CONSIDER THE FOLLOWING SCENARIO: YOUR book has sold well over the past five years, but now its revenues have fallen to the point where it’s not feasible for the publisher to continue producing, storing, and keeping track of your book. But you still want to get your ideas out to the public, and you would consider self-publishing or giving your book away for free online. Or maybe your publisher is not prepared to issue a revised version, but you’ve received an offer from another publisher to do so. All of these are great options, but you might have a problem: You’ve assigned or exclusively licensed your copyrights to your publisher, and the license hasn’t expired. This means your publisher still controls the rights to your work, even if it is not actively exploiting those rights and has no plans to do so in the future.
The solution: a rights reversion clause—also commonly called an out-of-print, discontinuance, or (somewhat confusingly) termination clause. These provisions allow you to get some or all of your copyrights back from your publisher if certain conditions are met. (Authors Alliance’s guide to Understanding Rights Reversion outlines the steps authors can take to revert rights either by exercising contractual clauses or through negotiations with their publishers.\(^{21}\))

The word “termination” can actually mean three different things when it comes to your contract. First, there’s the kind mentioned above—a “termination clause” that deals with rights reversion. Second, there’s termination of the contract itself, covered in Chapter 17: Termination. Finally, there’s statutory “termination of transfer,” which is a right the Copyright Act gives to authors that allows them to terminate some transfers of copyright, notwithstanding contractual language to the contrary. To be eligible for statutory termination of transfer a work typically must be at least 35 years old, and notice must be given at least two years before the right is exercised.\(^{22}\) (For information on statutory
termination of transfer, visit the Authors Alliance/Creative Commons Termination of Transfer Tool at rightsback.org.)

There are typically three components that make up the rights reversion clause:

1. a triggering condition that must be satisfied before your book is eligible for reversion;
2. steps that must happen if the clause is triggered and you want to exercise the right to revert; and
3. any additional obligations related to the reversion.

This chapter reviews variations of these components and helps you identify terms that serve your interests and future plans.

TRIGGERING CONDITIONS

Generally, a rights reversion clause will contain a triggering condition that must be satisfied before you have a contractual right of reversion. Since the reversion of your copyrights generally depends on the triggering condition being fulfilled, it is in your interest to precisely detail these conditions so there is no
confusion about whether they’ve been met. This section introduces the most common triggering conditions.

**Out of Print**

*Out-of-print* triggering conditions are common in reversion clauses. Under this type of trigger, a book becomes eligible for reversion when the publisher ceases to keep the book “in print.” Before the advent of print-on-demand and digital technology, this usually meant that the triggering condition for reversion was satisfied when the publisher stopped printing copies of the book and had no copies or licensed editions available for sale. However, in the digital age, the definition of “in print” has become less straightforward: Is a book in print if it is only available as an ebook? What if it is only available via print-on-demand technology? Can anything be truly out of print these days?

You can avoid this ambiguity either by requesting a specific definition of what constitutes out of print in your contract, or by choosing an entirely different triggering condition.

Watch out if your contract defines a book as being in print if it is available in electronic formats or as print-on-demand without further specifying
that a minimum amount of sales is required. Without a requirement that a certain number of electronic or print-on-demand copies be sold each year, your book may effectively never go out of print. To avoid this situation, consider including language that requires a certain threshold be met for the electronic edition to be considered in print, like so:

If the Work is only available as an Electronic Book or through a form of print-on-demand capability, the Work shall not be deemed in print unless such Electronic Book and/or print-on-demand capability generates combined sales of no less than 250 copies per year.

If it’s important to you that your book always be distributed in a certain format (say, as a hardcover with four-color printing), then you might try to define the reversion trigger in a way that is tied to your preferred format.
Success Story

An author interviewed for this guide recognized the importance of a clearly defined triggering condition for reversion. Her publisher’s standard contract had a rights reversion clause that was triggered by a works in-print status, but it didn’t specify what it meant for the work to be in print. In particular, she was concerned that “in-print” could include digital formats. After raising this concern with her publisher, the publisher inserted a provision into the author’s contract that linked the definition of “in print” to the availability of hard copy print formats.

Earning and Sales Thresholds

In order to avoid difficulties in interpreting what the phrases “out of print” or “in print” mean, some publishers have shifted to reversion clauses based on the amount of revenue earned or the number of copies sold. Under these clauses, books become eligible for reversion if the revenue earned or number of copies sold in a given period of time falls below a certain threshold.

For example, if an earnings threshold is the trigger, an author is eligible to revert rights when royalties dip
below a certain amount. Such clauses typically specify that a work is deemed out of print if the author earns less than a certain amount in any given royalty period.

**Success Story**

Pamela Samuelson, a co-founder of *Authors Alliance*, wanted to make sure that she could get her rights back if her book was no longer selling well. The original version of her publication contract included a triggering condition that was based on the availability of English-language editions. Concerned that the mere availability of an ebook version of her book, regardless of sales, would mean that this triggering condition would never be met, Professor Samuelson negotiated for a change to the publisher’s standard triggering condition. After some initial resistance from the publisher and through persistent but respectful communication explaining her concerns, her reversion clause now is triggered if author earnings fall below a certain level. The clause now also directs the parties to discuss open access or similar distribution as an alternative to a full reversion of rights.
Another possibility is to use a sales threshold, where reversion is triggered if the publisher sells fewer than a certain number of copies:

In the event that the sales of the Publisher’s edition(s) of the Work in print format and in any ebook format(s) are fewer than the average of 50 copies annually in any two consecutive calendar years ... the Author may request to have all rights granted to the Publisher under this Agreement reverted....

If your book isn’t a particularly high royalty-earner, or if copies are often sold at a deep discount, an earning threshold may be a better alternative than a sales threshold.

**Stock Threshold**

Although not common today, some reversion clauses include triggering conditions that are based on the publisher’s stock of a book. Under these clauses, a book becomes eligible for reversion if the publisher’s stock of the book falls below a specified stock threshold.
This kind of triggering condition doesn’t have much bite, because if the publisher is willing to set aside room to keep a certain number of copies around, it can prevent you from ever getting your rights back. Further, it can be difficult for an author to find out how many copies the publisher has in its inventory.

**Hybrid Triggers**

Many contracts include *hybrid* triggering conditions that mix-and-match different types of triggering criteria. For example, a contract could say that reversion is triggered if the publisher stops offering physical copies for sale and sells fewer than 250 electronic copies per accounting period. This means that if a publisher ends physical production, the reversion clause wouldn’t be triggered so long as the publisher continues to actively sell the book in digital form. Another hybrid form would be to combine a sales and earnings threshold, where a book has to sell a set number of copies and has to earn a certain amount in royalties for it to remain “in print.”

Remember that although this section has presented several common examples of triggering conditions, a right of reversion can be triggered by any
condition you and your publisher agree to. Whatever triggering condition you settle on, try to tailor it to your overall publication goals, even if this results in a somewhat unconventional set of conditions.

INITIATING A REVERSION

Once you’ve established a clear triggering condition, your contract should precisely define what happens when that condition is triggered. Consider this author-unfriendly rights reversion clause as an example of what not to do:

If the Work has been declared out of print by the Publisher in the United States, the Publisher may, but shall not be obligated to, offer to revert rights to the Work to the Author.

Under these terms, rights reversion may never occur, even if the out-of-print condition has been triggered, as reversion is left entirely to the publisher’s discretion. Instead, you want your contract to specify that, once the triggering conditions are met, your copyrights will revert to you and your publisher is obligated to provide all necessary documentation of that fact.
Commonly, rights reversion provisions require that an author first gives notice to her publisher that the triggering condition has been met. After notice is received, the publisher may be allowed a certain amount of time—typically two to six months—to “cure” the triggering event and avoid reversion. For example:

If [triggering condition], 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.

It is a good idea to include language that specifies that the publisher must provide the author with a letter within a set time confirming that all rights granted under the agreement have reverted to the author.
ADDITIONAL OBLIGATIONS

There are a few additional issues related to reversion that you may want to make clear in your contract. For instance:

• Will your publisher give you the rights to the cover and other art or materials, or offer to sell them to you at fair market value? Will this include both the copyrights to the work and also the physical documents?
• Will your publisher give or sell you the digital design files of the book?
• Will your publisher give you the option to purchase any remaining inventory at cost?
• Are there any outstanding licenses of your work to third parties? If so, what are the terms of these agreements with the publisher? How will these licenses be treated now?
• When will you receive any unpaid royalties that accrued prior to reversion?

Here’s an example that addresses some of these issues:
Upon reversion, the Author may, within 30 days, purchase [all production materials and digital files] and any remaining copies at cost, or at the remainder price, whichever is lower; otherwise, the Publisher may dispose of said materials, subject to the royalty provisions of this Agreement.

One potential problem with this example is that it specifies that you can acquire the production materials and digital files that you would need to produce additional copies of your book, but it doesn’t mention whether you can acquire ownership or permission to the copyrights that reside in these materials. For example, you may need to acquire both the source files and a copyright license to reuse cover art that was created (or commissioned) by your publisher. A better clause would therefore address both physical materials and intellectual property rights needed for future printings.

Finally, make sure that you have a plan for your book once you revert rights. See Authors Alliance’s guide to *Understanding Rights Reversion* for more information on this topic. 23