Australian Society of Authors

archived publisher contracts. See contractual reversion rights, empirical research on

	books but mem, none
Australian Publishing Association, 141–2	books. See literary works
152, 170	(1737), 34, 91
research project), 13–15, 22, 142–3, 147,	Bill for the better Encouragement of Learning
unmet demand for literary works ( <i>Untapped</i>	Big Tech firms, 26, 57–8, See also particular firms
169	Bevan, Fiona, 18–19
unfair contract terms, ADR to challenge,	summary of main arguments, 31, 149–51, 173–4
term of copyright protection, 8, 134	ideal system imagined, 170–3
(Copyright Act 1911)	8. should promote enforceability, 167–70
Imperial right generally. See Imperial Act	7. should have appropriate carve-outs, 163–7
37, 42	reversion rights
Imperial reversion right, adoption and repeal,	subversion. See waivers of statutory
research on	6. should be protected against contractual
reversion rights, empirical	167
contractual reversion rights in. See contractual	5. should be clear and certain by design, 156–8,
contract termination on liquidation, 132	4. should be kept fit for purpose, 154–6, 167–8
Australia	3. should have appropriate triggers, 153-4
video games, 12, 26–7	2. should be industry specific, 152-3, 157
unmet demand for, 15–16	151–2, 159, 165
59–62, 151, 156, 158	1. investment incentives should be maintained,
'Terms of Trade' negotiation duties (UK),	best practice principles for reversion mechanisms
Belgium), 99	and Artistic Works 1886, 5, 38, 40, 43
exploitation-based reversion right (France and	Berne Convention for the Protection of Literary
audiovisual works	Bently, Lionel, 33, 35-7, 64-5
audiobooks, 2	Belgium, statutory reversion rights, 99
artificial intelligence (AI), 2, 20, 30, 153-4	
Arnold, Richard, 85	automatic reversion (design option), 58, 170-2
made of reversion rights	Author's Interest Project, 21–2, 93, 126–7
arguments against reversion rights. See criticisms	waivers prohibited after three years, 103, 123, 159
reversion rights, empirical research on	123, 159
Are Contracts Enough? study. See contractual	exploitation-based triggers, 97, 99-100, 118-19,
Amazon, 10, 26, 58	Austria, statutory reversion rights
AI (artificial intelligence), 2, 20, 30, 153-4	on 'out of print' definition, 129–30, 141–2
108–9	reversion rights, empirical research on

Adams, Bryan, 55, 126

ADR (alternative dispute resolution) procedures,

Boyle, James, 26	power imbalances, 144–5, 169
Braithwaite, John, 21	public interest ignored, 147–8
Brauneis, Robert, 87–8	slowness to evolve, 146
British Commonwealth, statutory reversion rights.	summary of main arguments, 30-1, 125-7, 148
See statutory reversion rights	territorial use-it-or-lose-it rights, 131-2
Bulgaria, statutory reversion rights, 95, 101, 123	contractual reversion rights, empirical research or
Burgess, Richard James, 18	aims and methodology, 132-4
	conclusions, 141–4
Canada	enforcement challenges (findings from
authorship of works-for-hire, 164	Untapped project), 142-3, 147
Imperial reversion right	length and breadth of copyright assignments,
criticisms of, 49-51, 170	134–6, 140–1
Imperial right generally. See Imperial Act	liquidation rights lacking, 140
(Copyright Act 1911)	notice periods, 137-40
litigation applying, 48–9	'out of print,' definitions of, 136-7
statutory reversion rights, proposals for, 55-6	payment required to reclaim rights, 140
term of copyright protection, 55	contractual waivers of reversion rights. See waiver
carve-outs from reversion rights	of statutory reversion rights
for collective works, 47, 100-1, 166-7	Cooper, Elena, 38
generally, 163–4	Copinger and Skone James on Copyright, 39, 41-2
for specific works, 100-1	Copyright Act 1710 (Statute of Anne), 2, 4, 33-6,
when rightsholder not responsible for	62–4
underexploitation, 100	Copyright Act 1911. See Imperial Act (Copyright
for works-for-hire, 72–7, 101–2, 164–5	Act 1911)
Cavendish, JM, 39, 128	copyright bargain evaluated
Charles, Ray, 80	aims, incentives and rewards of copyright, 3-6,
choice of law/forum clauses, 83-5, 158, 161-3, See	20–1, 151
also waivers of statutory reversion rights	best practice principles for reforms. See best
Clark, Charles, 145	practice principles for reversion
Clemens, Samuel (Mark Twain), 65, 153	mechanisms
Clinton, George, 88	blurring of incentives and rewards, 6
collective agreements on reversion rights	excessiveness of terms (when mapped to
French-style 'living rights' via, 155–8, 167–70	incentives), 6–9
waivers of statutory rights restricted to, 103,	no obligation for rightsholders to exploit works
112–13, 120–3, 159–60	11–16
collective works, 47, 57, 59, 100–1, 166–7	orphaned works problem, 12–13, 58, 172–3
Commonwealth, statutory reversion rights. See	rewards diverted away from creators, 16-20, 29,
statutory reversion rights	164
computer games, 12, 26	untested arguments for term extensions, 5, 9–11
Conger (eighteenth-century bookseller syndicate),	20
35	copyright reversion. See contractual reversion
contracts assigning copyright. See licences	rights; statutory reversion rights
assigning copyright	copyright terms of protection, See also time-based
contractual reversion rights	triggers of reversion
earliest known example, 2	in Australia, 8, 134
liquidation rights, 132, 140	in Canada, 55
model terms development project, 148	EU Term Extension Directive, 8–9, 95–6,
'out-of-print' clauses, 1, 127–31, 150–1	105-9
empirical research on. See contractual	evaluated. See copyright bargain evaluated
reversion rights, empirical research on	licence terms on, 12
structural limitations	under international agreements, 8–9
excessive duration, 146-7	in US, 5, 9–10, 29
expense of legal advice, 145–6	copyright works. See audiovisual works; literary
poor drafting, 146	works; sound recordings
r	works, sourid recordings

Courtney, Leonard, 1st Baron Courtney of	summary of main arguments, 51–4, 110, 124, 152
Penwith, 38–9	154
criticisms made of reversion rights	Disney, 26, 44–6, 81–2
adverse impact on small publishers, 57–8	Doctorow, Cory, 19, 31
defeatable by testamentary disposition, 50	Drahos, Peter, 21
freedom of contract curtailment, 23–7, 35, 57,	Duran Duran, 84, 86, 161–2
111, 126	shook landing to libraries a second
insult to authors, 27–8, 66–7, 69	ebook lending to libraries, 2, 10–11, 152
loss of works to the public, 57, 111	employee works exemptions from reversion rights
reduced creator pay, 28–30, 50, 57	72–7, 101–2, 164–5
testamentary freedom curtailed, 79–80, 160–1	enforcement challenges
uncertainty for publishers, 50–1	design of mechanisms to promote
Croatia, statutory reversion rights, 97–8, 118–19, 121	enforceability, 167–70
Crosby, Paul, 8, 13	for contractual reversion rights (findings from
cultural depreciation, 7, 12	Untapped project), 142-3, 147
Curthoys, Ann, 143	retaliation concerns, 107–8, 144, 168–70
Czech Republic, statutory reversion rights, 97, 101–2, 118–19, 123	for statutory reversion rights in Europe, 107–8, 115, 168–9
···· / ···· · · // ·· · · · · /	for US termination right, 77–9, 157, 167
Day, Katherine, 144	Estonia, statutory reversion rights, 123
Dean, Owen, 45, 56, 59	EU copyright law
Deazley, Ronan, 34	DSM Directive. See Digital Single Market
DeCarlo, Daniel, 77–8	Directive (EU)
Delahunt, Meaghan, 143	Term Extension Directive, 8–9, 95–6, 105–9
Denmark, statutory reversion rights, 91–2, 97, 103,	Europe, statutory reversion rights in
159	exploitation-based triggers. See exploitation-
derivative works, 2, 8, 98, 135, 153-4, 165-6	based triggers of reversion
Dickens, Charles, 39	limitations, 104–5
digital dissemination of cultural works	contractual waivers, scope for, 102-3, 110, 115
AI (artificial intelligence) for, 2, 20, 30, 153–4	120-1
Big Tech firms dominating, 26	enforcement challenges, 107-8, 115, 168-9
digital underexploitation as trigger for reversion,	ineffective triggers, 105-6
98–9, 109, 117–18, 154	lack of information, 107
ebook lending to libraries, 2, 10–11, 152	poor design, 108–9
print-on-demand services, 2, 129–30, 136–7	rights unsuited to digital context, 109–10
streaming services, 7, 15–16, 18–20, 26–7, 60–1	uncertainty, 106-7, 116-20
Digital Single Market Directive (EU), See also	origins
exploitation-based triggers of reversion	Danish Copyright Ordinance (1741), 91–2
ADR (alternative dispute resolution)	Prussian law proposals (1794), 92-3
procedures, 168–9	Spanish Intellectual Property Law (1879),
Article 22 (use-it-or-lose-it reversion right)	93-4
background and first proposals, 61, 110-12,	summary of main arguments, 90
114–16, 159	time-based triggers, 96
contractual waivers, scope for, 115, 120-1	of EU Term Extension Directive, 8-9, 95-6
enacted version, 112–14	105–9
enforcement challenges, 115, 168-9	overview of regimes, 94-5
implementations, 118–19, 121–4	UK. See United Kingdom, statutory reversion
'lack of exploitation' standard, uncertainty	rights
over, 116–20	exemptions from reversion rights. See carve-outs
choice of law clauses undermining prohibited,	from reversion rights
162	exploitation-based triggers of reversion
fair remuneration and transparency rights, 21,	advantages, 150–1
111, 113, 166, 174	best practice principles for. See best practice
representative organisations, rights of standing, 170	principles for reversion mechanisms

exploitation-based triggers of reversion (cont.)	Hall & Oates, 88
contractual. See contractual reversion rights	Heald, Paul, 10, 164–5
digital underexploitation, 98–9, 109, 117–18, 154	history of statutory reversion rights. See statutory
EU law provision. See Digital Single Market	reversion rights
Directive (EU), Article 22	Howard, Harlan Perry, 88
exemptions. See carve-outs from reversion rights	Howard, Linda, 88
general, 97, 118–19	Hugenholtz, P. Bernt, 102
industry-specific, 97–9, 153, 157	Hugo, Victor, 172
situation-specific, 99–100	Hungary, statutory reversion rights, 97, 103, 123, 159
underexploitation of works problem, 11–16	
	ideal system of reversion rights, 170–3
Facebook, 26	Imperial Act (Copyright Act 1911)
films. See audiovisual works	enactment of reversion rights, 37-40, 94
'financier's copyright', 21	repeals (1956-68), 40–3
Finland, statutory reversion rights, 98, 100	potential benefits to author heirs, 43, 62
foreign choice of law/forum clauses, 83–5, 158,	Canadian experience, 48–9
161–3, <i>See also</i> waivers of statutory reversion rights	criticisms of Canadian Imperial right, 49–51 'Mbube'/Wimoweh'/'The Lion Sleeps
France, statutory reversion rights	Tonight' saga, 43–6
exploitation-based triggers, 98-9, 117-18, 123, 153	Redwood Music litigation saga, 46–8
'living rights' via collective agreements, 155-8,	Innocents Abroad (Twain), 65
167–9	intellectual property clause, US Constitution, 4
physical and digital uses distinguished, 98,	Ireland, statutory reversion rights, 119–20, 123
109, 154	Italy, statutory reversion rights, 95, 100–1, 153
'Terms of Trade' negotiation duties, 60-1	
time-based triggers, 95	Johansen, David, 76
Fred Fisher judgment (US Supreme Court, 1943),	Johnson, Eric E, 25
66–8	jointly authored works, 47, 57, 59, 100-1, 166-7
freedom of contract critique of reversion rights,	IZ
23–7, 35, 57, 111, 126	Kaminstein, Abraham L, 68
Fromer, Jeanne C, 5	Karp, Irwin, 28, 69–70, 88
Furgal, Ula, 93, 98	Kelley, Thomas P, 48–9
Calla Barrala in C	King, Stephen, 88
Gallo Records, 43–6	Kirsch, Jonathan, 128
Garcia, Kristelia A, 7	Krentz, Jayne, 88
generative AI (artificial intelligence), 20, 30,	Kretschmer, Martin, 7
Cormony statutory reversion rights of 102.2 up	Landas William M =
Germany, statutory reversion rights, 97, 102–3, 115, 118–19	Landes, William M, 7 Lawson, Airlie, 13, 142
Gervais, Daniel, 55	Levinson, Barry, 15–16
Giblin, Rebecca	licences assigning copyright
ideal system of reversion rights imagined by,	extending terms of copyright protection, 12
170-3	freedom of contract critique of reversion rights,
other mentions, 6, 10–11, 19, 31	23–7, 35, 57, 111, 126
research projects. See research projects on	length and breadth of rights assigned (research
reversion rights	finding), 134–6, 140–1
Ginsburg, Jane C, 33, 35–7, 64–5, 85, 162	record industry recoupment terms, 18
Glazier, Mitch, 74–5	record industry royalty rates, 19, 171–2
Gloucester Place Music judgment (English High	reversion rights in. See contractual reversion
Count, 2016), 84, 86, 161–2	rights
Gompel, Stef van, 117	sub-licences, 8, 29, 143
Google, 26	unfair terms, 104–5, 169
Graff, George, 66 Guibault, Lucie, 102–4	waivers of reversion rights. See waivers of statutory reversion rights
VILIDATIII. LAICIE. 102-4	SIAITHOLY TEVELSION TIGHTS

rightsholders' criticisms of reversion rights. See

criticisms made of reversion rights

New Zealand Ligature Press, 13, 152 Linda, Solomon, 43-6 Imperial reversion right, adoption and repeal, 'Lion Sleeps Tonight, The'/'Mbube'/'Wimoweh' 37, 41-3 saga, 43-6 Imperial right generally. See Imperial Act liquidation, reversion in the event of, 132, 140 (Copyright Act 1911) literary works unfair contract terms, ADR to challenge, 169 depreciation of economic value, 7 Nicolai, Friedrich, 92 derivative works and translations, 2, 8, 98, 135, 153-4, 165-6 Oliar, Dotan, 87-8 digital dissemination. See digital dissemination orphaned works, 12-13, 58, 172-3 of cultural works Osborne, Richard, 23 'out-of-print' clauses, 1, 127-31, 150-1 'out-of-print' clauses effectiveness. See contractual reversion rights, effectiveness. See contractual reversion rights, empirical research on empirical research on sales on re-entry to public domain, 10-11 generally, 1, 127-31, 150-1 unmet demand for (Untapped research project), 13-15, 22, 142-3, 147, 152, 170 Pallante, Maria, 77 Lithuania, statutory reversion rights, 98, 101, 123, 154 Pascal, Francine, 88 Litman, Jessica, 29 Patterson, Lyman Ray, 34-5 Live Nation Entertainment, 26 Pelly, Liz, 20 'living rights' via collective agreements on performers' rights (EU law), 96, 108-9 reversion rights, 155-8, 167-9 Peters, Marybeth, 74 Lopez-Tarruella, Aurelio, 105-9 Poland statutory reversion rights, 97, 101, 114 Luxembourg, statutory reversion rights, 123 Portugal, statutory reversion rights, 95, 98, 106, 123 Posner, Richard A, 7 principles for reversion mechanisms. See best Macaulay, Thomas Babington, 4 Macomber, Debbie, 88 practice principles for reversion Malan, Rian, 43-5 mechanisms Malawi, statutory reversion rights, 51-2 print-on-demand services, 2, 129-30, 136-7 Malta, statutory reversion rights, 119 public service broadcasters, 59-61 Manges, Horace S, 70 publishers' criticisms of reversion rights. See Martin, Ann M, 88 criticisms made of reversion rights Mauritius, statutory reversion rights, 51-2 'Mbube'/'Wimoweh'/'The Lion Sleeps Tonight' Ramalho, Ana, 105-9 Ramaphosa, Cyril, 57 saga, 43-6 McCartney, Paul, 76 Ransom, Harry H, 33 McCrary, Justin, 7 record industry. See sound recordings Milne, AA, estate of, 81-3 Recording Industry Association of America, 74-5 Miriam Rose Stern Agency, 47 Redwood Music litigation saga, 46-8 Model Law on Copyright project (WIPO), 148 research projects on reversion rights Montgomery, LM, 49 Are Contracts Enough? study. See contractual Morgenstern, Jay, 67-8 reversion rights, empirical research on Morricone, Ennio, 84-5, 162-3 Author's Interest Project, 21-2, 93, 126-7 movies. See audiovisual works limitations of current study, 22-3 multi-authored works, 47, 57, 59, 100-1, 166-7 on US termination rights, 22, 87-8 Murray, Brian, 154 Untapped the Australian Literary Heritage musical works. See sound recordings Project, 13-15, 22, 142-3, 147, 152, 170 retaliation concerns about enforcing reversion Nauru, statutory reversion rights, 51-2 rights, 107-8, 144, 168-70 Netflix, 60-1 reversion rights. See contractual reversion rights; Netherlands, statutory reversion rights statutory reversion rights criticisms of, 106, 108-10, 117 Ricketson, Sam, 4-5

outlined, 97, 100, 103, 118-19, 121, 162

proposed reform (2010), 111

Roberts, Nora, 88	of Statute of Anne (Copyright Act 1710), 2, 4,
Romania, statutory reversion rights, 97-8, 103,	33-6, 62-4
118–19	repealed in 1814 reform, 36–7
Rosen, Hilary, 74	summary of main arguments, 30, 32-3, 62
Rub, Guy A, 145	'Terms of Trade' negotiation duties (UK),
	59–62, 151, 156, 158
Salamanca, Olivia, 102–4	Steinbeck, John, estate of, 80–3
Samuelson, Pamela, 77	Stern, Miriam, 46–8
Schuster, Jerry and Joe, 16-17	streaming services, 7, 15–16, 18–20, 26–7, 60–1
Seeger, Pete, 44	Stringer, Rob, 18
Sirinelli, Pierre, 162	sub-licences, 8, 29, 143
Slovakia, statutory reversion rights, 98, 101-3,	Sun, Hyojung, 23
118–19, 121	Sweden, statutory reversion rights, 98, 100
Smith, Adam, 35–6	
Society of Authors (UK), 61, 128-9, 131	Tanzania, statutory reversion rights, 51-2
sound recordings	Tarantino, Bob, 49–51
as collective works, 47	technological dissemination. See digital
consolidation of music industry, 26-7	dissemination of cultural works
depreciation of economic value, 7	television shows. See audiovisual works
EU reversion rights for, 8–9, 95–6	Term Extension Directive (EU), 8–9, 95–6, 105–9
French Code of Good Practice for the	termination right, US. See US termination right
publication of, 156	terms of copyright protection. See copyright terms
litigation respecting	of protection
Gloucester Place Music judgment (English	'Terms of Trade' negotiations for audiovisual
High Court, 2016), 84, 86, 161–2	works, 59–62, 151, 156, 158
'Mbube'/'Wimoweh'/'The Lion Sleeps	testamentary freedom critique of reversion rights,
Tonight' saga, 43–6	79–80, 160–1
Redwood Music saga, 46–8	Thompson, John, 14
rewards diverted away from artists, 18-20, 29, 164	time-based triggers of reversion, See also copyright
UK proposed reversion rights for, 61–2, 151–2	terms of protection
unmet demand for, 15	advantages, 150, 156
US termination right, application to, 72–7	automatic application (design option), 58, 170–2
South Africa, statutory reversion rights	best practice principles for. See best practice
'Mbube'/'Wimoweh'/'The Lion Sleeps Tonight'	principles for reversion mechanisms
saga, 43–6	in Europe. See under Europe, statutory reversion
proposals for, 56–9, 170	rights in
Spain, statutory reversion rights	in US. See US termination right
exploitation-based triggers, 98–9, 121, 153–4	waiver prohibitions for, 160
time-based triggers, 58–9, 93–5, 102–3, 160	Torno, Barry, 27–8
Spotify, 26–7, 30	Towse, Ruth, 26
St John, Madeleine, 1, 128	translations of literary works, 2, 8, 98, 135, 153-4,
statutory reversion rights	165–6
best practice principles for. See best practice	Turner, Sharon, 36
principles for reversion mechanisms	Twain, Mark (Samuel Clemens), 65, 153
Bill for the better Encouragement of	7. 7. 7.
Learning (1737), 34, 91	unfair terms in copyright licences, 104-5, 169
in Commonwealth jurisdictions, overview, 52-4	United Kingdom
contractual waivers of. See waivers of statutory	Society of Authors, 61, 128–9, 131
reversion rights	statutory reversion rights
in European jurisdictions. See Europe, statutory	EU Term Extension Directive
reversion rights in	implementation, 108–9
of Imperial Act. See Imperial Act (Copyright Act	of Imperial Act. See Imperial Act (Copyright
1911)	Act 1911)
in specific jurisdictions. See jurisdiction name	proposals for, 61-2, 151-2
	-

of Statute of Anne (Copyright Act 1710), 2, 4, 33–6, 62–4 repealed in 1814 reform, 36–7 'Terms of Trade' negotiation duties, 59–62,	statutory. See Digital Single Market Directive (EU), Article 22; Europe, statutory reversion rights in
151, 156, 158	Vercoe, Elizabeth, 77
United States	video games, 12, 26
authorship of works-for-hire, 164	Visser, J.G., 110
constitutional intellectual property clause, 4	
term of copyright extension, 5, 9–10, 29	Waite, John, 76
termination right. See US termination right	waivers of statutory reversion rights
Untapped the Australian Literary Heritage Project,	European jurisdictions, scope for waivers, 102-3,
13–15, 22, 142–3, 147, 152, 170	110, 115, 120–1
US termination right	foreign choice of law/forum clauses, 83-5, 158,
derivative works carveout, 165	161–3
enforcement challenges, 77-9, 157, 167	prohibitions, appropriate designs, 158-61
evolution	Waller, Fats, 46–8
current regime adoption (1976), 68, 70-1	Warner Brothers, 16–17
first enactment (1790), 63-4	Wealth of Nations, The (Smith), 35-6
Fred Fisher judgment (Supreme Court, 1943),	'Wimoweh'/'The Lion Sleeps Tonight'/'Mbube'
66–8	saga, 43–6
proposed reforms (1960s), 68–70	Winkler, Theresia, 48–9
revised regime (1831), 64-5	WIPO Model Law on Copyright project, 148
revised regime (1909), 65-6	Witcher, The (Sapkowski), 165
inalienability, controversies arising, 79, 85-6	Women in Black, The (St John), 1, 128
foreign law used to circumvent, 83-5,	work-for-hire exemptions from reversion rights,
161–3	72–7, 101–2, 164–5
statutory heirs deprived of termination rights,	
80–3	Yoakam, Dwight, 76
testamentary freedom curtailed, 79–80,	YouTube, 20, 26–7
160–1	Yuvaraj, Joshua
sound recordings, application to, 72-7	other mentions, 165, 173
successful creators privileged, 86–8	research projects. See research projects on
summary of main arguments, 5, 63, 88–9, 152	reversion rights
use-it-or-lose-it rights	
contractual. See contractual reversion rights	Zanzibar, statutory reversion rights, 51–4

