

Codebook for Exploratory Study into Contracts from the Australian Society of Authors Archive

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I Introduction

This is a guide for coding clauses collected from book publishing contracts within the archive of the Australian Society of Authors ('ASA'). The coder will be provided with a spreadsheet of raw data that the researchers have extracted from contracts in the Australian Society of Authors archive in Sydney, Australia. A random sample of rows of data from 30 contracts has been selected from the sample of 145 contracts.¹ The sampled subjects are set out in the random order generated. Row numbers have been hidden to prevent coders from associating data in a subject with the year the contract was provided.

The task involves reading this data and answering the questions in the adjoining columns with one of the "potential answers" for each question. If one of the "potential answers" cannot be selected then you should type "unsure".

Note: Changes to the codebook since the reliability test was undertaken on 27 November 2019 are in bold.

¹ This website was used to generate the sample: <https://stattrek.com/statistics/random-number-generator.aspx#error>. The website describes the sample as follows: 'This table of 30 random numbers was produced according to the following specifications: Numbers were randomly selected from within the range of 2 to 146. Duplicate numbers were not allowed. This table was generated on 10/22/2019.'

II Coding Instructions

Category 1: Rights assigned

Q1: *What were the territories over which the publisher was granted rights to print, publish and/or license the use of the work? (Spreadsheet column: **Territories**)*

This question is designed to determine how geographically wide the grant or licence of rights to print, publish and/or licence the work is. It does *not* cover provisions that require the author’s approval for the publisher’s sale of the book in a particular territory or territories. The publisher must have the unfettered right to sell the book in a particular territory for it to qualify as a positive response. For example, if it says rights to sales or licences in the United States are jointly-controlled then the answer selected should reflect that the US is not included in the grant or licence.

However, it *does* cover territories in respect of which there are:

1. Provisions where the publisher may have to consult with the author before selling those rights but *without* an express requirement for the author’s consent.
2. Provisions allowing the publisher to negotiate the sale of such rights without an *express* requirement for the author’s consent.
3. Grants or licences to print, publish and/or licence the work where the publisher has not specified whether it is exclusive, or mentioned it is a sole grant/licence.

Code	Possible answer	Explanation
A	Aus & NZ	Where the licence or grant is only exclusive throughout Australia and New Zealand. This includes if the publisher can sub-license rights in jurisdictions other than that territory without the author’s consent, as we are only focused on the main grant to print, publish and/or license the work.
B	Aus, NZ, and UK	Where the licence or grant is only exclusive throughout Australia, New Zealand, and the UK. This includes if the publisher can sub-license rights in jurisdictions other than that territory without the author’s consent, as we are only focused on the main grant to print, publish and/or license the work
C	Aus & NZ, world	Where there is one exclusive grant or licence to print, publish and/or license the work in Australia and New Zealand and another grant or licence for printing, publishing and/or licensing rights around the world.
D	Countries which “at the date of this Agreement are members of the British Commonwealth or are	Where the text is extracted.

	colonies or trusteeship territories of such members and in the Republic of South Africa, the Irish Republic, Burma, Egypt, Iraq, israel, Jordan and the British Trusteeships. The licence shall be non-exclusive throughout the rest of the World except the United States of America, its Colonies and Dependencies and the Philippine Islands.”	
E	Not specified	Where the extracted data does not say what territories the grant or licence covers. This includes even if the royalty layout seems to indicate that the publisher can print the work in particular territories. This is because it is not specified in the grant what territories the rights to print, publish and/or license the work cover.
F	World	Where the publisher is granted worldwide rights to print, publish and/or license the work. This includes but is not limited to the use of the phrases “worldwide”, “throughout the world”, “in all territories”. This includes if the contract purports to take the entire copyright (if the answer to Q4 is “assignment”). It does not include if the publisher has a non-exclusive right over certain territories or requires the author’s approval to exercise rights in certain territories.
G	World except NZ	Where the grant or licence to print, publish and/or license the work covers the world except New Zealand (meaning the publisher cannot unilaterally exercise rights in New Zealand: they may need to get the author’s approval).
H	World except US	Where the grant or licence to print, publish and/or license the work covers the world except the United States (meaning the publisher cannot unilaterally exercise rights in the United States: they may need to get the author’s approval).

Q2: What were the languages in which the publisher could print, publish, and/or license the use of the work? (Spreadsheet column: *Languages*)

This category covers the languages in which the publisher had rights to print, publish and/or license the book. There are usually two ways in which this is granted in publishing contracts: the main grant

to print, publish and/or license the book, and the grant of the right to use or sell translation rights to other publishers.

Code	Possible answer	Explanation
A	All languages	<p>Where the publisher is granted rights to publish, print and/or license the work in all languages.</p> <p>This includes if they are granted rights in one language <i>and</i> subsidiary translation rights that can be exercised <i>without</i> the author’s consent. This is because the publisher is <i>functionally</i> granted rights in all languages: rights to publish, print and/or licence the work in one language and rights to translate into others.</p> <p>Where a publisher is required to <i>consult</i> an author prior to selling translation rights that still qualifies as being able to sell those rights without the author’s consent, because there is no express provision for the author to veto the sale by failing to give consent.</p> <p>Similarly, it is assumed that publishers can conclude the sale of translation rights where they are given rights to <i>negotiate</i> the sale of those rights and there is no express requirement for the author’s consent.</p> <p>This option should be selected if the publisher purports to take the entire copyright (if the answer to Q4 is “assignment”).</p> <p>This option should not be selected if it is implied that all languages are granted: that is, outside of a specific grant of all languages or a grant of copyright.</p>
B	All languages + translation rights consent	<p>Where the publisher is granted rights to publish, print and/or license the work in all languages but requires the author’s consent to exercise translation rights.</p> <p>As above, the author’s consent is presumed not to be required if the publisher must <i>consult</i> the author or the publisher has rights to <i>negotiate</i> the sale of the translation rights but in either case there is no express requirement for the author’s consent.</p>
C	English	<p>Where the publisher is only expressly granted the rights to print, publish and/or license the work in English.</p> <p>This applies if translation rights are not mentioned <i>or</i> if they are granted translation rights but have to obtain the author’s approval to sell or exercise those rights.</p> <p>This does not apply if the language is <i>implied</i> to be English (e.g. there is no language specified for printing, publishing</p>

		and/or licensing but the subsidiary rights indicate that sale of rights other than English are subject to the author’s consent). We are only looking for express grants of the rights to print, publish and/or license the work in English.
D	Not specified	Where the languages in which the publisher can print, publish and/or license the work are not stated. This includes <i>even if translation rights are granted to the publisher</i> , because it is still not expressly clear what languages the primary printing, publishing and/or licensing grant is for. Therefore the clause is <i>incomplete</i> and we are not able to definitively claim exactly what languages have or have not been granted to the publisher. However in Q3 we do identify those for which the publisher has been granted translation rights.
E	Unclear	Where there are multiple options for the languages in which the publisher can print, publish and/or license the work and one has not been selected.

Q3: If the languages in which the publisher could print, publish, and/or license the use of the work are not specified, is the publisher granted translation rights? (Spreadsheet column: **Translation Rights If Language Not Specified)**

This question seeks to identify whether the publisher has been granted the right to use and/or sell and/or license *translation* rights in the work even though the contract may not have specified the languages in which they can print, publish and/or license it. Consistent with Q2, the publisher must not be required to obtain the author’s consent for the answer to be positive.

Code	Possible answer	Explanation
A	Yes	Where the publisher has the ability to use and/or sell and/or license translation rights without requiring the author’s consent. They are still considered to have the ability to do so without requiring the author’s consent if they are required to <i>consult</i> with the author or have the rights to <i>negotiate</i> the sale of the translation rights, as it is not expressly stated that they have to obtain the author’s consent in those situations.
B	No	Where the publisher either does not have the right to use and/or sell and/or license translation rights or cannot do so without requiring the author’s consent. This includes if the translation rights are not expressly stated in the grant or license of subsidiary rights but the author is granted “all other rights” or something equivalent to that: this is because we are looking only at express grants of translation rights.

C	N/A	Where the answer to Q2 was either ‘all languages’, ‘all languages + translation rights consent’, ‘English’, or ‘unclear’.
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The $\pi=0.22$ (83.3%) score for Q3 can be attributed to the fact that for all the disagreements (n=5) the external coder chose “C”. “C” depends on a particular answer to Q2; however, these 5 rows were subject to disagreements for Q2 as well. The clarifying notes in Q2 (e.g. the coder selecting “all languages”) when none have been specified) should result in fewer disagreements in that question and by extension for Q3 as well.

Q4: *Were the rights assigned (eg ownership vested in the publisher) or licensed to the publisher (eg ownership remains with the author?) If licensed, what kind of licence was it? (Exclusive, sole, non-exclusive) (Spreadsheet column: **Type of grant**)*

This question is about the type of grant or licence the publisher had to print, publish and/or license the work.

The text in bold clarifies the instructions in relation to five disagreements between assignments and exclusive licences from a reliability test conducted on 27 November 2019.

Code	Possible answer	Explanation
A	Assignment	Where the contract purports to grant copyright to the publisher. This includes: <ol style="list-style-type: none"> 1. If the copyright insignia is to have the publisher’s name beside it. 2. If copyright is to be taken in the publisher’s name. 3. If the publisher is granted all rights in the work, which would be the equivalent of granting copyright. <p>This applies even if other parts of the clause suggest or state that a licence is being granted, because that is a deficiency in drafting.</p>
B	Exclusive licence	Where the publisher is granted rights to print, publish and/or license the work with the word “exclusive” in that grant or license. However, a licence to do all acts comprised in the copyright is not to be construed as an assignment: it is still a licence.
C	Non-exclusive licence	Where the publisher is granted rights to print, publish and/or license the work and neither the word “sole” nor the word “exclusive” appears in the grant or license.
D	Sole licence	Where the publisher is granted rights to print, publish

		and/or license the work and only the word “sole” appears in the grant or license, rather than “exclusive”.
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Q5: How long was the publisher granted rights to print, publish and/or license the use of the work?
(Spreadsheet column: Duration)

This question seeks to determine the length of time for which the publisher could print, publish and/or license the work. As the focus was on this main grant or licence we have not recorded data as to the duration for which subsidiary rights are granted, or their royalties are payable (except for one contract where we noticed it).

Code	Possible answer	Explanation
A	1 year	Where the term of the grant or licence is for 1 year.
B	3 years	Where the term of the grant or licence is for 3 years.
C	10 years + subsidiary/overseas term	Where the term of the grant or licence is for 10 years and there is a separate term for subsidiary or overseas rights. This would apply if, for example, certain rights revert to the author after [x] years if they are unsold.
D	15 years + subsidiary/overseas term	Where the term of the grant or licence is for 10 years and there is a separate term for subsidiary or overseas rights. This would apply if, for example, certain rights revert to the author after [x] years if they are unsold
E	3 years from when the Work becomes available in print format. Agreement automatically renewed unless discontinued in accordance with para... [redacted]	Where the term is 3 years from when the Work becomes available in print format and can be automatically renewed unless it is discontinued.
F	Entire term	Where the publisher has the right to print, publish and/or license the work for the whole term of copyright. This includes: 1. Where the publisher is granted copyright in the work (where the answer to Q4 is “assignment”). 2. Where the publisher is granted rights

		for the duration in which copyright is in effect. ²
G	Entire term + future	Where the publisher has the right to print and/or publish and/or license the work for the whole term of copyright and renewals/extensions of that term. The allowance for future terms, renewals and/or extensions must be expressly stated in the clause for this answer to be selected. This includes where the publisher is granted copyright in the work (where the answer to Q4 is “assignment”) <i>and</i> it is specified that renewals/extensions are granted as well.
H	Entire term + subsidiary/overseas term	Where the publisher has the right to print and/or publish and/or license the work for the whole term of copyright BUT there is a limit on how long subsidiary or overseas rights are granted for (eg those rights granted for 4 years or revert to authors if there are no sales of them within 18 months).
I	Term not specified	Where the term of the rights to print, publish and/or license the work is not specified. This does not include where the publisher purports to take copyright (where the answer to Q4 is “assignment”) as the answer in that case can only be “entire term”.
J	Term not specified + subsidiary/overseas term	Where the term of the rights to print, publish and/or license the work is not specified, BUT there is a limit on how long subsidiary or overseas rights are granted for (eg those rights are granted for four years or revert to authors if there are no sales of them within 18 months).
K	When no longer in print	When the term to print, publish and/or license the work is specified to be as long as the book is in print, when the work is out of print, or variations of that wording.
L	When no longer in print + subsidiary/overseas term	When the term to print, publish and/or license the work is specified to be as long as the book is in print, when the work is out of print, or variations thereof, BUT there is a limit on how long subsidiary rights or overseas rights are

² It could be implied that this would mean the publisher’s rights would apply in any extended term. However, for the sake of minimising subjective interpretation in the coding process we are applying an “entire term” answer to this situation. Only contracts which expressly grant future terms to the publisher should be coded as such.

		granted for (eg those rights are granted for 4 years or revert to authors if there are no sales of them within 18 months).
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Q6: *Were there any term restrictions on the use of subsidiary or overseas rights? (Spreadsheet column: **Term of subsidiary/overseas rights**)*

This question seeks to identify whether there is a separate, specific term for which subsidiary and overseas rights are granted.

Code	Potential answer	Explanation
A	1 year	Where the term of the subsidiary or overseas rights is 1 year.
B	2 years	Where the term of the subsidiary or overseas rights is 2 years.
C	5 years	Where the term of the subsidiary or overseas rights is 5 years.
D	18 months to negotiate for rights outside Aus & NZ	Where there is a further term of 18 months for the publisher to negotiate the sale of rights in the work outside Australia and New Zealand..
E	3 years (ebooks + subsidiary rights)	Where the term of the subsidiary or overseas rights is 3 years and it also applies to ebooks.
F	5 years + subsidiary 18 months to negotiate worldwide rights	Where the term of the subsidiary or overseas rights is 5 years AND there is a further term of 18 months for the publisher to negotiate the sale of worldwide rights.
G	N/A	Where the data does not list any term limits on subsidiary rights.

Category 2: Reversion clauses

Q7: *If the contract had an out-of-print clause, was there a standard within the clause to determine whether the work was out of print? (Spreadsheet column: **Specific type of out-of-print clause**)*

Preface:

1. An out-of-print clause is permits the rights granted or licensed to the publisher to revert back to the author (whether automatically or upon demand by the author) if the book goes out of print. Variations of the “out-of-print” concept include if the book is off the market, no longer

on sale, or not available. The main criterion is that the author should have the right to terminate the grant or license and/or have their rights revert back to them *if the book is no longer being sold or available*.

2. *As a sample of the larger selection has been randomly selected there is a chance that certain rows may not have out-of-print clauses at all. If that is the case then Q8 - Q11 should be answered with "N/A".*

This question seeks to identify whether the contract specified a particular threshold to define when a book is out of print. This can be either an *objective threshold* (eg a number of sales the book had to meet within a particular time period, the number of copies of the book that the publisher has in stock at a particular time) or a *non-objective threshold* (eg a book is out of print if it is not available in any edition or under contract for publication within one year of it going out of print).

If there are multiple criteria for whether a book is out-of-print, or multiple triggers for the termination/reversion process to be activated, then the option or *path* that allows the author the most leeway to terminate the contract should be selected (the most "author-friendly" approach). For example:

1. If the contract indicates that the author can give notice to terminate the contract if the publisher deems demand for the work to have ceased OR the work is out of print, then the variety of out of print clause should be coded as "out of print" instead of "publisher's discretion". This is because the former gives the author the power to activate the clause while the latter relies on the publisher's discretion: therefore, the former is more "author-friendly".
2. If the author can terminate the contract if the work is "out of print or off the market", but the clause then goes on to specify that a book is considered out of print if it fails to meet a specific stock and/or royalty threshold, then it should be coded as "objcrit stock and royalties" or "objcrit stock or royalties". This is because having objective criteria is friendlier to authors due to it being a clear standard for them to point to when seeking to terminate a contract, rather than having to meet an undefined and sometimes unduly high standard of "out of print or off the market".
3. If the contract defines out of print as the time when the publisher deems the demand for the work insufficient but then the clause specifies the author can seek to terminate the contract if the work is not available in any edition, then the clause should be coded as "not available in any edition". This is because the latter gives the author the power to activate the clause while the former relies on the publisher's discretion: therefore, the latter is more "author-friendly".

However if there are multiple options that must *both* be fulfilled then the coding must reflect that fact. For example, if the clause states that the author can terminate the contract if the work is out of print *and* not available in any edition, and the clause later provides that a book is out of print if it fails to meet a specific royalty/stock threshold, the clause should still be coded as "out of print and not available in any edition". This is because even if the specific royalty/stock threshold is met, the author still has to prove that the work is not available in any edition before they can activate the out-of-print clause.

Code	Potential answer	Explanation
A	Declared by publisher AND not available for purchase including electronically	Where the publisher decides that the work should no longer be kept available for purchase and fails to do so, including by way of electronic copy.
B	Declared by publisher to be out of print	Where the publisher decides and notifies the author that the work is out of print. This does not include if the publisher determines there is no more demand and can destroy plates, books etc but there is no express reference to the agreement terminating and/or rights returning to the author.
C	Not for sale in any edition	Where the clause includes criteria like “not for sale in at least one edition” or “not for sale in any edition”.
D	Not held in stock in saleable quantities	Where the criterion is that the work is “not held in stock in saleable quantities”.
E	Objcrit copies sold	Where the work is considered out of print if it fails to sell a certain number of copies, whether over a specified period of time or not. This also applies if there are two alternative sets of objective criteria relating to copies sold. This is because in either case the author has a “copies sold” threshold to rely on when seeking to activate the out-of-print clause.
F	Objcrit royalties	Where the work is out of print if it does not meet a specified financial royalty threshold.
G	Objcrit stock and royalties	Where the work is out of print if it does not meet a specified financial royalty threshold AND a specified stock threshold.
H	Objcrit stock or copies sold	Where the work is out of print if it does not meet a financial royalty threshold OR a specified stock threshold.
I	Off the market	Where <i>only</i> the phrase “off the market” is used in the out-of-print clause.
J	Off the market and not available in any edition	Where the phrase “off the market and not available in any edition” is used in the

		out-of-print clause (or something close to that effect). This includes if it is “off the market and not available in any edition issue or authorised by the publisher.”
K	Out of print	<p>Where the clause simply allows termination if the work is “out of print” or “not in print”, without further elaborating on what that means.</p> <p>This includes if the clause states that the work is not available <i>because</i> the work is out of print: in other words, the final determinant of availability is that the work is out of print, but no further clarification is given on how this criterion is met.</p>
L	Out of print and it is mutually agreed that the Work’s potential both as a book and with subsidiary rights has been fully exploited	Where the clause can be activated if the work is out of print and both parties mutually agree “that the work’s potential both as a book and with subsidiary rights has been fully exploited”.
M	Out of print and not available in any edition	<p>Where the clause can be activated if the work is “out of print and not available in any edition”, or something close to that effect.</p> <p>This does <i>not</i> include where the clause states that the work will be considered out of print if no editions of the work are available or contracts in existence for the publication of that work within a particular time period. It only applies if there is a phrase like “out of print and not available in any edition”.</p>
N	Out of print AND off the market	Where the clause contains the phrase “out of print and off the market” or something close to that effect. For example, off the market and not in print in any edition, or out of print AND no copies are on sale (“no copies on sale” being the equivalent of “off the market”).
O	Out of print in all editions	Where the clause contains the phrase “out of print in all editions”, “if all editions of the work...are out of print” or something close to that effect and/or the work is considered out of print if no editions of the work are available or contracts in existence for the

		publication of that work within a particular time period. It also includes if the work is not being exploited anywhere by the publisher.
P	Out of print or off the market	Where the clause contains the phrase “out of print or off the market”. This includes if it says “out of print or off the market in all editions”.
Q	Publisher can terminate and discontinue at their sole option	If the only way for the contract to end for a work being out of print is for the publisher to terminate and discontinue the sale of the work at their sole option
R	Unavailable for sale	Where the clause contains the phrase “unavailable for sale”.
S	N/A	Where there is no out-of-print clause.

The $\pi=0.64$, 70% score obtained in a reliability test on 27 November 2019 for this variable can be attributed to the extreme variability and poor drafting of the clauses.

Q8: What was the broad category of the standard used to determine whether the work was out-of-print (Broad category of type of out of print clause)?

This question seeks to identify whether the standard used to determine whether the work was out of print was based on technical availability, objective criteria, or the publisher’s discretion.

Code	Potential answer	Explanation
A	Non-objective criteria (technical availability)	<p>Where the work being out of print is either defined by a non-objective standard or complemented by a non-objective standard. E.g. out of print and not available in any edition, out of print or off the market, out of print and off the market.</p> <p>This includes:</p> <ol style="list-style-type: none"> 1. Clauses where the standard is that the work is out of print, without further elaboration on what this means. This is because authors are not contractually protected from publishers referring to norms that are based on technical availability to argue that the work is not actually out of print. 2. Clauses in which ‘out of print’ may be defined according to a stock or royalty threshold but the author has to show that the work is unavailable in addition to this threshold: functionally, the clause still operates according to a technical availability standard.

		3. Clauses in which a work being out of print means it is not held in stock in saleable quantities, as ‘saleable quantities’ is not further defined and could be the subject of disagreement between the parties.
B	Objective criteria	Where the work being out of print is defined by an objective criteria. This includes the number of copies in stock, the number of copies sold in a particular period, the amount of royalties made over a particular period, etc. It does not include where there is a stock or royalty threshold but the author still has to show that the work is unavailable in any edition.
C	Publisher’s discretion	Where the clause requires the publisher to determine whether the work is out of print. This includes where it is then required that the publisher fails to keep the work available: the publisher still has discretion to initiate the out-of-print procedure in the first place. This includes where the author can commence termination processes if the work is out of print and it is mutually agreed that the work’s potential both as a book and with subsidiary rights has been fully exploited. This is because the publisher retains discretion over whether they mutually agree the work’s potential has been fully exploited and thus prevent the author from reclaiming their rights.
D	N/A	Where there is no out-of-print clause.

Q9: Did the author have to give the publisher notice to reprint once the work was out of print? If yes, how long was that notice? (Spreadsheet column: *Notice to reprint*)

This question seeks to identify whether the author was required to give the publisher notice to reprint the work once it was out of print, before the rights reverted to the author (whether automatically or by further notice from the author).

This question does not cover the following situations:

1. If the author can terminate the contract and/or regain their rights by giving notice in writing to the publisher (without a requirement to reprint the work);
2. If rights simply revert to the author automatically when a work goes out of print.

This question involves several contracts with unclear and poorly drafted out-of-print clauses. Therefore, the following guidelines apply:

1. Potential answers which have a single number apply to the months of notice the author can give the publisher to reprint or reissue the work. This includes phrases like “putting a new edition in hand” or making it available to the market: essentially, having a new edition of the book *printed and/or available for purchase* at the end of the allotted notice period.
2. However, if the contract specifies that the publisher has [x] months to put a work in hand to

be put on sale [y] months later, then add [x] and [y] to produce [z] months in total and then select [z] as the potential answer value.

3. If the notice period allows the publisher to *begin* to put processes in place to reprint, as opposed to actually *completing* the reprinting (eg, [x] months to “make arrangements...for the publication of a new edition...”, “authorise the reprinting”, “contract for its reissue”, “order their printers to prepare a new edition and...to publish such new edition as quickly as trade conditions permit them”, “contract for purchase within a reasonable time”), *add 6 months* as a reasonable time for the publisher to complete reprinting. Therefore the final notice period should be the notice period to begin reprinting plus 6 months.
4. However, if the clause says something like rights revert if the publisher fails to agree to reprint the work within [x] months, that should not have 6 months added to it. There is some ambiguity as to whether this means the publisher has [x] months to *agree* to reprint the work or [x] months to actually reprint the work. We have adopted the plain language reading that indicates the former, because the agreement appears to be to reprint the work within [x] months. If they do not agree to do so, then by default they do not do so within [x] months, and the author’s rights return to them after that period. However we acknowledge there is the possibility of the latter being used: this is a drafting deficiency.
5. Likewise if the rights revert after the publisher ‘decline[s] within [x] months to do so [republish the work]’ 6 months should not be added. This is because the declining appears on a plain language reading to apply to the decision to republish the work within [x] months, despite the odd placing of the phrase ‘within [x] months’.
6. It is different if the sentence states something like: ‘if within [x] months the publisher has not agreed to publish a new edition...’ In *that* case, 6 months should be added. This is because it is the act of agreeing to publish, rather than actually publishing, to which the time period applies.
7. If the clause specifies that the author’s requirement for the publisher to reprint the work shall be met if publication of a reprint is scheduled within [x] months of the notice, then the final notice period should be [x], if [x] is longer than the actual notice period. This is because the maximum period the publisher can keep the rights is [x], if there is already a contract for publication at the time the author has given notice.

Code	Potential answer	Explanation
A	2	Where the author can give the publisher 2 months’ notice to reprint the work.
B	3	Where the author can give the publisher 2 months’ notice to reprint the work.
C	6	Where the author can give the publisher 6 months’ notice to reprint the work.
D	7	Where the author can give the publisher 7 months’ notice to reprint the work.
E	9	Where the author can give the publisher 9 months’ notice to reprint the work.
F	11	Where the author can give the publisher 11 months’ notice to reprint the work.

G	12	Where the author can give the publisher 12 months' notice to reprint the work.
H	14	Where the author can give the publisher 14 months' notice to reprint the work.
I	18	Where the author can give the publisher 18 months' notice to reprint the work.
J	24	Where the author can give the publisher 24 months' notice to reprint the work.
K	3 for out of print 6 for out of print and not available in any edition	Where there is one clause that states the author can give 3 months' notice to reprint if the work is out-of-print, and another clause stating the author can give 6 months' notice to reprint if the work is out-of-print and not available in any edition.
L	1.5 if gross sales are fewer than 50 copies in two successive accounting periods. 30 days if unavailable by way of fewer than 10 copies print/ebooks selling in successive accounting periods For OOP/unavailable, 7	Where the notice periods to reprint are: 1.5 months (6 weeks) if gross sales are fewer than 50 copies in two successive accounting periods, 30 days if the work is unavailable (which means under 10 copies are sold in successive accounting periods), and 7 months if the work is out of print or unavailable.
M	Due notice	Where the author can give "due notice" to the publisher to reprint the book. If "due notice" appears as an alternative to the rights automatically reverting to an author if the publisher does not agree to re-publish the work within a particular period after it has gone out of print, then "due notice" should still be selected because it places the power to initiate termination procedures in the author's hands, and there is the option for the time period to be shorter than the specified time period in the other alternative.
N	No	Where there is no notice required for the publisher to reprint the work.
O	N/A	Where there is no out-of-print clause.
P	Unclear	Where it is not clear from the data what the notice period is based on the guidance provided above (eg if the clause does not make sense or appears incomplete).

Q10: *Did the author have to wait an additional period after the work went out of print before regaining their rights or commencing procedures to regain their rights? If yes, how long was that notice? (Spreadsheet column: **Period after work out of print to regain rights**)*

This question seeks to identify if there was a period that the author had to wait *after* the book went out of print before they could regain their rights or commence procedures to regain their rights.

This covers situations where the period the publisher had to wait after the book was out of print appears to be an alternative to the notice period the author needed to give the author. For example, if the contract indicates that the rights revert if the publisher does not reprint within [x] months OR neglects to do so after being given notice of [y] months, then the coded answer for this variable should be [x] months.

This is because the poor drafting of some contracts means there would be too much interpretation required to determine whether a period is an alternative or an addition to an existing period. When we report the results we will have a section in the results that refers to cumulative notice periods and at that point we will indicate which ones appear to be mutually exclusive and which are complementary.

Code	Potential answer	Explanation
A	0	Where there is no additional period the author must wait after the book is out of print before they can regain their rights or commence procedures to regain their rights.
B	6	Where the author must wait 6 months after the book goes out of print before they can regain their rights or commence procedures to regain their rights.
C	12	Where the author must wait 12 months after the book goes out of print before they can regain their rights or commence procedures to regain their rights.
D	24	Where the author must wait 24 months after the book goes out of print before they can regain their rights or commence procedures to regain their rights.
E	36	Where the author must wait 36 months after the book goes out of print before they can regain their rights or commence procedures to regain their rights.
F	N/A	Where there is no out-of-print clause.

Q11: *Did the author have to wait a period of time after the work's initial publication before regaining their rights or commencing procedures to regain their rights? If yes, how long was that period? (Spreadsheet column: **Period after initial publication to regain rights**)*

Similarly to the last question, this question seeks to identify whether there is a period the author must wait after the work is first published before the author can regain their rights or commence procedures to regain their rights (such as giving the publisher notice to reprint the work). As with Q10, the answer

should still be coded positively if it appears that the period after publication is an alternative to the notice period to reprint the work.

Code	Potential answer	Explanation
A	0	Where there is no time the author must wait after initial or last publication to regain their rights or commence procedures to regain their rights.
B	12	Where the author must wait 12 months after the book is initially published before they can regain their rights or commence procedures to regain their rights.
C	24	Where the author must wait 24 months after the book is initially published before they can regain their rights or commence procedures to regain their rights.
D	36	Where the author must wait 36 months after the book is initially published before they can regain their rights or commence procedures to regain their rights.
E	60	Where the author must wait 60 months after the book is initially published before they can regain their rights or commence procedures to regain their rights.
F	84	Where the author must wait 84 months after the book is initially published before they can regain their rights or commence procedures to regain their rights.
G	24 months after last publication	Where the author must wait 24 months after the book is <i>last published</i> , not initially published, to regain their rights or commence procedures to regain their rights.
H	0 for OOP/unavailable 24 for gross sales in two successive accounting periods totaling fewer than 50 copies	Where there are multiple clauses allowing the author to terminate for the book being out of print, and there is no specified time the author must wait after the book is initially published to initiate rights reversion procedures if the book is out of print/unavailable BUT the author must wait 24 months after the book is initially published if they want to terminate the contract on the basis that gross sales in two successive accounting periods are under 50 copies.
I	N/A	Where there is no out-of-print clause.

Q12: *Did the author have to terminate the contract and/or regain their rights by giving notice to the publisher once the book met out-of-print criteria? (Spreadsheet column: **Notice to terminate**)*

This question seeks to identify if, once out-of-print criteria had been met, the author needed to give further notice to terminate the contract and/or regain their rights. This category applies whether or not there was a requirement for the publisher to reprint the work, or for the author to wait for a particular period of time from when the work was out of print or first published. It also applies, for example,

where the author can simply terminate the agreement in writing once a particular sales threshold is not met.

This does not apply to periods the author may have to wait to regain their rights once all the criteria have been met if they do not have to give notice to the publisher. For example, if the clause states that once all the out-of-print criteria have been met, rights revert to the author after one year, then the answer to this question should still be ‘no’, because the author does not have to give notice to the publisher: after one year, they automatically get their rights back.

If there are two out-of-print clauses but both of them grant automatic reversion after the out-of-print criteria are met, then the answer should be ‘no’ as it would be ‘no’ in either case.

This category includes if the author can ‘require’ the publisher to resign their rights to the publisher once the out-of-print criteria are met.

Code	Potential answer	Explanation
A	1	Where the author has to give 1 month’s notice to the publisher to terminate the contract and/or regain their rights after the work is out of print.
B	3	Where the author has to give 3 months’ notice to the publisher to terminate the contract and/or regain their rights after the work is out of print.
C	Yes	Where the author has to give notice to the publisher to terminate the contract and/or regain their rights after the work is out of print but the time is not specified.
D	No	Where the author does not have to give notice to terminate the contract and/or regain their rights after the work is out of print. This includes if the author has the ‘right to terminate’ the agreement if the work meets out-of-print criteria but the clause does not specify the author has to give notice to the publisher of such termination.
E	1 for OOP/unavailable No if gross sales are fewer than 50 copies in two successive accounting periods	Where the author can either give one month’s notice to terminate if the book is out of print and unavailable and the publisher has failed to meet reprint requirements OR there is no requirement for further notice if the publisher has failed to meet reprint requirements where gross sales are fewer than 50 copies in two successive accounting periods.
F	N/A	Where there is no out-of-print clause.

Q13: Did the notice periods stack up? (Spreadsheet column: Notice Stack)

This question seeks to identify whether the notice to reprint and waiting periods after initial/last publication and/or the work going out of print are cumulative. This is important as for the previous questions we simply recorded them if they were present.

Code	Potential answer	Explanation
A	Delay after first publication and notice to publisher to reprint	Where the author must wait for a period of time after the work is first or last published and then also give the publisher notice to reprint the work.
B	Delay after work goes out of print and notice to publisher to reprint	Where the author must wait for a period of time after the work is out of print and then also give the publisher notice to reprint the work.
C	Delay after first publication and delay after work goes out of print and notice to publisher to reprint	Where the author must wait for a period of time after the work is out of print and the book is first or last published and then also give the publisher notice to reprint the work.
D	N/A for OOP/unavailable, Delay after first publication and notice to publisher to reprint for gross sales totalling fewer than 50 copies in two successive accounting periods.	Where there is no cumulative notice period if the work is out of print or unavailable but the author must wait for a period of time after the work is first or last published to terminate the contract on the grounds that sales total fewer than 50 copies in two successive accounting periods.
E	Unclear alternative notice periods	Where the text seems to indicate that there are multiple notice or waiting periods that apply as alternatives, but it is not 100% clear from the text. This includes formulations where the text states that the author can begin out-of-print reversion procedures if three years after the work is initially published the publisher determines the work is out of print or the work is out of print and the publisher fails to reprint the work within six months.
F	N/A	Where the clause does not fit into the first four categories.

Q14: Was the author required to make a financial contribution as a condition of reclaiming their rights? (Spreadsheet column: Author pay to regain rights)

This question seeks to identify whether the author has to make any financial contribution to reclaim their rights if there is a reversion right (including reversion for the publisher going into liquidation).³ This does not include if the author has the *option* to re-purchase certain items. It also does not include if the author has to repay an unearned part of the advance *if the author is the one who breached the contract*, as we are focused on reversion on the basis of the publisher breaching the contract.

Code	Potential answer	Explanation
A	Yes	Where the return of rights to the author or termination of the agreement depends on the author purchasing materials (eg the printing presses used to print the book) or repaying the unearned part of their advance.
B	No	Where no condition of payment exists for rights to return to the author or the agreement to terminate.
C	N/A	Where there is no reversion right.

Q15: Do unused rights revert to the author after a period of time? (Spreadsheet column: Unused rights revert)

This question seeks to identify whether specific rights (eg subsidiary rights, overseas rights, foreign language rights) that are not used within a period of time revert to the author. These rights are termed ‘use-it-or-lose-it’ rights. This does not include general rights to terminate the contract and/or have rights revert to the author if the publisher has failed to publish the work in the first instance because in any case it is likely the author would have this right at common law.

Code	Potential answer	Explanation
A	If no overseas sales are made within this twelve month period then the rights to publish overseas revert to the Author	If the text is as extracted
B	If no overseas sales are made within this eighteen month period, then the rights to publish overseas shall revert to the Author.	If the text is as extracted
C	It is further agreed that all publishing rights excluding Australia and New Zealand, shall revert to the AUTHOR if unsold by the PUBLISHER six months after the Australian publication date.	If the text is as extracted
D	Notwithstanding the provisions of this clause, a non-exclusive right to sell international (non-Australian) rights shall revert to the Author two years after publication of the Work if in the reasonable opinion of both the Author and Publisher satisfactory progress has not been made on international sales.	If the text is as extracted

³ A reversion right does not include rights to regain rights if the publisher fails to initially publish the work.

E	If the rights referred to in Clause...[redacted] remain unexploited after two (2) years from first publication in Australia, then the Author may advise the Publisher, by notice in writing, that the Publisher's licence in respect of the particular right/s is to continue on a non-exclusive basis only. The Author agrees to extend the periods referred to above if the Publisher provides satisfactory evidence that it is actively pursuing publication of the Work in that territory or that language.	If the text is as extracted
F	If no overseas sales are made within eighteen (18) months of the first Australian publication the rights to publish overseas reverts to the Author.	If the text is as extracted
G	These [subsidiary] rights revert after three years if no sales have been made during the previous three years.	If the text is as extracted
H	No	Where there are no use-it-or-lose it rights

The only disagreement for this variable on a reliability test conducted on 27 November 2019 was between B and F. We have checked the relevant clause and the correct answer should have been F, which was what it was initially coded as.