



## UvA-DARE (Digital Academic Repository)

### **“Use-it-or-lose-it”: an historic opportunity to achieve better copyright outcomes for creators - will it go to waste?**

*Open letter to the European Commission and the relevant authorities of Member States of the European Union*

Kretschmer, M.; Furgal, U.; Giblin, R.; Benabou, V.-L.; Bently, L.; Borghi, M.; Caso, R.; Cooper, E.; Derclaye, E.; Dobusch, L.; Dusollier, S.; Geiger, C.; Hugenholtz, P.B.; Husovec, M.; Janssens, M.-C.; Margoni, T.; Mezei, P.; Peukert, A.; Quintais, J.P.; Ricolfi, M.; Riis, T.; Senftleben, M.; Sganga, C.; Strowel, A.; van Gompel, S.

#### **Publication date**

2020

#### **Document Version**

Final published version

[Link to publication](#)

#### **Citation for published version (APA):**

Kretschmer, M., Furgal, U., Giblin, R., Benabou, V.-L., Bently, L., Borghi, M., Caso, R., Cooper, E., Derclaye, E., Dobusch, L., Dusollier, S., Geiger, C., Hugenholtz, P. B., Husovec, M., Janssens, M.-C., Margoni, T., Mezei, P., Peukert, A., Quintais, J. P., ... van Gompel, S. (2020). *“Use-it-or-lose-it”: an historic opportunity to achieve better copyright outcomes for creators - will it go to waste? Open letter to the European Commission and the relevant authorities of Member States of the European Union*. CREATE. <https://www.create.ac.uk/blog/2020/12/11/open-letter-revocation-how-authors-and-performers-can-reclaim-their-copyrights/>

#### **General rights**

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

#### **Disclaimer/Complaints regulations**

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

*UvA-DARE is a service provided by the library of the University of Amsterdam (<https://dare.uva.nl>)*



11 December 2020

Open letter to the European Commission and the relevant authorities of Member States of the European Union

**“Use-it-or-lose-it”: an historic opportunity to achieve better copyright outcomes for creators – will it go to waste?**

Contracts covering copyright and performers’ rights are typically very broad, often covering all economic rights, worldwide, for the entire term of copyright (which can be a century or more). These broad takings can be highly problematic: very often, the investor who holds those rights stops exploiting them long before the contract expires, leaving the creator unable to further profit from their work, and the public unable to gain access.

In 2019, the EU adopted the Directive on Copyright in the Digital Single Market which for the first time regulates the contracts of creators. Important provisions establish the principle of appropriate and proportionate remuneration and transparency obligations. Article 22 mandates a right of revocation. Authors and performers should have the right to reclaim their rights where their works are not being exploited by publishers or record labels – a principle of ‘use-it-or-lose-it’.

This historic initiative creates the possibility of new income for creators, new exploitation opportunities for investors, and new access for the public. ‘Use-it-or-lose-it’ rights already exist in some EU member states (and other countries around the world). There are all kinds of variations, including entitlements to reclaim rights:

- Over books that have gone out of print;
- Over languages (in the case of books) that have had rights assigned but were never exploited;
- Where the rightsholder has gone bankrupt;
- Where a creator contributed to a work that was never completed;
- Where royalties haven’t been paid, or appropriate royalty statements have not been provided;
- When the work has not been accepted for publication.

These examples hint at the potential. However, our new analysis ([mapping all reversion rights currently in existence in the EU](#)) shows that these laws were modelled on analogue practices. They don't fully take advantage of digital possibilities, and are often limited to certain kinds of works (such as books).

Termination under these laws is never automatic. Instead, these rights act as the starting point for renegotiating contracts, helping ensure that long-term contractual relationships continue. However, they also provide an important safety valve to release contracts that have outlasted their time.

EU Member states are now deep into the implementation process for the Copyright Directive, which must be completed by July 2021. However, few countries are expressly inviting consultation around Article 22, and some [implementation proposals](#) omit mention altogether. Even countries which already have use-it-or-lose-it rights in their national legislation do not deal explicitly with digital uses (except France in the limited case of books). It is a critical question how to treat works that are technically available online without being meaningfully exploited.

All countries could benefit by taking this opportunity to think critically how use-it-or-lose-it rights could help creators and investors, and help reclaim culture that would otherwise be lost. The new EU mandate offers a once-in-a-generation opportunity to create meaningful new rights for creators – something that is especially important as we look for ways to rebuild the creative industries post-COVID.

We ask Member States to include the revocation right explicitly in their consultations about implementing the Directive on Copyright in the Digital Single Market. We ask the Commission to collect information and conduct a study about the effects of revocation.

Prof. Martin Kretschmer, Professor of Intellectual Property Law  
Director, CREATE (UK Copyright and Creative Economy Centre), University of Glasgow  
[martin.kretschmer@glasgow.ac.uk](mailto:martin.kretschmer@glasgow.ac.uk)

Dr. Ula Furgal, Postdoctoral Researcher, CREATE, University of Glasgow  
[ula.furgal@glasgow.ac.uk](mailto:ula.furgal@glasgow.ac.uk)

Assoc. Prof. Rebecca Giblin, ARC Future Fellow  
Director, Intellectual Property Research Institute of Australia (IPRIA), University of Melbourne  
[rebecca.giblin@unimelb.edu.au](mailto:rebecca.giblin@unimelb.edu.au)

The Author's Interest Project ([authorsinterest.org](http://authorsinterest.org)) and CREATE ([create.ac.uk](http://create.ac.uk)) are collaborating with reCreating Europe (<https://www.recreating.eu/>) on a project, mapping reversion rights.

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

## **First signatories**

Prof. Valérie-Laure Benabou, Aix-Marseille Université (AMU)

Prof. Lionel Bently, Director, Centre for Intellectual Property and Information Law (CIPIL), University of Cambridge

Prof. Maurizio Borghi, Director, Centre for Intellectual Property Policy & Management (Jean Monnet Centre of Excellence 2018–21), Bournemouth University

Dr. Roberto Caso, Associate Professor of Comparative Private Law, Università di Trento

Dr. Elena Cooper, Leverhulme Early Career Fellow, CREATE, University of Glasgow

Prof. Estelle Derclaye, Professor of Intellectual Property Law, University of Nottingham

Prof. Leonhard Dobusch, Professor of Business Administration, University of Innsbruck, and Academic Director of the Momentum Institute, Vienna

Prof. Séverine Dusollier, School of Law, SciencesPo, Paris

Prof. Christophe Geiger, Director, Research Department, Centre d'Etudes Internationales de la Propriété Intellectuelle (CEIPI), Université de Strasbourg

Prof. P. Bernt Hugenholtz, Professor of Intellectual Property Law, Institute for Information Law, University of Amsterdam

Dr. Martin Husovec, Assistant Professor of Law, London School of Economics

Prof. Marie-Christine Janssens, Head of Unit, Centre for IT & IP Law (CiTiP) – imec, KU Leuven

Prof. Thomas Margoni, Research Professor of Intellectual Property Law, Centre for IT & IP Law (CiTiP) – imec, KU Leuven

Dr. Péter Mezei, Associate Professor of Law, Institute of Comparative Law and Legal Theory, University of Szeged

Prof. Alexander Peukert, Chair in Civil and Intellectual Property Law, Goethe Universität, Frankfurt am Main

Dr. João Pedro Quintais, Postdoctoral Researcher, Institute for Information Law (IViR), University of Amsterdam

Prof. Marco Ricolfi, Chair of Intellectual Property Law, Department of Legal Studies, Turin University, and Co-Director of the Nexa Center of the Polytechnic of Turin

Prof. Thomas Riis, Professor, Centre for Information and Innovation Law, University of Copenhagen

Prof. Martin Senftleben, Director, Institute for Information Law (IViR), University of Amsterdam

Dr. Caterina Sganga, Associate Professor of Comparative Private Law, Coordinator, reCreating Europe H2020 consortium, Scuola Superiore Sant'Anna, Pisa

Prof. Alain Strowel, Professor, UCLouvain and Université Saint-Louis

Dr. Stef van Gompel, Associate Professor, Institute for Information Law (IViR), University of Amsterdam