

AFTER THE DEAL: AUTHORS' SECOND CHANCES IN A GLOBAL COPYRIGHT ECONOMY

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ABSTRACT

Copyright law is designed to vest creators with rights that secure both control over their works and the capacity to derive economic value from their creativity. Yet, in practice, the commercialization of most creative outputs is mediated through intermediaries (such as book publishers, music labels, and film studios) whose role is indispensable but not neutral. In other domains, particularly the fine arts, the transfer of the tangible embodiment of a work often confers upon its owner a significant degree of control over its exploitation.

This structural arrangement gives rise to an inherent tension between creators, on the one hand, and intermediaries and physical owners, on the other. While contractual mechanisms serve as the principal means of allocating rights and addressing this tension across legal systems, they are not the sole regulatory tool. Many jurisdictions superimpose a layer of inalienable authors' rights, designed to preserve an author's enduring connection with the work, or at least its economic exploitation.

This essay focuses on a distinct subset of such rights: those grounded in the normative commitment to afford authors a "second bite" at the economic fruits of their creations. These rights take different forms. In some countries, notably the United States, but also Germany, the Netherlands, and others, authors may reclaim transferred rights through termination mechanisms, thereby reopening opportunities for renegotiation and prospective control over exploitation. In other jurisdictions, particularly within the European Union, authors are granted rights vis-à-vis the owners of tangible works, such as resale royalty rights, which ensure continued enjoyment of downstream commodification. Although these regimes differ in structure, they share other features, including aspects of their theoretical justification, as well as their inalienability.

The first aim of this essay is to map these rights, trace their evolution, especially in recent years, and critically assess the extent to which they meaningfully advance the interests of authors and authorship.

The essay then situates these rights within the context of increasingly globalized markets for informational goods. Because such mechanisms are not harmonized through widely adopted international instruments, they vary significantly across jurisdictions, producing legal fragmentation and potential market distortions. These divergences may influence both the geography of creative production and the locus of commercialization. For example, it has been argued that the early adoption of resale royalty rights in France contributed to a shift in art market activity toward the United Kingdom.

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Moreover, jurisdictional variation invites strategic litigation, as parties seek to leverage favorable legal regimes and encourage courts to assert authority over worldwide rights. This phenomenon is evident in disputes concerning termination rights on both sides of the Atlantic, including cases involving Duran Duran in the United Kingdom, Paul McCartney in New York, and recently, Cyril Vetter in Louisiana.

Against this backdrop, the essay explores the tensions generated by these inalienable rights, examines how national courts and other institutional actors might respond, and ultimately considers whether a more coordinated, international approach would be normatively desirable and practically feasible.