Nicole Cabrera and Jordyn Ostroff, with the Samuelson Law, Technology, & Public Policy Clinic presenting UNDERSTANDING RIGHTS REVERSION

On behalf of AUTHORS ALLIANCE

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Please Note: This presentation is not legal advice. This presentation provides general information and strategies for authors who wish to obtain a reversion of rights, but does not apply this information to any particular author’s situation. We are not entering into an attorney-client relationship. Please consult an attorney if you are unsure how the information in this presentation applies to your particular situation.

UNDERSTANDING RIGHTS REVERSION

On behalf of
What is Authors Alliance?

• Authors Alliance is a nonprofit organization that promotes authorship for the public good by supporting authors who write to be read.

• Members include university professors, poet laureates, fiction writers, journalists, Nobel laureates, and librarians.

• Released *Understanding Rights Reversion* in 2015.

• Check out [www.authorsalliance.org](http://www.authorsalliance.org) for more information!
UNDERSTANDING RIGHTS REVERSION
When, Why, & How to Regain Copyright and Make Your Book More Available

Authors Alliance · No. 1
Today’s Presentation

• Overview of Copyright Law
• The Problem of Inaccessible Books
• Reverting Rights: When, Why, and How

• Golden Rules of Reversion
• Success Stories: Authors Like You
• Copyright is a *bundle of exclusive rights* that (typically) initially vests in the author of the work.
Foundations of Copyright Law

• Copyright is a *bundle of exclusive rights* that (typically) initially vests in the author of the work.

• Make copies
• Make derivative works
• Distribute
• Publicly display
• Publicly perform
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.
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.

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?**
The Case of the Invisible Books

New Editions of Books Currently Available on Amazon (by decade)

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 obtain a reversion of rights, or otherwise get your publisher’s permission, to make your book available in the ways you want?

- **Yes**: Does your contract include a reversion clause?
  - **Yes**: Are you eligible to exercise your reversion clause?
    - **Yes**: Exercising a right of reversion
    - **No**: Proceeding without a right of reversion
  - **No**: Proceeding without a right of reversion

- **No**: Proceeding without a right of reversion

**Be Read**
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 film student.
- *Can Martin license motion picture rights in his book without reverting rights from his publisher?*
Do you need to obtain a reversion of rights, or otherwise get your publisher’s permission, to make your book available in the ways you want?

YES → Does your contract include a reversion clause?

NO → Proceeding without a right of reversion

YES → Are you eligible to exercise your reversion clause?

NO → Exercising a right of reversion

YES → Be Read
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….
If the Work shall become out of stock and will not be reprinted and is unavailable for sale in any English language edition issued or licensed by the Publisher, then the Author may give notice in writing to the Publisher to reprint or reissue the Work. If no agreement is reached for the reprinting or reissuing of the Work within 3 months of the Author’s request, all the Publisher’s rights in the Work shall terminate. For the avoidance of doubt, a Work shall not be considered out of stock or unavailable if it is available in whole or in part by print on demand or online or on CD-ROM or in any other electronic format.

Example Reversion Clause #1
If the Work shall become out of stock and will not be reprinted and is unavailable for sale in any English language edition issued or licensed by the Publisher, then the Author may give notice in writing to the Publisher to reprint or reissue the Work. If no agreement is reached for the reprinting or reissuing of the Work within 3 months of the Author’s request, all the Publisher’s rights in the Work shall terminate. For the avoidance of doubt, a Work shall not be considered out of stock or unavailable if it is available in whole or in part by print on demand or online or on CD-ROM or in any other electronic format.

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Example Reversion Clause #1
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 #2
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.

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Example Reversion Clause #2
Do you need to obtain a reversion of rights, or otherwise get your publisher’s permission, to make your book available in the ways you want?

Does your contract include a reversion clause?

Are you eligible to exercise your reversion clause?

Proceeding without a right of reversion

Exercising a right of reversion

Be Read
Has Your Reversion Clause Been Triggered?

Carla Carlsbad

Sybil Soothsayer
Has Your Reversion Clause Been Triggered?

Carla Carlsbad

- *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?
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?
Do you need to obtain a reversion of rights, or otherwise get your publisher’s permission, to make your book available in the ways you want?

NO

Proceeding without a right of reversion

YES

Does your contract include a reversion clause?

NO

Are you eligible to exercise your reversion clause?

NO

Exercising a right of reversion

YES

Be Read
Exercising a Right of Reversion

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.
Do you need to obtain a reversion of rights, or otherwise get your publisher’s permission, to make your book available in the ways you want?

- Yes
  - Does your contract include a reversion clause?
    - Yes
      - Exercising a right of reversion
      - Be Read
    - No
      - Proceeding without a right of reversion
  - No
    - Are you eligible to exercise your reversion clause?
      - Yes
        - Exercising a right of reversion
        - Be Read
      - No
        - Proceeding without a right of reversion
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
Be Reasonable

Remain courteous & professional. Appeal to publisher’s sense of reason.

Katie Hafner,
Authors Alliance Advisory Board Member, Non-fiction Author, & Journalist

Photo by Jessica Raimi
Be Flexible

Be open to solutions other than the one you have in mind. Consider compromises.

Barbara Waxer,
College Instructor &
Textbook Author
Be Creative

Each author, book, and contract is different. Think broadly about how to increase availability.

Professor Stephen Sugarman, Professor of Law at UC Berkeley & Academic Author
(Pictured with co-author John Coons)
Be Persistent

This process can take time. Be your own best advocate by circling back to your publisher.

Michael Capobianco,
Science Fiction Author
Don’t Wait. It’s Time to Be Read!

What are you waiting for?

It’s just a conversation

It’s worth the time

You can do it on your own

There’s a solution for everyone
Check Out the Guide!

Website: www.authorsalliance.org/reversion

Contact: info@authorsalliance.org

Twitter: @Auths_Alliance

Facebook: Authors Alliance

Understanding Rights Reversion