

# Non-use and Reversion: Will CDSM Article 22 make a difference?

Martin Kretschmer  
Professor of Intellectual Property Law, Director of CREATE  
University of Glasgow

(joint project with Rebecca Giblin and Ula Furgal)

Copyright Challenges During the  
Pandemic (and Beyond)  
European Copyright Society  
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# CDSM Directive

## Chapter 3

### Fair remuneration in exploitation contracts of authors and performers

Art. 18: Principle of appropriate and proportionate remuneration

Art. 19: Transparency obligation

Art. 20: Contract adjustment mechanism

Art. 21: Alternative dispute resolution procedure

**Art. 22: Right of revocation**

# Rights reversion

Attractive policy idea

- Author friendly (increases remuneration?)
- Prevents warehousing of rights (increases availability?)

## Levers

Time (eg US s203)

Lack of exploitation

Bankruptcy

Non-payment of royalties

Sector specifics (books out-of-print)

Process (automatic, notification)

# Non-use? The empirical picture

- Only 2.3% of in-copyright books and 6.8% of in-copyright films released pre-1946 remain commercially available (Mulligan & Schultz 2002).
- Book Trade Almanac for 1872–1957: of 10,027 books published in the US in 1930, only 174 (1.7%) were still in print in 2001 (Landes and Posner 2003).
- Reissues of US sound recordings: random sample of 1521 records issued between 1890 and 1964, only 14 percent were available from rights owners (Brooks 2005).
- Is it going to get better digitally? Sample of books from the New York Times best seller list 1923-32: only 27% are available as e-book (Heald 2014).

**Note to Europe: all US data!**

# Art. 22: Right of revocation

“Member States shall ensure that where an author or a performer has **licensed or transferred** his or her rights in a work or other protected subject matter on an **exclusive basis**, the author or performer may **revoke in whole or in part** the licence or the transfer of rights where there is a **lack of exploitation** of that work or other protected subject matter.”

Exercised after **a reasonable time**, possibly within the specific time frame

Specific provisions can be provided for different sectors, types of works, and collective works

Process: notice of intention + **appropriate deadline** + notice of termination

Can involve a change from exclusive to non-exclusive assignment

Precluded when lack of exploitation is predominantly due to circumstances that **the author/performer can reasonably be expected to remedy**

Waivability can be limited

# National provisions

**154** different provisions

**5 MS** have no reversion rights

Cyprus, Ireland, Malta, Estonia, Latvia  
(except as required by Term Directive 2011/77/EU)

Variation by types of contracts/works  
and triggers

Both exclusive and non-exclusive  
agreements

Some regional patterns

No trends over time

	Austria	Belgium	Spain	Croatia	Cyprus	Czechia	Denmark	Estonia	Ireland	France	Germany	Greece	Hungary	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden
general: non-use or insufficient use																									
general: time-based termination																									
general: lack of initial exploitation																									
general: inappropriate exploitation																									
general: transfer of business to a third party																									
general: bankruptcy, liquidation, death etc.																									
general: max term of agreement																									
general: default term of agreement																									
general: future works																									
general: employee works																									
moral rights																									
publishing: time-based termination																									
publishing: max term of agreement																									
publishing: lack of acceptance																									
publishing: lack of initial publication																									
publishing: lack of subsequent publication (new edition)																									
publishing: out-of-print																									
publishing: lack of publication in all languages																									
publishing: non-use																									
publishing: inappropriate use																									
publishing: reporting on remuneration																									
publishing: lack of payment of royalties																									
publishing: transfer of rights to a third party																									
publishing: transfer of business to a third party																									
publishing: bankruptcy, liquidation, death etc.																									
publishing: priority to publish work in electronic form																									
audio-visual: max term																									
audio-visual: time-based termination																									
audio-visual: lack of completion																									
audio-visual: lack of initial distribution																									
audio-visual: bankruptcy, liquidation, death etc.																									
performance: max term																									
performance: default term																									
performance: lack of completion																									
performance: lack of initial performance																									
performance: interruption in performances																									
performance: inappropriate exploitation																									
performance: bankruptcy, liquidation, death etc.																									
adaptation: lack of completion																									
adaptation: lack of initial distribution/performance																									
adaptation: interruption in distribution/performance																									
journalistic works: lack of initial publication																									
journalistic works: lack of acceptance																									
republication: contributions to collections																									
republication: scientific works																									

<https://www.create.ac.uk/reversion-rights-resource-page/>

# National provisions

Trigger linked to:

**Exercise of right/use of work**

*Use of work in a way which reduces its value (Slovakia)*

**Creator (moral rights and convictions)**

*Withdrawal due to vital creative interests of the author (Poland)*

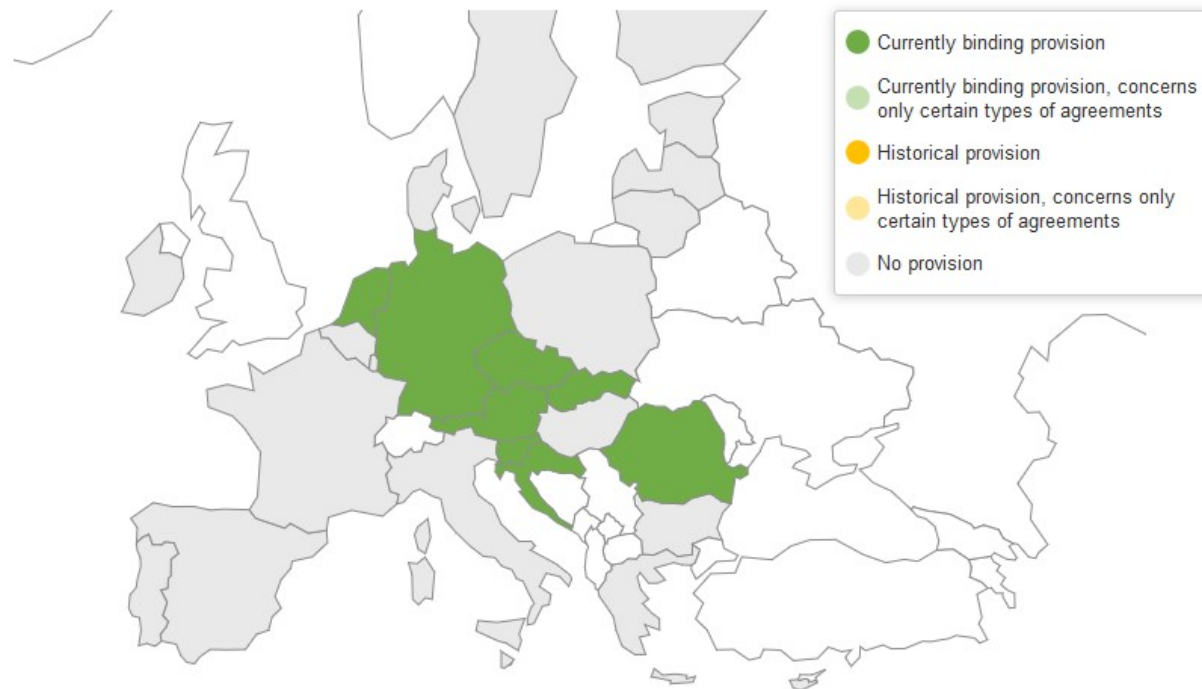
**Licensee/transferee**

*Termination in case of bankruptcy, judicial reorganisation or liquidation of the publisher's business (Belgium)*

**Time**

*Contract for a use of work concluded for a period longer than 10 years lasts 10 years (Bulgaria)*

# Use-it-or-lose-it



Trigger of reversion: lack of use or **insufficient use**  
**which impairs author's legitimate interests**



# Implementation

**France** (L. 131-5-2.): procedure (including time and non-use) to be determined in a professional agreement

**Belgium** (XI.167/1; XI.205/1): obligation to exploit within the agreed period; possibility to change to non-exclusive assignment; commission/employment within non-creative or advertising sector excluded

**Hungary**: no proposal

**Netherlands** (25e): overriding interest of licensee/transferee removed

**Germany** (41): possibility to change to non-exclusive assignment added

**Croatia** (52): termination due to lack of legal successor/bankruptcy added

<https://www.create.ac.uk/cdsm-implementation-resource-page/>

# Conclusions: Lost opportunity?

## **Not too late:**

Guidance on exercise of revocation right (termination is not an only option)

Working within sectoral groups

Two unresolved fundamental issues:

### **Value of works over time**

Some (BE/LUX trend-setting?) implementations limit revocation to “lack of initial exploitation”. Long contracts/warehousing not caught!

### **Digital uses of works**

What does digital non-exploitation mean?

**Monitoring and research:** Does legislation work as intended? What are the empirical effect of CDSM interventions?

# REVERSION OF COPYRIGHT IN EUROPE

A EUROPEAN INTELLECTUAL  
PROPERTY REVIEW TRIPLE BILL

GETTING CREATORS PAID: ONE MORE  
CHANCE FOR COPYRIGHT LAW

MARTIN KRETSCHMER  
REBECCA GIBLIN

INTERPRETING EU REVERSION RIGHTS:  
WHY "USE-IT-OR-LOSE-IT" SHOULD BE  
THE GUIDING PRINCIPLE

ULA FURGAL

REVERTING TO REVERSION RIGHTS?  
REFLECTIONS ON THE COPYRIGHT  
ACT 1911

ELENA COOPER

CREATe Working Paper 2021/5



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