

COPYRIGHT REVERSION



THE AUTHOR'S INTEREST

What is reversion?

Book authors are (almost always) the first owners of their copyrights. They typically licence or transfer their rights to publishers to get their books to market. *Reversion* refers to the return of those rights to authors - for example, where a book has gone out of print, where rights aren't being exploited, or after a certain period of time.

The Author's Interest project recently analysed the laws of 191 countries, and found more than half already grant reversion rights for authors. But many of these laws were developed in the pre-digital era, and have become outdated. In some countries (including the UK and Australia) authors have no mandated rights at all, and their rights are only what's left to them by their publishing contracts.

Modern, effective reversion rights have huge potential to help solve the biggest problems facing copyright. By updating existing laws and filling these gaps, we can do much to improve author incomes, create new investment opportunities for publishers, and improve public access to our cultural heritage.

RIGHTS REVERSION CREATES POSSIBILITIES FOR:

- **NEW INCOME FOR AUTHORS**
- **NEW INVESTMENT OPPORTUNITIES FOR PUBLISHERS**
- **NEW ACCESS FOR THE PUBLIC**



We recently analysed 60 years of publishing contracts from the archive of the Australian Society of Authors (1960-2014). **Here are some key takeaways from our preliminary results:**

Our research shows authors need better protections than contracts can provide

1. Important rights can be missing altogether

30% of the contracts we examined were missing liquidation clauses (enabling authors to reclaim rights in event publishers go out of business). 14% were missing out-of-print rights. Just 6% of the contracts we analysed provided for unexploited rights to be returned to authors.

2. Contracts can be incredibly slow to evolve

Take out-of-print clauses for example. Authors have been advocating for clear, objective criteria to define when a book is out of print for over 50 years. For example - that the book is out of print when fewer than 50 copies are sold, or the author receives less than \$200 in royalties over the previous year. But despite that long history, just 6% of the contracts we analysed used objective criteria to define out-of-print status.

3. Contracts can be poorly drafted - ambiguous and inconsistent

Sometimes publishers extracted their author's entire copyright, but then also took a licence for something covered by the copyright. That suggests they didn't understand the legal impact of their own contract. Important terms were commonly left out altogether, including how long contracts were to last and the languages they covered. These problems are understandable: publishing books involves very different skills to drafting contracts, and although publishers want to do the right thing by their authors, they don't always have the resources to do both things well.

4. We can't expect contract drafters to predict the future

Most contracts took exclusive rights (or the entire copyright) for the entire copyright term. A contract signed today by a young, healthy author could well endure to 2150 or beyond. What will books look like in 2150? What will be the opportunities and challenges? We can't possibly expect the drafters of publishing contracts to accurately predict that. But that's what we're asking them to do by making publishing contracts play such a key role in defining author rights.

Granting authors minimum reversion rights would open new economic opportunities and help reclaim lost culture

The world is starting to appreciate that effective reversion rights are crucial to a well-functioning copyright system.

The 2019 European Digital Single Market Directive requires member states to implement laws ensuring authors can reclaim their rights where they aren't being exploited. And in Canada, two parliamentary committees recently recommended the law be amended to allow authors to reclaim their rights 25 years after transfer.

To help copyright better achieve its aims, new reversion rights are needed to:

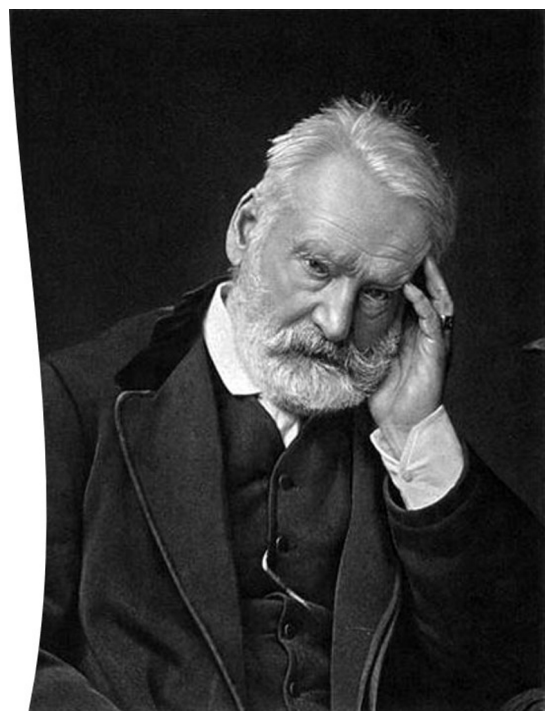
- give authors fresh opportunities to financially benefit from their works;
- open up new investment opportunities for publishers; and
- promote ongoing availability to the public.

Rights should be developed collaboratively between all industry stakeholders and capable of regular updating to reflect evolving industry norms and realities.

Our research suggests there's an urgent need to investigate reversion rights addressing:

- books that have reached the end of their commercial life with their current publisher;
- uses that publishers control but are not exploiting (such as foreign territories or languages, digital and audio rights);
- situations where publishers go into liquidation;
- term limits (akin to the current US law which allows authors to terminate transfers after 35 years).

Many publishers are already doing the right thing, and their terms would exceed any legal minimums. The role of baseline reversion rights is to fill the gaps where the contracts fall short, and to limit the harms caused by terms that don't reach acceptable standards, or that become outdated.



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About the Author's Interest project

The Author's Interest project is a four year research project led by Associate Professor Rebecca Giblin. Funded by the Australian Research Council, the project is investigating how taking authors' copyright interests more seriously can help get them paid, open up new investment opportunities for publishers, and improve public access to knowledge and culture. The work described in this booklet has been carried out by Rebecca Giblin and Joshua Yuvaraj.

We thank the Australian Society of Authors for access to its archive, though note we carried out our research independently and that our findings don't necessarily reflect its views. We also thank the Authors Guild (US), Society of Authors (UK) and the various literary agents for their assistance in the course of this research.

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