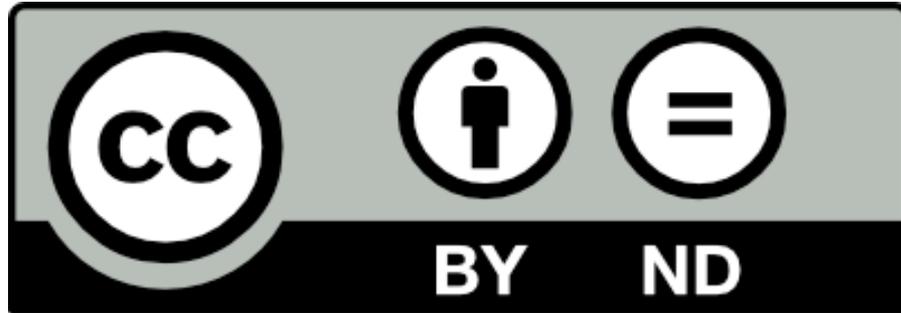


AUTHORS
ALLIANCE



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<http://creativecommons.org/licenses/by-nc/4.0/>

On Your Terms

Managing Your Rights to Keep Your Work Available

With Lila Bailey, Brianna Schofield, and Michael Wolfe

info@authorsalliance.org // [@Auths_Alliance](https://twitter.com/Auths_Alliance) // facebook.com/AuthsAlliance

Who Are We?

- Lila Bailey – Digital Copyright Attorney
- Brianna Schofield – Teaching Fellow at Berkeley Law's Samuelson Law, Technology & Public Policy Clinic
- Michael Wolfe – Executive Director of the Authors Alliance

What is Authors Alliance?

- Authors Alliance is a nonprofit organization that promotes authorship for the public good by empowering authors in the digital age.
- Check out www.authorsalliance.org for more information!



AUTHORS
ALLIANCE

WHY AUTHORS ALLIANCE?

- Inward- & outward-facing activities
 - Inward-facing: provide information resources to authors about contractual & policy matters
 - Outward-facing: provide input to policy processes about our members' interests

Join!

authorsalliance.org/join

membership is free + international

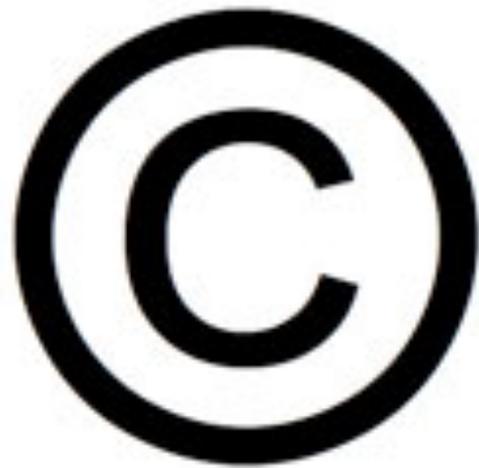
Quick Notes

- We are all lawyers, but nothing we say is legal advice
- Please hold questions until the end of the presentation

Today's Presentation

- Copyright Basics
- Introduction to Creative Commons Licensing
- Understanding Publishing Contracts
- Understanding Rights Reversion

COPYRIGHT BASICS



copyright

Constitution: Article 1, § 8

- “To promote the progress of Science and Useful Arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...”



Automatic Protection

- Copyright protection automatically applies to original works of authorship that are “fixed in any tangible medium of expression.”
- You don't need to do anything other than write your ideas down to have your work protected by the law.
- You do need to register your work with the US Copyright office to be able to enforce in court

Exclusive Rights

- Copyright law gives the owner of a copyrighted work the exclusive rights to do and to authorize any of the following:
 1. to reproduce;
 2. to prepare derivative works;
 3. to distribute copies;
 4. to perform the copyrighted work publicly; and
 5. to display the copyrighted work publicly.

No © Protection/Public Domain

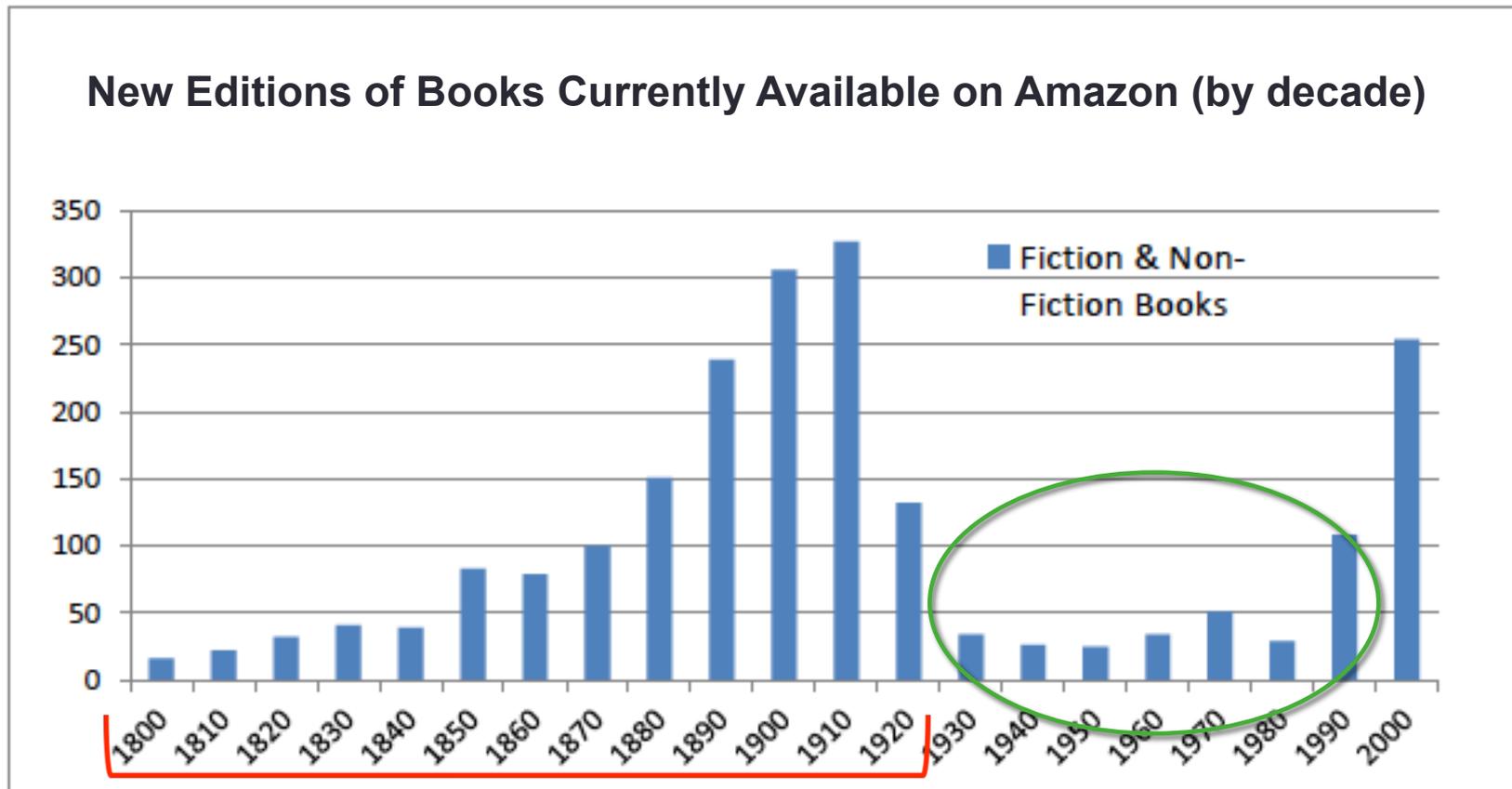
- The public domain is not a place!
- Things that are not protected by copyright include:
 - Facts, data
 - Ideas, methods, or systems
 - Names, Titles
 - Short phrases, expressions
 - Basic plot structures
 - Works of U.S. Federal Government
 - Utilitarian objects
 - Expired copyright (works published before 1923)

Length of © Protection

- If the work is written by an individual author and first published in the United States after 2002, the term of protection is life of the author + 70 years.
- After that, the copyright term expires, and the work becomes part of the public domain.



The Case of the Invisible Books



CREATIVE COMMONS

“My problem isn’t piracy... it’s obscurity.”

– Cory Doctorow, author of Little Brother and Homeland, editor of the Boing Boing blog

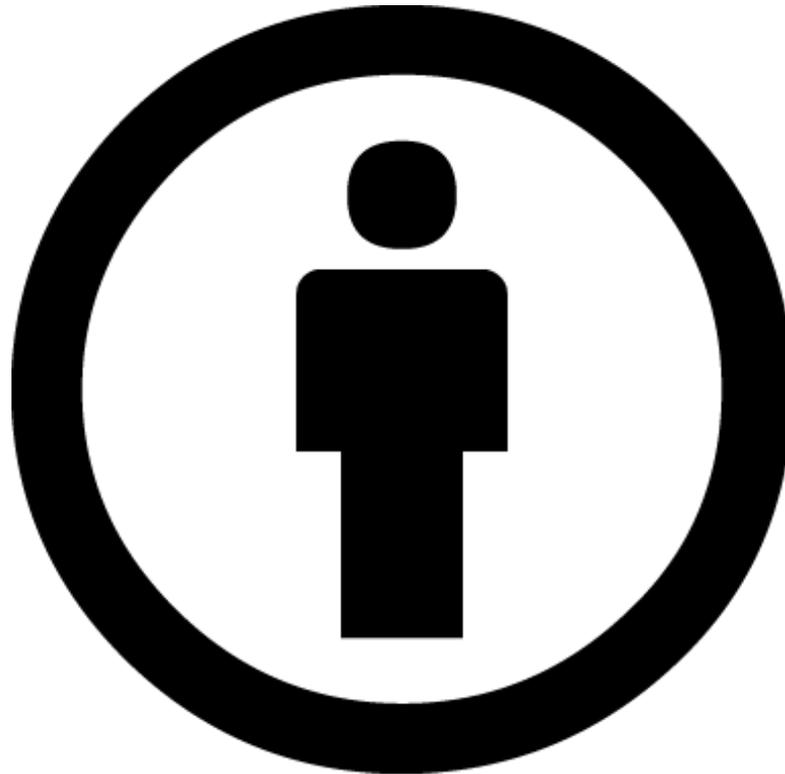
Creative Commons

- A non-profit organization that offers a simple, standardized way to grant copyright permissions for creative work.



Photo by [Tyler Stefanich - CC BY](#)

Attribution



- Allows others to copy, distribute, display, and perform the copyrighted work — and derivative works based upon it — but only if they give credit in the manner specified.

Non-Commercial



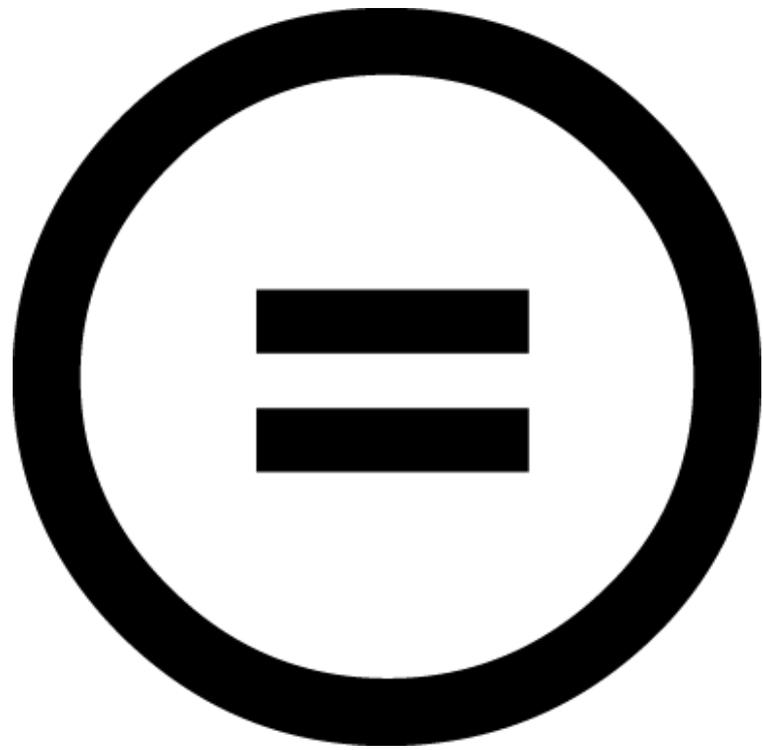
- Let others copy, distribute, display and perform the work for non-commercial purposes only.

Share-Alike



- If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.

No Derivatives



- Allows others to copy, distribute, display, and perform only verbatim copies of the work, not derivative works based upon it.

License Chooser Tool

License Features

Your choices on this panel will update the other panels on this page.

Allow adaptations of your work to be shared?

Yes No

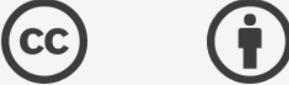
Yes, as long as others share alike

Allow commercial uses of your work?

Yes No

Selected License

Attribution 4.0 International



This is a Free Culture License!



Help others attribute you!

This part is optional, but filling it out will add machine-readable metadata to the suggested HTML!

Title of work

Attribute work to name

Attribute work to URL

Source work URL

More permissions URL

Format of work

License mark

Have a web page?



This work is licensed under a Creative Commons Attribution 4.0 International License.

Copy this code to let your visitors know!

```
<a rel="license" href="http://creativecommons.org/licenses/by/4.0/"></a><br />This work is licensed under a <a rel="license" href="http://creativecommons.org/licenses/by/4.0/">Creative Commons Attribution 4.0 International License</a>.
```

Normal Icon Compact Icon

Six Possible License Options

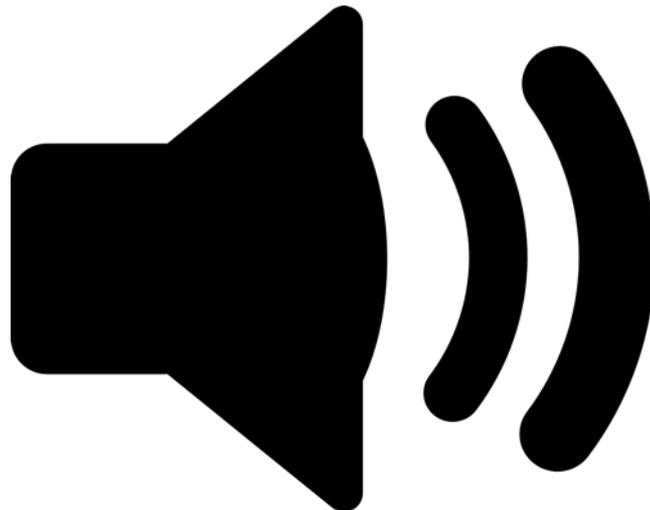


Three “Layers”

- Legal Code – Contains the legalese to make the license enforceable just about anywhere in the world.
- Human Readable – Contains language normal people can read and understand.
- Machine Readable – Contains metadata written in a format that software systems, search engines, and other kinds of technology can understand.

CC Can Amplify Your Reach

- CC makes it easier
 - To share works digitally with people all over the world
 - You can even share just one work as a “promo” to get people interested in your other work
 - To translate your work into other languages
 - To ensure your work will always be available, even if your publisher stops selling it or even goes out of business



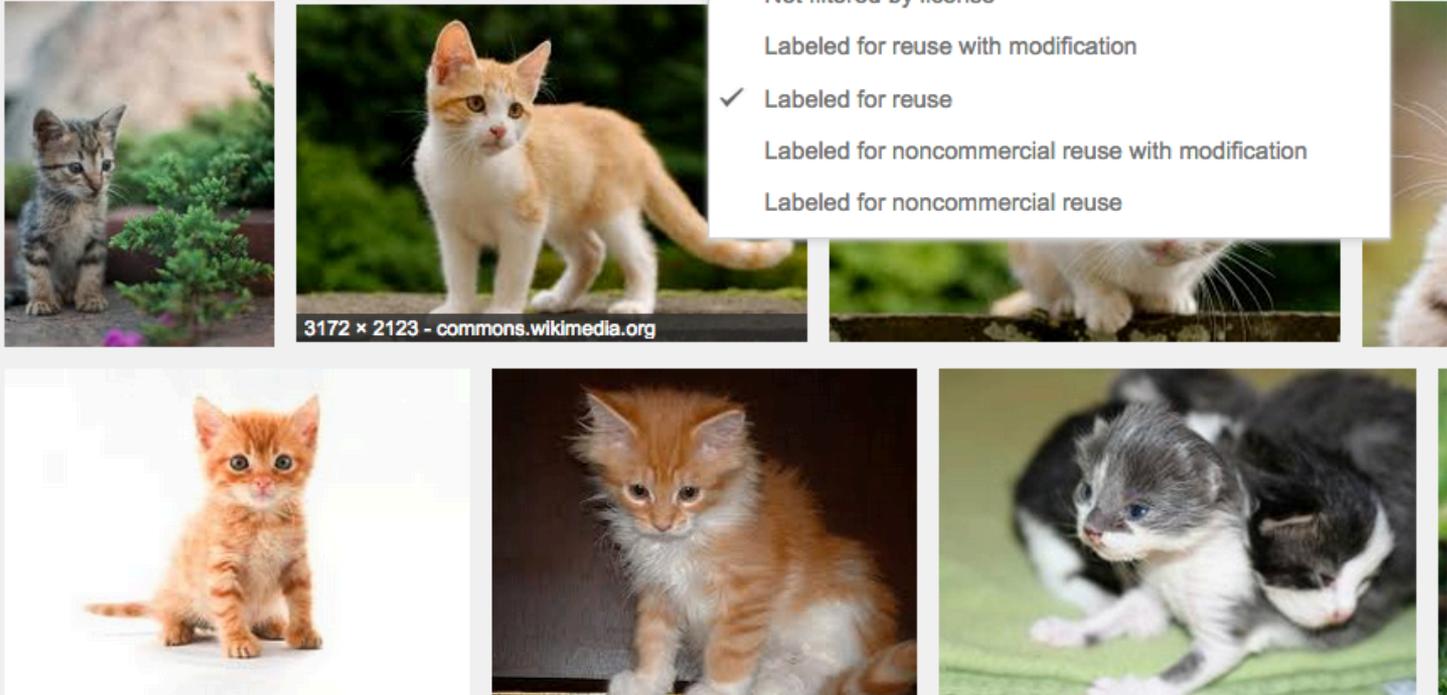
CC Makes Works Easy to Find

Google kitten

Web **Images** Videos News Shopping More ▾ Search tools

Size ▾ Color ▾ Type ▾ Time ▾ **Labeled for reuse ▾** More tools ▾ Clear

- Not filtered by license
- Labeled for reuse with modification
- ✓ Labeled for reuse
- Labeled for noncommercial reuse with modification
- Labeled for noncommercial reuse



3172 x 2123 - commons.wikimedia.org

PUBLISHING CONTRACTS

Contracts are boring...



look at this kitten!

Your copyright will last your lifetime *plus* seventy years. Think carefully before signing it away!

Your Rights: Retained or Regained

How and when your work can be read depends on *who* is empowered to make it available.

This might be you, your publisher, your institution, the public generally, or some combination of these.

Your Rights: Retained or Regained

To maximize your audience:

1. *retain* those rights you might need in your publishing contract.
2. *regain* rights later when original channels aren't serving your objectives

Your Rights: Retained or Regained

- Think about your publishing goals before submitting.
- Where possible, prioritize options that might best serve your goals.

Publishing Contracts + Availability

I. Read

Publishing Contracts + Availability

2. Negotiate

Publishing Contracts + Availability

3. Keep

Publishing Contracts + Availability

1. Read
2. Negotiate
3. Keep

And when in doubt, ask for help!

Publishing Contracts + Availability

I. Read

Publishing Contracts + Availability

Rule 1: Read

- Who owns the rights?
- Do you retain the rights needed to effectively promote, use, and build from your work?

Publishing Contracts + Availability
Rule 1: Read

Don't forget future uses!

- Can you write a new edition elsewhere?
- Are you giving your publisher rights to future works?

Publishing Contracts + Availability
Rule 1: Read

Permissions and others' works:
what do you promise your
publisher about third-party images,
quotations, and excerpts?

Publishing Contracts + Availability
Rule 1: Read

Many writers depend on *fair use*.
Make sure your contract allows
you to rely on fair use!

Publishing Contracts + Availability

Rule 1: Read

- **Boundaries of fair use are not always clear**
 - Publishers may be risk averse and insist on rights clearances, even when uses might be fair
 - Many rights owners may refuse to grant clearances

CODES OF FAIR USE BEST PRACTICES

- Center for Social Media & Impact at A.U. has developed 11 codes of fair use best practices for different creative communities
- You might not have one yet, but we can work toward making fair use more accessible for all creators

Publishing Contracts + Availability

Rule 1: Read

Warranties and Indemnifications

- Warranties are your promises you're making to your publisher. Read these carefully!
- Indemnity provisions set out the rights and responsibilities of the parties if a claim is made by a third party.
- Watch out for overreach! Are you promising to indemnify your publisher even against unsuccessful or frivolous claims?

Publishing Contracts + Availability

Rule 1: Read

The fine print:

- Forum selection clauses
- Non-competes
- Confidentiality agreements
- Cost shifting

Publishing Contracts + Availability

Rule 1: Read

I. Read

- We're providing free resources to help with trickier provisions.
- Don't understand something? Shoot us a line at contracts@authorsalliance.org

Publishing Contracts + Availability

2. Negotiate

Publishing Contracts + Availability

Rule 2: Negotiate

- Ask for what you want! You won't get it otherwise.
- *The red pen works.* Mark up your contracts before signing!

Publishing Contracts + Availability
Rule 2: Negotiate

Contracts for larger works require more care, but also offer more room for negotiation.

Publishing Contracts + Availability
Rule 2: Negotiate

Think long term!

- Consider time limiting grants of rights
- Don't let your work end up out of print!

Help! I signed my
contract *years* ago.

Publishing Contracts + Availability

3. Keep

Publishing Contracts + Availability

Rule 3: Keep

A good contract protects **your** rights—you'll want it handy if the worst happens!

We're working on tools to make retaining contracts easier.

Publishing Contracts + Availability

Rule 3: Keep

Having this information helps enable efforts to regain your rights.

We've made a guide on this topic (ask us for a copy!)

RIGHTS OF REVERSION

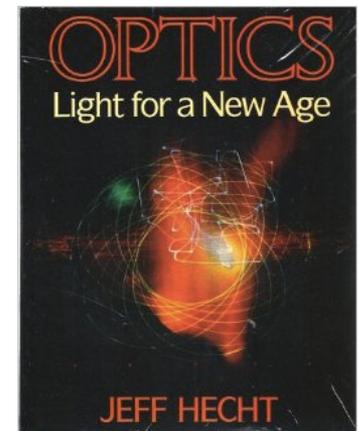
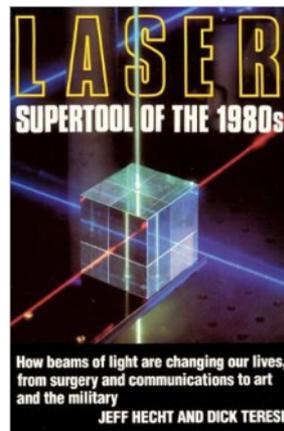
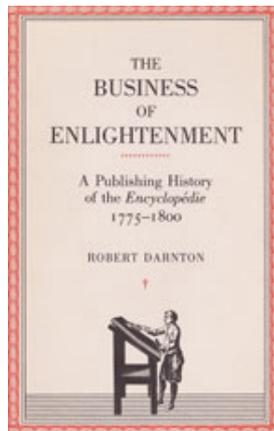
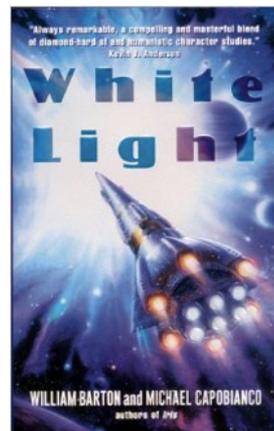
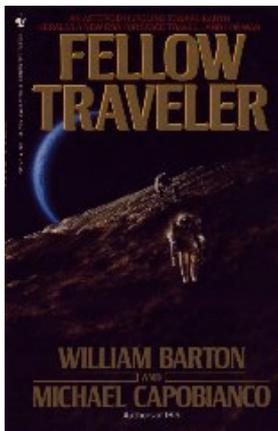
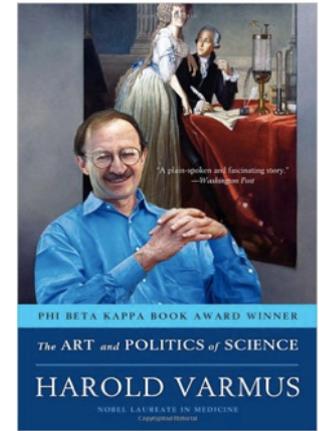
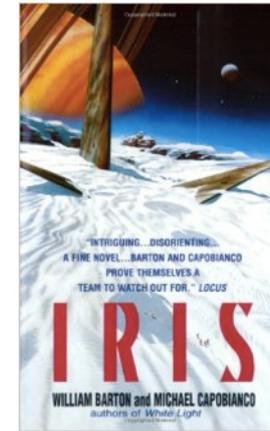
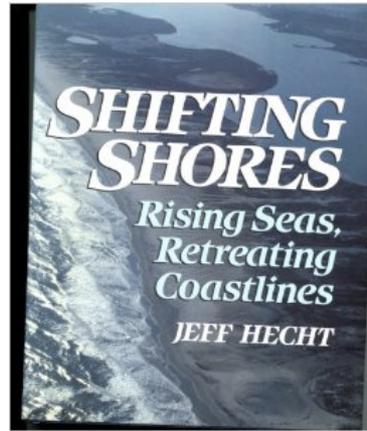
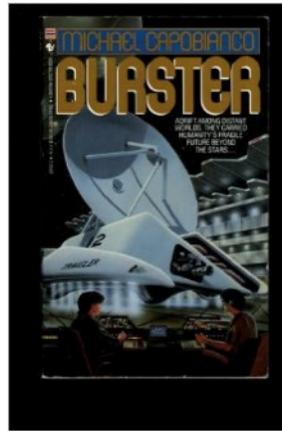
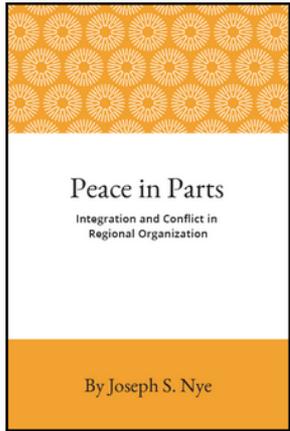
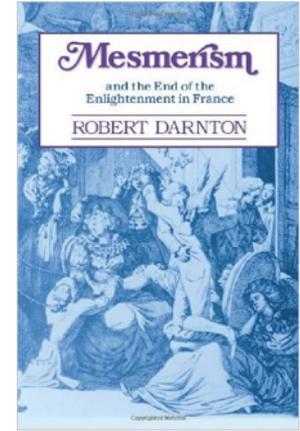
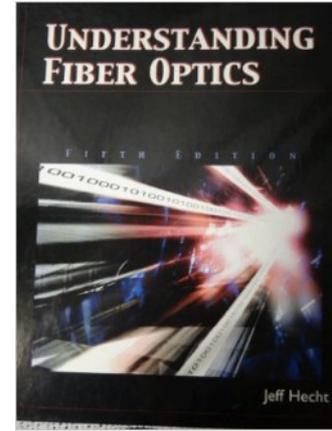
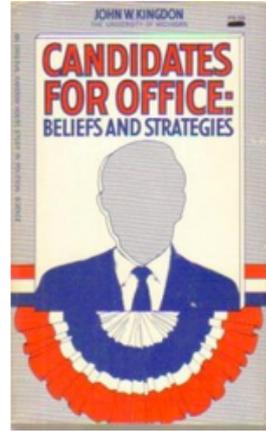
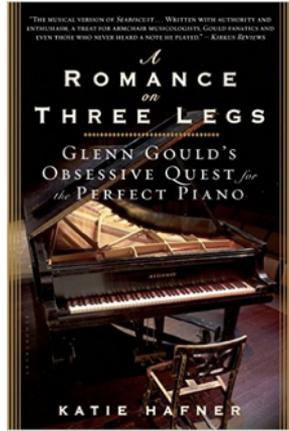
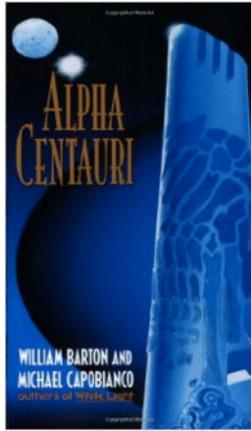
Foundations of ©opyright Law

- Copyright is a *bundle of exclusive rights* that (typically) initially vests in the author of the work.
- Many authors transfer some or all of these rights to their publishers. When an author does this, she may no longer be able to exercise these rights without infringing her publisher's rights in the work.



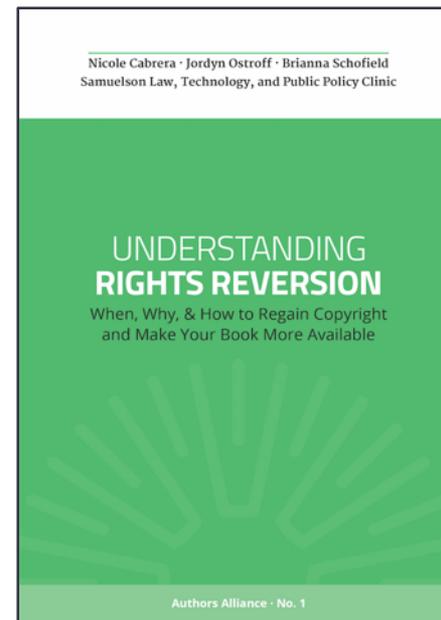
Rafaela Reversion

- Transferred exclusive rights to publish all print, electronic, & digital editions of her book.
- Book is no longer available for purchase in print.
- *Can Rafaela create and sell her book as an e-book without infringing publisher's rights?*



Turning on the Lights

- A *right of reversion* is a contractual provision permitting an author to regain some or all of the rights in her book from her publisher when its triggering conditions are met.
- Authors can still achieve their goals for their books even if they do not have contractual rights of reversion.
- Reverting rights is . . .
 - ✓ Good for **authors**.
 - ✓ Good for **publishers**.
 - ✓ Good for **the public**.

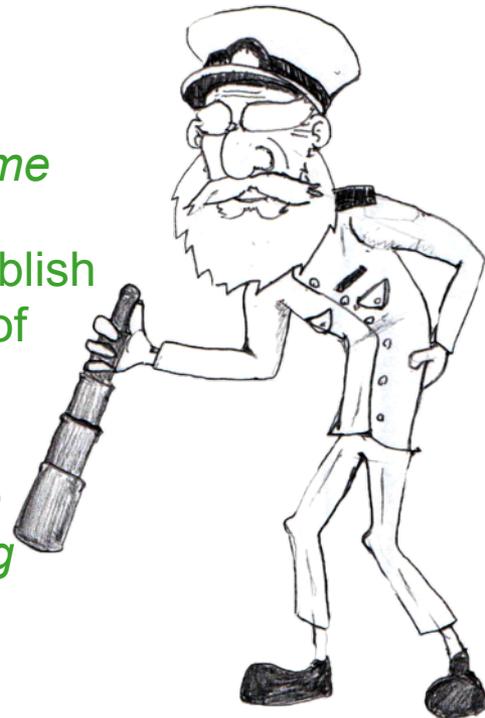


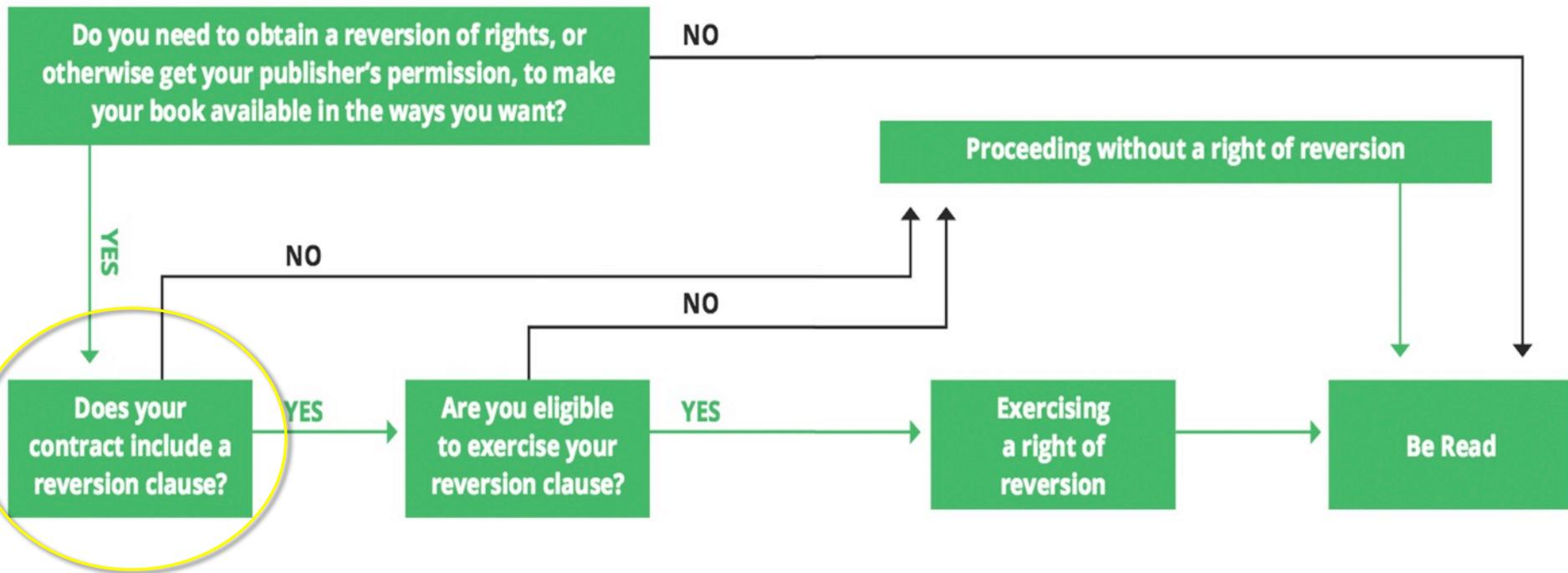
Do You Need to Revert?

- Decide how you want to increase your book's availability.
- Find (and read!) your contract.
- Determine what rights you granted to your publisher. Do you even need to revert rights in order to make your book available in the ways you want?

Martin Maritime

- Transferred exclusive rights to publish only print and electronic editions of his novel.
- Approached by a film student.
- *Can Martin license motion picture rights in his book without reverting rights from his publisher?*





The Lowdown on Reversion Clauses

What are they called?

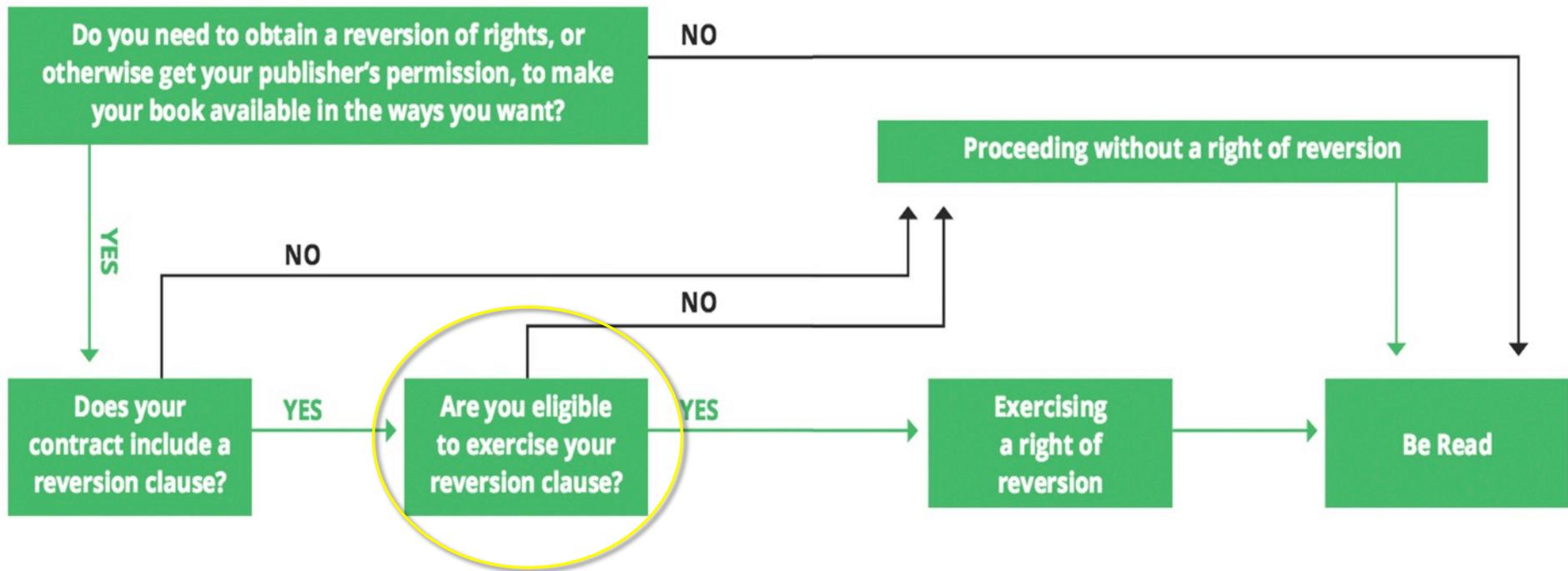
- Out-of-print clause
- Discontinuance clause
- Reversion of Rights clause
- Termination clause
- *and more....*

What triggers them?

- Stock level thresholds
- Sales/earned revenue thresholds
 - Out-of-print status
- Term-of-years expiration
 - *and more....*

Should the Publisher fail to keep the full-length work in print, and after written demand from the Author, decline or neglect to bring it back into print within six (6) months the Author may terminate this Agreement and all rights granted hereunder shall revert to the Author. The Work shall be deemed in print if available in any of Publisher's full-length print editions available through normal U.S. trade channels. If the Work is only available as an Electronic Book or through a form of print upon demand capability, the Work shall not be deemed in print unless such Electronic Book and/or print upon demand capability shall generate combined sales of no less than 250 copies per year.

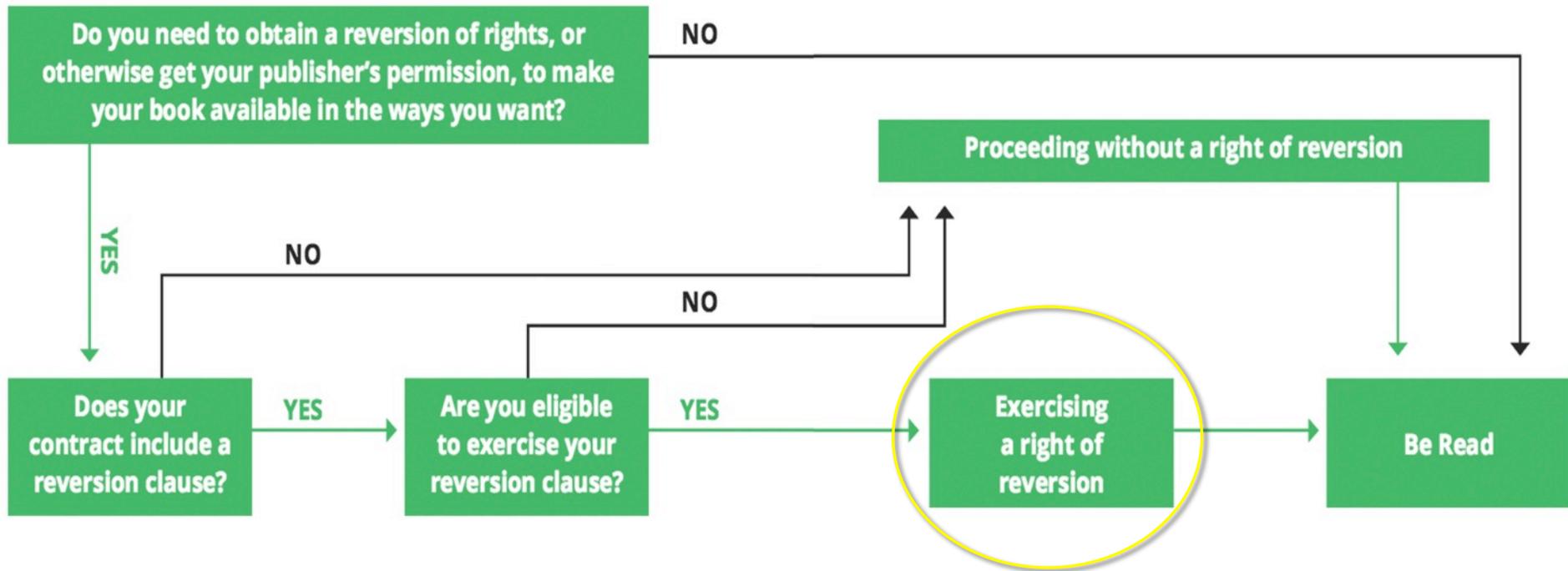
Example Reversion Clause



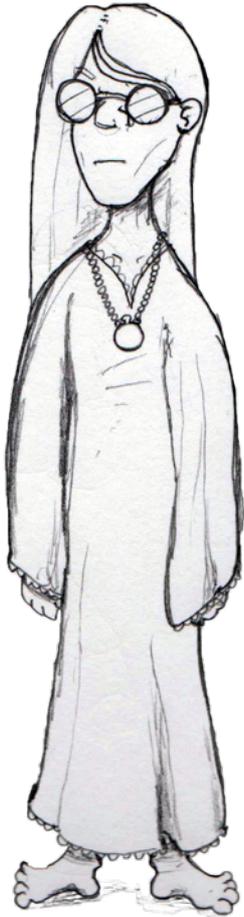
Has Your Reversion Clause Been Triggered?

- Sybil wants to make *Pythia* openly accessible.
- She finds and reads her contract. She transferred all print, electronic, and digital rights to her publisher.
- She has a reversion clause. She is eligible for reversion if annual sales in all formats < 250 copies.
- Sybil consults her royalty statements. *Pythia* has had no sales in years.
- Is Sybil eligible to exercise her reversion clause?

- *My Life as a Spelunker* is not available in print.
- Carla finds and reads her contract. She transferred all print, electronic, and digital rights to her publisher.
- She has a reversion clause. It defines a work as “in print” if it is for sale in any format.
- Carla checks online; finds it available as an e-book.
- Is Carla eligible to exercise her reversion clause?



Exercising a Right of Reversion



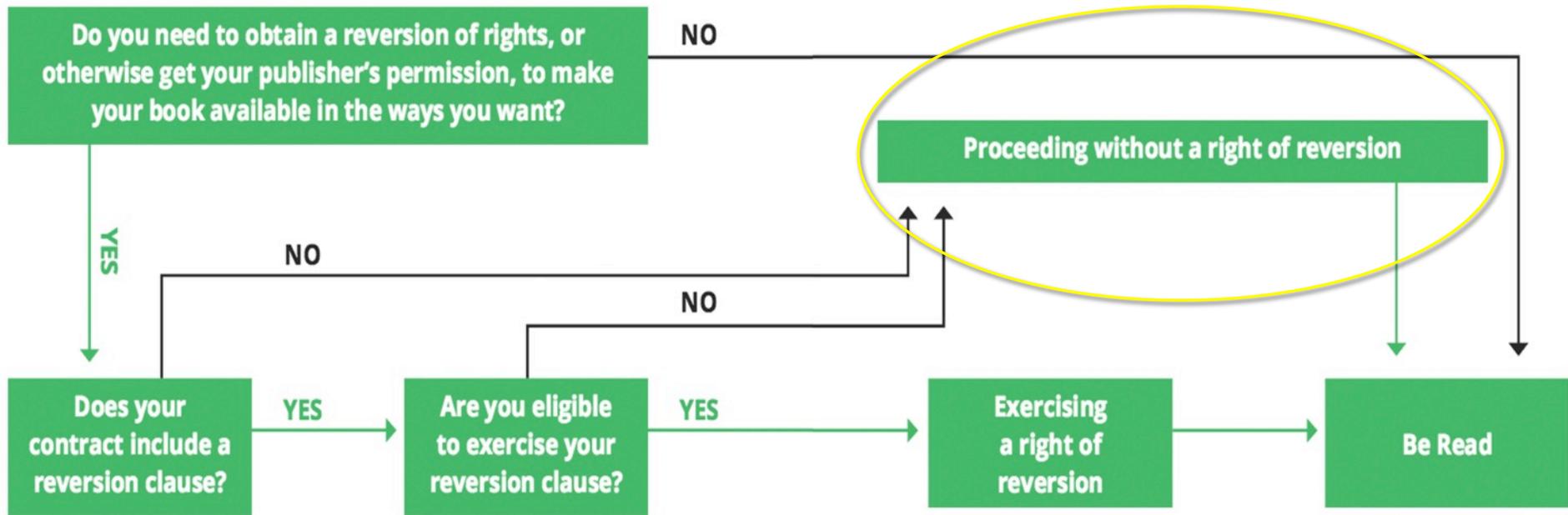
Sybil Soothsayer

Gather Information

- Have a plan in place for your book.
- Discuss your publisher's plans for your book.
- Collect your royalty and sales information. Call publisher's warehouse, if necessary, for stock information.

Engage Your Publisher

- Notify your publisher of your intent (in writing) to revert.
- Be Reasonable, Flexible, and Persistent.



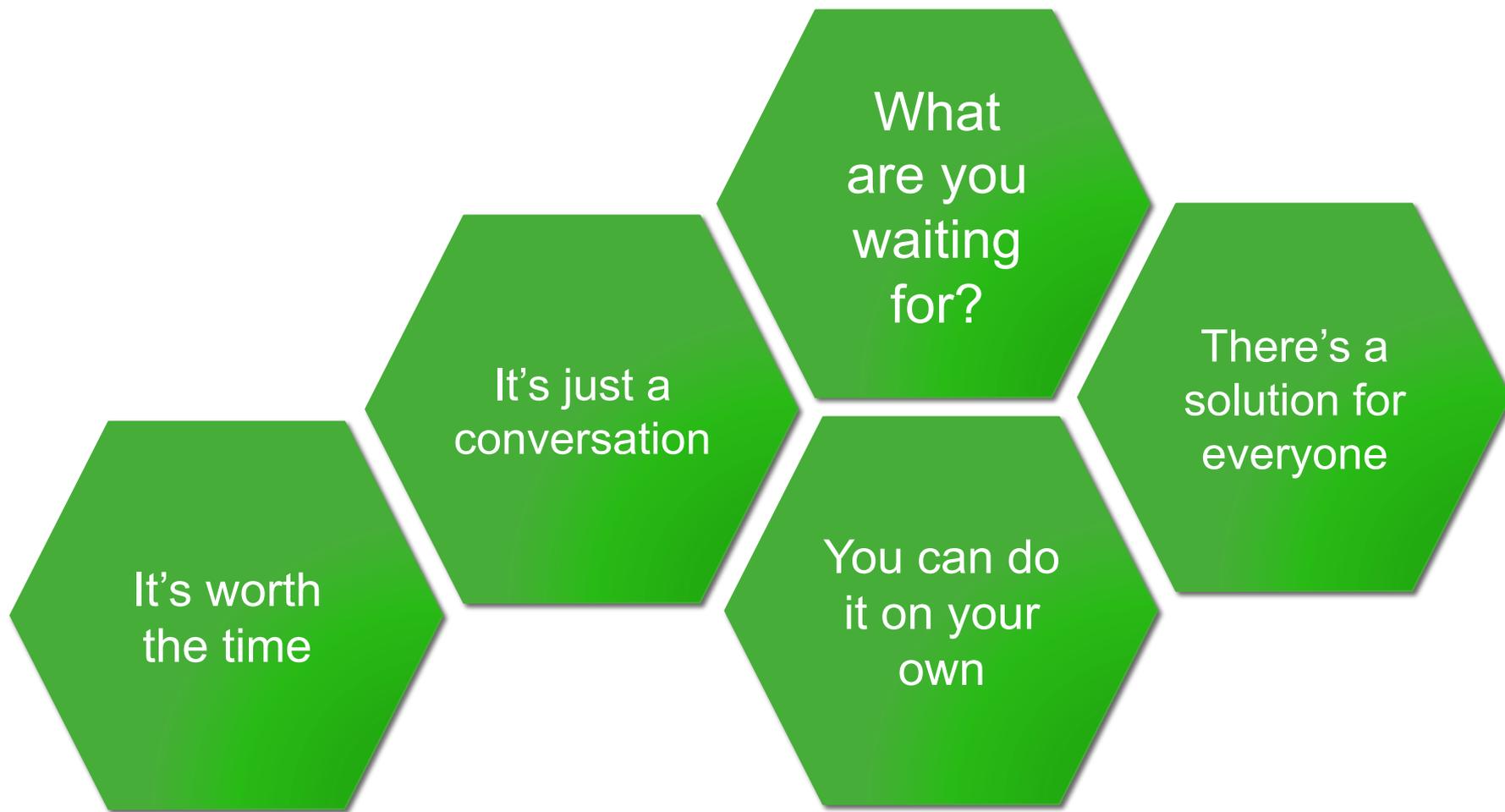
Don't Have a Right of Reversion? Don't Worry!

- Have a plan in place for your book.
- Strategize! Build your case for reversion:
 - Is your publisher no longer earning revenue on your book?
 - Is your publisher not utilizing all the rights you transferred to it?
 - Does your publisher have no plans to renew your book's availability or sales?
 - Is your publisher keeping your book in the dark?
- Rely on the Golden Rules: **Be Reasonable, Be Flexible, Be Creative, Be Persistent.**

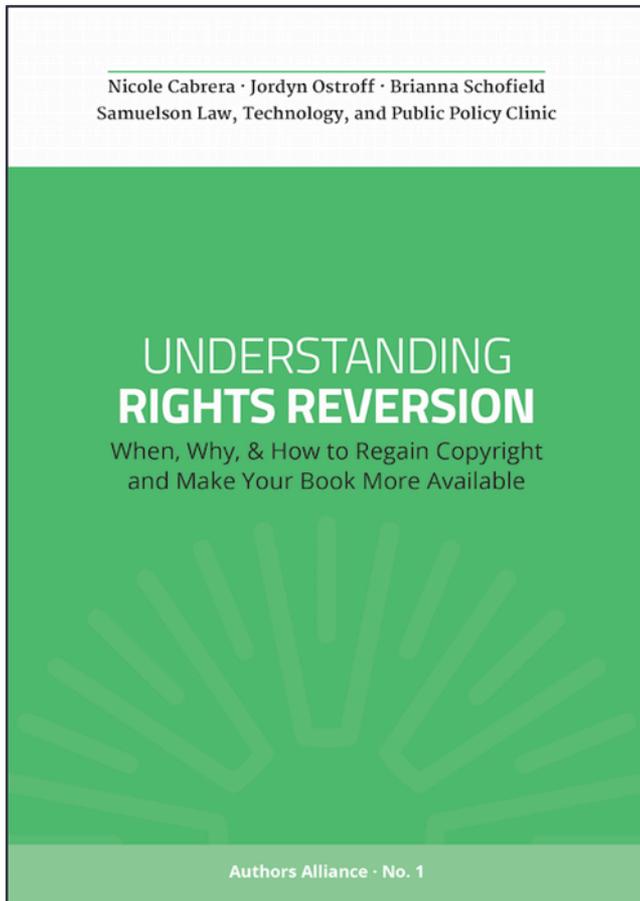


Carla Carlsbad

Don't Wait. It's Time to Be Read!



Check Out the Guide!



Website: www.authorsalliance.org/reversion

Contact: info@authorsalliance.org

Twitter: [@Auths_Alliance](https://twitter.com/Auths_Alliance)

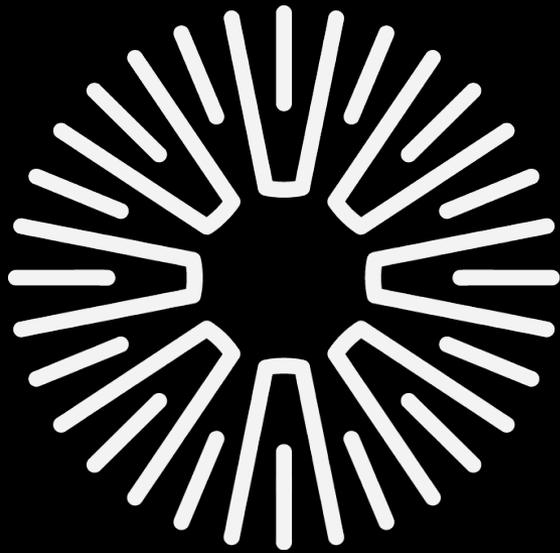
Facebook: [Authors Alliance](https://www.facebook.com/authorsalliance)

[Understanding Rights Reversion](#)

Join!

authorsalliance.org/join

membership is free + international



AUTHORS
ALLIANCE