980), [1981] R.P.C. 337 (H.L.), at p. 349.

Furthermore, it was held that the definition of “collective work” does not necessarily encompass all works of joint ownership as one “cannot... squeeze the right-hand foot of a work of joint ownership into the left-hand shoe of a collective work, as each is defined in the Act of 1911”: *Redwood Music Ltd. v. Francis Day & Hunter Ltd.*: see [1979] R.P.C. 385 (C.A.) Bridge J., at p. 406.

The same reasoning would be applicable under subsection 14(2). Despite this principle

and in light of jurisprudential hesitation, doubts still exist concerning the exact limits of “collective work” insofar as it constitutes an exception to the reversibility rule.

§5.5.2 Licence

The reversionary provision of section 14 only applies when there is an assignment or grant of interest in a copyright. It would seem that this section will not operate so as to diminish a licence which does not convey a grant of interest in the licensed copyright: see subsection 14(3).

§5.5.3 Subject-matter other than works

The reversionary provision of section 14 of the *Copyright Act* does not apply to performers' performances, sound recordings made after 1997-09-01 nor to communication signals as they are not “works” or, as put by GENDREAU (Ysolde) et al., *Canada*, in *International Copyright Law* (New York, LexisNexis, 2002), at §4[3][b] since they “are not ‘works’ having ‘authors’”.

§6.0 Case Law

§6.1 Canada

1. *Francis Day & Hunter Ltd v Twentieth Century Fox Corporation* (1939), [1940] A.C. 112 (J.C.P.C.-Canada) Wright J.
Gilbert, the writer and composer died intestate in 1903. Under the then existing law in England the copyright would have expired in 1934, but under the Copyright Act, 1911 (Imp.), c. 46, the period was changed into one of 50 years from the author's death, that is until 1953. For the residue of this extended period, that is from 1934 to 1953 the copyright vested not in the assignees of the right but in the author or his personal representatives. In the present case these were two daughters. [at pp. 118-119.]
2. *Anne of Green Gables Licensing Authority Inc v Avonlea Traditions Inc* (2000), 4 C.P.R. (4th) 289 (Ont. Sup. Ct.) Wilson J.
(83) This complex statutory framework of reversionary copyright was originally created in England to relieve against hardship suffered by the impoverished families of deceased authors; it is known colloquially as the “Dickens” provision. The reversionary rights have been repealed in England, but remain in force in Canada.

(84) L.M. Montgomery died on April 24, 1942. The copyright therefore

expired on April 24, 1992. Since copyright has been assigned to a third party in this case (Page and its successor, Farrar), the rights of the assignee are limited by the reversionary rights of the author's estate, which came into effect twenty-five years after the date of the author's death

3. *Kelley Estate v. Roy* (2002), [2002] CarswellNat 2421 (FCTD) Gibson J.

(54) Counsel for the applicant urged that the underlined words in the closing three (3) lines of subsection 14(1) of the Act must be read as rendering any agreement, otherwise valid under subsection 13(4) of the Act, entirely void where it purports to assign the reversionary interest as described in subsection 14(1). Counsel urged this interpretation on two (2) grounds: first, because if the closing words are not so read, they would be purely duplicative of the earlier words in the subsection that I have emphasized; and secondly, because only such an interpretation accords with the grammatical structure of the closing words.

(55) By contrast, counsel for Firefly urged that subsections 13(4) and 14(1) of the Act must be read together and that the interpretation urged on behalf of the applicant would be entirely inconsistent with the objective of subsection 13(4) and the objectives of the Act, read as a whole.

(56) [...] I am satisfied that the interpretation urged on behalf of the applicant would simply not be consistent with the scheme of the Act as a whole and, more particularly, with the scheme of subsections 13(4) and 14(1) of the Act, read together

§6.2 United Kingdom

1. *Redwood Music Ltd. v. Francis, Day & Hunter Ltd.* (1980), [1981] R. P.C. 337 (H.L.), Lord Salmon:

I agree with the Court of Appeal that the object of the proviso was to safeguard authors and their heirs from the consequences of any imprudent disposition which authors might make of the fruits of their talent and originality.

To this end, the proviso enacts that an assignment of a copyright by its first owner shall not be operative beyond 25 years after his death; and the copyright shall then devolve for its remaining 25 years on his legal personal representatives as part of his estate.

[...]

The appellant companies contend that the last clause of the proviso (referred to as “the exception”) eliminates the safeguard with which the proviso would otherwise protect the estate of the writers of the words of the song and the estate of the composers of its music during the last 25 years of the respective copyrights’ existence. I am afraid that I cannot agree with this contention.

It is common ground that there can never be a copyright of a song save in the exceptional case where its words and music are written by the same man, in which event he would own the copyright of the song and he and his estate would have full protection in relation to it under the proviso to section 5(2). In these circumstances it seems absurd to me that where the words of a song are written by one man and the music by another, and each accordingly has a separate copyright in relation respectively to the words and music yet neither the man nor his estate had any protection under the proviso. I do not consider that the language of the Act leads to any such result.

Much depends on the meaning of the words “collective work” in the exception at the end of the proviso to section 5(2) of the Act. “Collective work” is defined in section 35(1) of the Act as follows:

“Collective work’ means — (a) an encyclopaedia, dictionary, year book, or similar work; (b) a newspaper, review, magazine, or similar periodical; and (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.”

Paragraphs (a) and (b) describe the collective work, the compilation of which is copyright in addition to the copyright of each of the parts which constitute or are incorporated in the collective work. In my opinion, the exception to the proviso in section 5(2) is confined to the assignment of the copyright of a collective work such as an encyclopaedia, a dictionary and the like. I would stress that these works constitute “work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated”. Each such author, no doubt, has a separate copyright in the particular work he has written. The compiler of an encyclopaedia has, however, a separate copyright of the work which he has compiled by incorporating other work in it.

It was, I think, recognised that paragraphs (a) and (b) might fail to cover all the works which constitute collective works, and accordingly paragraph (c) was added to include, in principle, collective works which might turn out to have been overlooked, e.g. anthologies such as Palgrave’s Golden Treasury and the Oxford Book of English Verse.

In my opinion, an essential ingredient of “collective work” referred to in the exception to the proviso in section 5(2) was that it should have a copyright of its own, which is not surprising as copyright is what the Act is all about. The only assignment of any copyright which is expected from the protection of the proviso is the assignment of a copyright of a collective work.

A song, as in the present case, has its words written by one man and its music by another; its words have a copyright, and so has its music. But these two copyrights are entirely separate from each other and cannot be merged. It follows that the song itself has no copyright and does not therefore fall within the exception to the proviso in section 5(2). Accordingly, the writers of the words of the song having the copyright of those words and the composers of the music of the songs having the copyright of that music, they and their estates are, in my opinion, entitled to the protection conferred by the proviso. [at pp. 334-346]

2. *Redwood Music Ltd. v. Francis, Day & Hunter Ltd.* (1980), [1981] R. P.C. 337 (H.L.), Lord Russell of Killowen [after having referred to subsection 5(2) of the *Copyright Act*, 1911]:

Thus it is made impossible for the author either to assign or license, or to contract to assign or license, in manner extending into the reversionary 25 year period, though his legal personal representatives (or a beneficiary after assent) can do so at any time after the author's death.

§7.0 List of Cases

§7.1 Canada

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2. *Redwood Music Ltd. v. Bourne*, (1995), 63 C.P.R. (3d) 380 (Ont. Gen. Div.); aff'd (1999), 84 C.P.R. (3d) 414.
3. *Anne of Green Gables Licensing Authority Inc v Avonlea Traditions Inc* (1998),

- [1998] CarswellOnt 3928 (OntSC-Summary Judgement); (2000), 4 C.P.R. (4th) 289 & 5 C.P.R. (4th) iii (Ont. Sup. Ct.); (2000), 6 C.P.R. (4th) 57 (Ont. C.A. - Stay); appeal abandoned (2000), 5 C.P.R. (4th) iii (Ont. C.A.)
4. *Wing v Van Velthuizen* (2000), [2000] CarswellNat 2873 (FCTD)
 5. *Kelley Estate v. Roy* (2002), [2002] CarswellNat 2421 (FCTD)

§7.1 United Kingdom

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§9.0 Varia

§9.1 United Kingdom Copyright Act, 1911, s. 5(2)

Ownership of copyright, &c.

[...] Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

§9.2 United States Copyright Act, 1976 (as amended), s. 203

203. Termination of transfers and licenses granted by the author

(a) Conditions for Termination.-In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest;

(B) the author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them;

(C) the rights of the author's children and grandchildren are

in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) in the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.



