



## CC0 Jurisdictional Survey Responses

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<b>Survey Respondents:</b>	<u>Europe</u>	<u>Americas</u>	<u>Asia/Pacific</u>
	Austria	Columbia	China Mainland
	Belgium	Guatemala	Japan
	Denmark	Mexico	Philippines
	France		Australia
	Germany		
	Luxembourg		
	Netherlands		
	Norway		
	Poland		
	Romania		
	Slovenia		
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**CCO Jurisdictional Survey Responses**  
(as of 8 October 2008)

**I. Public Domain**

1. Does the concept of “public domain” exist in your jurisdiction in any legally recognized form for works of authorship or databases?
2. If you answered "yes" or "other" to Question 1, please describe or explain briefly

Austria	Yes	<p>The Austrian Copyright Law knows two possibilities for a work to become part of the public domain:</p> <p>1. Works not Protected by Copyright</p> <p>§ 7.- (1) Laws, orders, official decrees, public notices and decisions, or official works produced exclusively or mainly for official use of the kind specified in Article 2, items 1 or 3, shall not enjoy copyright protection. (2) Cartographic works produced or adapted (Article 5(1)) by the Federal Standards and Survey Office and intended for distribution (Article 16) shall not constitute unprotected works.</p> <p>2. Works which have fallen into the public domain on expiry of their term of protection (70 years after the death of the (last co)author)</p>
Belgium	No	
Denmark	No	
France	No	
Germany	No	As copyrights and moral rights are very closely connected and moral rights are bound to stay with the author, there is no public domain unless after expiry of the copyright.
Luxembourg	No	The term "domaine public" is only used to designate those works whose rights have expired.
Netherlands	No	
Norway	No	
Poland		Depends on interpretation of law - There is no clear legal basis in Polish law for dedicating a work to a public domain (i.e., waiving copyright protection). Moral rights are explicitly non-waivable and non-disposable. Economic rights expire 70 years p.m.a. and one could argue that no-one can privately shorten this period. Additionally, there are limitations in managing one's

		<p>rights individually, such as non-waivable royalties and compulsory intermediation of collecting societies.</p> <p>Thus, even if one could attempt to construct a "public domain license" (i.e. a broad license with no obligations of the licensee), such a license could not remove the above institutes.</p>
Romania		There is no "public domain" in the law, but it is recognized in the doctrine, as all the works that can't be protected by copyright or works where the copyright has expired.
Slovenia	Yes	<p>Art. 9 of the Copyright and Related rights act provides for non-protected creations:</p> <ol style="list-style-type: none"> <li>1. ideas, principles, discoveries;</li> <li>2. official legislative, administrative and judicial texts;</li> <li>3. folk literary and artistic creations.</li> </ol> <p>These creations are generally not protected by copyright and are therefore considered to be in public domain. The only exception are translations of texts mentioned under item 2 (official legislative, administrative and judicial texts), which are protected by copyright, unless they are published as official texts.</p>
Colombia	Yes	Public Domain in Colombia follows the general idea. Works are in the Public Domain when the protection period ends, folk and popular works where the author can not be identifiable, authors can resign their works to the public domain and works from foreign authors that do not have their rights protected under Colombian law.
Guatemala	Yes	It is mentioned in the Constitution and also in the Law Decree to protect authors' rights.
Mexico	Yes	<p>Public domain in Mexico is subject to two specific conditions. The first is temporality. This means that a work cannot be dedicated /released to the public domain just by saying so (even if it's the author will to do so), because this condition is achieved after the protection term has expired (Author's life plus 100 years in Mexico). Only then can a work pass into the public domain.</p> <p>The second condition for public domain works is that their use needs to comply with moral rights provisions (Attribution, integrity, etc.) so anyone using a work that is under public domain needs to respect these moral rights.</p>

China Mainland		According to the Copyright Law of China, the concept of "public domain" does exist in this jurisdiction, though not in a legally recognized form as in some other jurisdictions. The public domain concept in China mainly refers to works that are made free and available due to expiration of copyright or works that are not copyrightable. A Rights holder may also choose to dedicate his/her economic rights in the copyright to the public domain.
Japan	Yes	I believe it's the same as in the U.S.; any works whose copyright has expired is in the public domain, and any work to which the copyright owner has waived all the rights is in the public domain.
Philippines		The public domain concept is customarily recognized, although it is not explicitly defined in Section 171 of the Philippine Intellectual Property Law (Republic Act 8293). It recognizes that the "no copyright shall subsist in any work of the Government of the Philippines" in Section 176 of the law; and recognizes the effect of the lapse of the terms of protection for copyrighted works.
Australia	No	

3. Is there an established or recognized process for dedicating or placing a work in the public domain?

4. If you indicated a process does exist in Question 3, please provide a brief description and identify any formalities.

Austria	No	
Germany	No	As there is no concept of public domain - no.
Luxembourg	No	But cc zero is on the way ;-)
Netherlands	No	
Poland	No	
Romania	No	
Slovenia	No	No other than by law
Colombia	Yes	The law 23 of 1982 only says that for an author or right holder to resign to his rights has to do it by writing and has to make it public. He must consider that there are no contractual provisions that he should follow before giving away his rights. That is as far as the law says, so there is no really established procedure but some requirements to accomplish
Guatemala	No	

Mexico	Yes	By waiting for the protection term to expire. In Mexico, such term is the author's life plus 100 years.
China Mainland	No	
Japan		See Q4 - In theory, by expressing your intention to waive all the rights to the work, you can place the work in the public domain. However, the copyright law does not provide any specific process to do this: i.e., there is no registration system or the like. Therefore, it is generally thought that you can waive the rights based on the civil code, and the only requirement is the valid will of waiver. Of course, the problem is, there is no effective means the public could know about this waiver.
Philippines	None	The law only provides the legal process for the registration of works (Sections 191 and 192, RA 8293), and the assignment and exclusive licensing of works (Sections 180 and 182, RA 8293).
Australia	No	

5. Can a person who dedicated a work to the public domain revoke or terminate that dedication?

6. If you answered "yes" to Question 5, describe the circumstances under which a dedication may be revoked or terminated.

Austria		If a person did this in a license-contract, this would be revocable without any problem whatsoever.
Germany		For reasons stated above, no.
Luxembourg		n/a
Netherlands	Yes	Such a dedication would probably qualified as a unilateral juridical act which may always be revoked or terminated. Such a dedication would probably only be enforceable in court insofar as a third party has in good faith relied upon it.
Poland	Yes	Assuming that the "public domain license" in the answer to Q2 is a valid way (and no other reasonable way seems to exist under Polish law), it would be a license concluded for unspecified period of time. Such a license can be unilaterally terminated upon a notice and it is not clear whether one could waive the right to terminate.
Romania	No	
Colombia		There is no express norm, I believe the correct answer is no, but I am not 100% sure

Guatemala	No	
Mexico	No	
China Mainland	No	
Japan	Yes	<p>Because it is one of manifestation of intent that is subject to general rules of cancellation under the civil law, it can be (theoretically):</p> <p>1) invalid if there is a mistake in any element of the juristic act in question; provided, however, that the person who made the manifestation of intention may not assert such nullity by himself/herself if he/she was grossly negligent. (Article 95 of the Civil Code)</p> <p>2) cancelled if such declaration of intent is made by fraud or under threats (Article 96 of the Civil Code)</p>
Australia		n/a

## II. Waiver or Abandonment

7. Is an attempt to waive or abandon some or all copyright-related rights recognized and legally enforceable in your jurisdiction?

8. If you answered "yes" to Question 7, describe the process and formalities, if any, for waiving or abandoning the rights.

Austria	Yes	Theoretically it would be possible to waive some rights (never all copyright-related rights), however this would not be enforceable.
Belgium		Uncertain - There is no case law acknowledging such waiver or relinquishment and there are many legal questions that make such waiver questionable.
Denmark	No	
France	No	
Germany		<p>In the German copyright system, there is no possibility to waive or transfer the copyright itself. There is, however, the option to give away so-called "Nutzungsrechte" (exploitation rights). This will always happen through a contract between the parties, not through any kind of declaration.</p> <p>If the author wants to transfer exploitation rights, each exploitation right has to be listed separately and explicitly or it will not be transferred.</p>
Luxembourg		<p>Waiving and selling rights (incl. moral rights) is possible. There is no legally prescribed process for waiving rights. Contracts are used. There is debate whether written proof is required (as electronic contracts do not require this any longer). There is the catch-all phrase "notamment" in this article, meaning "including but not limited to". Note: Contract and License are equivalent terms under Luxembourg law. "Art. 12. A l'égard de l'auteur, la cession et la transmission de ses droits patrimoniaux se prouvent par écrit et c'interprètent restrictivement en sa faveur. La cession des droits patrimoniaux peu faire l'objet notamment d'une alienation ou de licences." Loi du 17 avril 2004. (Mem. A-61 du 29 avril 2004, p. 942; doc parl. 5128 <a href="http://www.legilux.public.lu/Legilux/fr/leg/textescoordonnes/recueils/COMMERCE_ELECTRONIQUE/ZIP_COMMERCE_ELECTRONIQUE.zip">http://www.legilux.public.lu/Legilux/fr/leg/textescoordonnes/recueils/COMMERCE_ELECTRONIQUE/ZIP_COMMERCE_ELECTRONIQUE.zip</a>).</p>
Netherlands	Yes	Same answer as for question # 6.
Norway	No	
Poland		See answers above, enforceability is highly questionable



Romania		To waive all copyrights, it is not possible, In theory you could license your works and keep only the moral rights (which are not transmissible).
Slovenia	Yes	<p>In general you are allowed to waive/abandon your rights unless the law provides otherwise. The Slovenian Copyright and Related Rights Act provides that it is not possible to waive/abandon or transfer moral rights. As it does not specify the same for economic rights, they are considered to be waivable.</p> <p>The law does not specify any particular procedures for waiving o abandoning economic rights. It does specify, however, that the transfer of economic rights has to be in written form (there are certain exceptions). The waiver/abandonment can be done either as a statement of the rightowner or as a contract between the rightowner and the other party (e.g. user).</p>
Colombia	No	
Guatemala	Yes	A person can do it in a written form but also must waive the right to execute on court any claim related with moral rights. I was analyzing that while the substantive right is non waivable, you can say that you will not enforce it.
Mexico	No	
China Mainland	Yes	
Japan	Yes	Theoretically, yes, you can waive copyright-related rights by effectively make such manifestation of intent, and no formalities required (i.e., no paper nor signature). It is just a matter of proof when you try to enforce that such waiver was made effectively at certain point in time. And, so far, there is no established means to make such waiver in an assured manner.
Philippines		Possible. Copyright is within the scope of property and related rights, considering Intellectual creation [Article 721 to 724, Civil Code of the Philippines, RA 386] is one of the modes of acquiring ownership (of property). The doctrine of waiver which provides that "everyone has a right to waive and agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right and without detriment to the community at large" is recognized. (See e.g. Bayas vs. Sandiganbayan, GR 143689-91, 12 November 2002). For a waiver to be valid (and in turn, enforceable), the essential elements of a valid waiver must exist: "(a) existence of a right; (b) the knowledge of

		the existence thereof; and, (c) an intention to relinquish such right." The standard of a valid waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences." (Heirs of Reyes vs. Calumpang, GR 138473, 30 October 2006; citations omitted) Most legal annotations in Philippine Civil Law indicate the necessity of waivers to be written. Note, however, due to the inadequacy of the law, there is no known mechanism to bring such general waivers as public records to render them applicable generally to the public.
Australia		<p>Possibly, but unclear - You can effectively 'waive' (eg by placing a very broad license such as CC BY on) your economic rights - but not your moral rights (see below).</p> <p>Verbal contracts are legally enforceable under Australian law. However, the court will read them down to the narrowest possible interpretation. So to be fully enforceable, a broad contractual waiver would have to be in writing, and would preferably be signed.</p> <p>Australian law does, however, have a broad definition of 'signature', including electronic signatures and assurances, as long as they are sufficiently reliable in the circumstances. Again, for a broad waiver to be upheld, it is likely that a fairly reliable signature would be required.</p>

9. Can a waiver or abandonment be revoked or terminated?

10. If you answered "yes" to Question 9, describe the circumstances under which a waiver or abandonment may be revoked or terminated, and any formalities associated with doing so.

Austria	Yes	Under ANY circumstances. A waiver would not be legally binding.
Belgium		If the waiver is made by unilateral act, such act is deemed to be irrevocable.
Germany		<p>There is a problematic issue with types of exploitation yet unknown: given certain requirements the author has the right to revoke these rights after these new usages have become known.</p> <p>Also, exploitation rights can be revoked if they are not put to use within a certain period of time (generally after a period of two years which can contractually be</p>

		<p>altered to five years).</p> <p>In addition, exploitation rights can be revoked for reasons of Change of Convictions. If the work does not reflect the convictions of the author anymore and it is not tolerable for him or her to see the work exploited, he/she can revoke this right, although a compensation must be paid.</p>
Luxembourg		No idea, I guess contract law applies.
Netherlands	Yes	No formalities are required.
Poland	Yes	<p>Termination of the "public domain license" referred to in the answer to Q2 can be done upon a notice. Notice does not have to be in writing, but has to be served to the other party (if it is made electronically, placing it in the electronic system suffices).</p> <p>Author can also declare any contract (or license) avoided because of its "material interests" (not defined in law).</p>
Romania	Yes	Being a contract ( a copyright license), in theory it could be revoked... but in practice it might not work.
Slovenia	Yes	<p>The law does not specify any procedures or formalities for revoking the waiver/abandonment. If the waiver/abandonment was given as a statement to an unknown circle of users and the rightowner decides to revoke it, those users who have already used/started using the work under the waiver/abandonment conditions, cannot be prosecuted for such uses. If the waiver/abandonment was given in a contract, it depends on the contract provisions, whether the waiver/abandonment can be revoked.</p> <p>According to the Slovenian legislation, if an author makes a non-exclusive assignment prior to a subsequent exclusive assignment of rights, the non-exclusive assignment is valid and effective against the assignee of the exclusive rights, unless otherwise provided by the agreement between the author and the assignee of the non-exclusive rights. A non-exclusive assignment gives an assignee the right to exploit the work according to the terms of the assignment and in competition with both the author and other assignees. In accordance with this definition, we believe that a waiver or an abandonment could be considered as a non-exclusive assignment of rights. Therefore, it would be valid and effective against the assignee of the exclusive rights, if it was made before the exclusive assignment. An exclusive</p>

		assignment gives an assignee the right to exploit the work according to the terms of the assignment and to the exclusion of the author and any other person. The only exception would be the abovementioned situation (prior non-exclusive assignment or prior waiver/abandonment).
Guatemala	No	
Mexico		Doesn't apply
China Mainland		It depends on the circumstances of how the waiver or abandonment was made.
Japan	Yes	See Q6
Philippines		If waiver is made by one party for the benefit of another, based on contractual obligations, the rescission thereof should arise from grounds common with other rescissible contracts. Most waivers, however, in various jurisprudence are attached based on grounds necessary to render the instrument voidable, i.e. through mistake, force, intimidation, etc.
Australia	Yes	As the waiver would merely be a broad license, it would be able to be terminated or revoked on the same grounds as other licenses (eg duress, unconscionability, breach etc).  However, in the absence of such grounds or a clause in the license itself, it seems unlikely that the courts would allow a unilateral revocation of a valid agreement (ie 'because I've changed my mind').

### III. Covenant Not to Assert

11. Is a covenant not to assert rights under copyright recognized and legally enforceable in your jurisdiction?

12. If you answered "yes" to Question 11, describe the process and formalities, if any, for creating an enforceable covenant not to assert rights under copyright.

Austria	No	
Belgium		Uncertain, specially for moral rights.
Denmark	No	
France	No	
Germany	Yes	Yes, withing the framework of a contract it should be enforceable.
Luxembourg		No idea. (ianal and don't even know what covenant...means)
Netherlands	Yes	No formalities are required.
Norway	No	
Poland		See answers above, one could attempt to structure it as a "public domain license" - see above answers
Romania		I don't think so...
Slovenia	Yes	The covenant would have to be given in a written form and signed by the author.
Colombia	Yes	It will be driven by contracts law, and can only deal with economical rights (not moral rights at all)
Guatemala	Yes	In written form.
Mexico		Not expressly - It can be done but you have to be very careful on the way you draft any recital that may pursuit this, because if it looks as if the author is trying to waive his/her right then it will be a null recital or clause.
China Mainland	Yes	There is no specific process or formality available here for this purpose. But one can do this based on the general provisions under the Contract Law of China, so a covenant could include an agreement not to assert rights under copyright law
Japan		Not clear - It is generally said that a covenant not to assert rights can be effective and legally enforceable, not specifically under copyright law, but under the general principle of civil code. However, it is generally said that such covenant should be made in a specific manner: i.e., specific enough in terms of duration, scope etc. If rights an be waived, it is more straightforward to do so. Covenant not to assert rights is only considered for rights not waiveable: i.e., moral rights. In Japan,

		<p>when you transfer copyright, moral rights can NOT be transferred, therefore, it is customary to get covenant not to assert rights for the work to make sure the freedom of use by transferee. However, there is a discussion (but not a case yet) that such covenant may be invalid when it is too broad and not specific enough, because too broad a covenant is almost like a waiver, which will work as a loophole, and the court will not admit such loophole...</p>
Philippines		<p>There are no express legal provision on matters involving "covenants not to assert" nor any jurisprudence in which such covenants have been the point of contention. There is no test jurisprudence yet for its proper appreciation.</p>
Australia	Yes	<p>A covenant not to enforce certain rights (eg economic rights) would likely be upheld under Australian contractual and estoppel law, as long as it was sufficiently specific and well evidenced.</p> <p>Evidence I have been able to find initially suggests covenants not to sue are generally interpreted narrowly ie to distinguish one-off agreements between two individuals from more general releases. That is, a promise not enforce the debt of an individual debtor would be read down to be merely a covenant, while a broader promise not to a seek remedy against a group of debtors would be a release. Courts will almost always read down a covenant to its narrowest possible interpretation.</p> <p>Under contractual law, written and signed documentation would be preferable (see answer to Q.8).</p> <p>Australian law regarding estoppel is similar to most common law jurisdictions. Estoppel can be enforced based on verbal statements alone. However, for a broad promise (ie that goes beyond a specific situation) substantial evidence of the representation, such as a written document, would be advantageous.</p> <p>Even if a broad covenant (ie beyond a one-on-one relationship) were upheld in relation to economic rights, any broad covenant not to assert moral rights would almost certainly be held invalid, as the Australian Copyright Act limits any moral rights consent to the specific case at hand (ie only allows you to give a one-</p>

		off consent to a particular use, other than where an employee is providing a broad consent to an employer). See Q.24.
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13. Can a covenant not to assert rights under copyright be revoked or terminated?

14. If you answered "yes" to Question 13, describe the circumstances under which a covenant not to assert rights under copyright may be revoked or terminated, including any formalities associated with doing so.

Germany		One possibility is to revoke the contract for reasons arising from general contract law (e.g. for reasons of deception). Also, the possibility of a breach of contract remains.
Luxembourg		Idem
Netherlands	Yes	Such a covenant would probably qualified as a unilateral juridical act which may always be revoked or terminated. Such a covenant would probably only be enforceable in court insofar as a third party has in good faith relied upon it.
Poland	Yes	See above answers
Slovenia	Yes	A covenant can always be revoked but the author has to pay damages to the contracting party.  In addition, the Copyright and Related rights Act provides for a moral right of the author to withdrawal. Namely, the author has the exclusive right to revoke his assigned economic right from its holder, provided he has serious moral reasons for this, and on condition that he first reimburses the damage caused to the right holder by such revocation. With the exercise of the right to withdrawal, the economic right of the holder is extinguished. The author must adequately reimburse the holder. The holder must notify the author of the extent of damages suffered by him within three months of the receipt of the notice of revocation. If the holder fails to do so, the right to withdrawal takes effect on the expiration of this term.
Colombia		Not sure about this, it will depend on contractual formalities and law
Guatemala	Yes	It will depend on the covenant and the causes to revoke or terminate it, in any case, there might be also an obligation to pay damages.

Mexico	Yes	As put on answer 12, it can be made but very carefully. That aside, all rights transmissions in Mexico are subject to temporality. There is a thin line between a transmission and a use license. This makes licenses not subject to that temporality condition.
China Mainland	Yes	Pursuant to the Contract Law of China, two parties may terminate a contract if they reach a mutual agreement through fair negotiation.
Japan	Yes	See Q6
Australia		It would depend on the terms of the contract - See answer to Q.10

15. Does a covenant not to assert rights under copyright require contractual privity in order to be effective or enforceable?

Germany	Yes
Luxembourg	Idem
Netherlands	No
Poland	There is no straight answer to this question
Slovenia	No, if it does not create obligations for third parties.
Colombia	Yes
Guatemala	No
Mexico	Yes
China Mainland	Yes
Japan	Yes
Australia	Yes

16. Is a covenant not to assert rights under copyright licensable, assignable or otherwise transferable?

17. If you answered "yes" to Question 16, what are the formalities associated with doing so?

Austria	No	
Germany		As part of the contracting party's obligation it is assignable within the rules of general contract law.
Luxembourg		Idem
Netherlands	No	
Poland	Yes	It would have to explicitly state that the other party can transfer it.
Slovenia	No	



Colombia		Since it relies on contractual law it might depend on the contract provisions
Guatemala	Yes	In a written form.
Mexico	No	
China Mainland	Yes	<p>Pursuant to the Contract Law of China, where the obligee assigns its rights, it shall notify the obligor. Such assignment will have no effect on the obligor without notice thereof.</p> <p>Where the obligor delegates its obligations under a contract in whole or in part to a third party, such delegation shall be subject to the consent of the obligee.</p> <p>Where the laws or regulations stipulate that the assignment of rights or transfer of obligations shall undergo approval or registration procedures, such provisions shall be followed.</p> <p>Upon the consent of the other party, one party may transfer its rights together with its obligations under contract to a third party.</p>
Japan		Yes, only if it is clearly agreed as such. It is not thoroughly discussed yet. However, covenant is usually deemed as a manifestation of intent not to exercise rights (i.e., some kind of license), and if so, the scope against whom the right holder would not assert right shall be made clear. Therefore, my personal opinion is that such re-license, assignment or transfer shall be clearly agreed by the right holder. Otherwise, a separate consent is required for such re-license or transfer.
Australia		<p>Needs further investigation - Our initial thoughts (that would need further investigation) are that if the covenant is in the form of a valid contractual document, it would be able to be transferred, as long as this was permitted by the contract itself.</p> <p>However, an agreement enforced by estoppel would not be transferable.</p>

18. Does a covenant not to assert rights under copyright "run" with the work waived (i.e., is it tied to the work so that after assignment or transfer it remains binding on assignees or transferees)?

Germany	No it would be part of the contractual agreement and would therefore be tied to the parties.
Luxembourg	Idem
Netherlands	No
Poland	Highly depends on the applicability of first sale and the wording of the covenant
Colombia	Depends on the contract that is signed
Guatemala	Yes, if you specified it on the assignment or transfer contract.
Mexico	No
China Mainland	Yes
Japan	You can try to say that such covenant will follow the work, but not clear yet whether such arrangement is enforceable.
Australia	Possibly - see Q.17

#### IV. Licenses and License Terms

19. Can a copyright license (or contract with a copyright license) written as irrevocable be revoked or terminated by the owner/author?

20. If you answered "yes" to Question 19, describe the circumstances under which a license or contract written as irrevocable may be revoked or terminated.

Austria	Yes	There is always the right of extraordinary cancellation which can not be excluded. Extraordinary cancellation demands "important reasons" which have to be proven by the claimant. The rules are rather strict here (in favor of the licensee) but no license under Austrian Copyright Law can be "waterproof" irrevocable.
Belgium		Depends on the nature of the license - If the license is an unilateral act, it will be irrevocable. If the license is part of a contract, such contract binds the parties and it can be revoked only if both parties agree or by the author only if the other party has not complied with her obligations, under strict conditions.
Denmark	No	
France	Yes	The right of withdrawal is a component of moral rights. A contract with a publisher can be revoked by the author without reason, but with compensation for the commercial prejudice. This prerogative is very rarely enforced.
Germany		There is a problematic issue with types of exploitation yet unknown: given certain requirements the author has the right to revoke these rights after these new usages have become known.  Also, exploitation rights can be revoked if they are not put to use within a certain period of time (generally after a period of two years which can contractually be altered to five years).  In addition, exploitation rights can be revoked for reasons of Change of Convictions. If the work does not reflect the convictions of the author anymore and it is not tolerable for him or her to see the work exploited, he/she can revoke this right, although a compensation must be paid.
Luxembourg		Contracts that are against the law are not valid. For the rest, I don't know.

Netherlands	Yes	<p>If the copyright license is considered a standard form agreement, then the revocation will be valid only if the other party has not manifested assent to the offer. It would require contractual privity.</p> <p>If the copyright license is seen as a unilateral juridical act, then the revocation would be valid unless a third party has in good faith relied upon it.</p>
Norway	No	
Poland	Yes	<p>In case of a breach or in case of "material interests" of the author</p> <p>Otherwise, in case it is concluded for an unspecified period of time. Generally, only contracts concluded for specific period of time cannot be terminated unilaterally. However, if a license is concluded for longer than 5 years it changes into a license for unspecified period of time as a matter of law.</p>
Romania	Yes	<p>Depending on the exact terms of the licenses, but if all the parties of a license agree to change the provision of the contract of being irrevocable, then it can be revoked or terminated.</p> <p>Also, it need to be considered to what extent such a contract could be written as irrevocable in the first place.....</p>
Slovenia	Yes	The answer is identical to the one under no. 14.
Colombia	No	
Guatemala	No	
Mexico	Yes	By law it can be revoked in any time under the author's discretion
China Mainland	Yes	<p>Theoretically, we view a license as an offer. Accordingly, pursuant to the Contract Law of China, an offer can be revoked. but the revocation notice must reach the offeree before it has dispatched a notice of acceptance.</p> <p>An offer may not be revoked, if</p> <p>(1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or</p> <p>(2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contact.</p>

Japan	Yes	Even though the license is said to be irrevocable, if such "manifestation of intent to agree to such arrangement" is found to be made by mistake, by fraud or under threat, it can be cancelled or invalidated.
Australia	Yes	See Q.10

## V. Moral Rights

21. Are moral rights granted by law or treaty to the original author of a work of authorship or database in your jurisdiction?

Check all that exist: Attribution, Integrity, Publication/Disclosure, Withdrawal

22. If you answered "yes" to Question 21, please state the duration of those rights.

Austria	Attribution, Integrity, Publication/Disclosure	70 years after the death of the author
Belgium	Attribution, Integrity, Publication/Disclosure	Life time of the author + 70 years
Denmark	Attribution, Integrity, Publication/Disclosure	In general, moral rights expire 70 years after the death of the author. However, after that time moral rights continue to exist but only to a very limited extent. Thus, if the copyright has expired a work may not be altered or made available to the public if "cultural interests are thereby violated". This right is perpetual and the purpose is to protect the cultural heritage. It is disputed whether this perpetual right has any practical significance in modern society.
France	Attribution, Integrity, Publication/Disclosure, Withdrawal	It shall be perpetual, inalienable and imprescriptible. It may be transmitted mortis causa to the heirs of the author. Exercise may be conferred on another person under the provisions of a will.
Germany	Attribution, Integrity, Publication/Disclosure, Withdrawal	By law: all of these. Life of the author plus 70 years post mortem (always same timespan as the duration of copyright).
Luxembourg	Attribution, Integrity	Attribution - Yes, the author has the right to demand attribution; Integrity - Yes, the author has the right to demand integrity, but only in as far as modification, mutilation or any other challenge to the integrity of the work is actually damaging the author's reputation or honour; Publication/Disclosure - No, Part of copyright; Withdrawal - No, Part of copyright. Note: Moral

		rights can only be held by one or several physical persons, who must be the original authors themselves. Duration is perpetual.
Netherlands	Attribution, Integrity, Publication/ Disclosure	PS: there are no moral rights with respect to databases). Moral rights in the Netherlands last for the life of the author. They may only be exercised (for 70 years after his death) if he has designated someone to do so in a codicil to his will.
Norway	Attribution, Integrity, Publication/ Disclosure, Withdrawal	Perpetual.
Poland	Attribution, Integrity, Publication/ Disclosure	Supervision on the use of the work; generally, the list is not exhaustive - moral rights protect a non-waivable link between the author and the work. Duration is perpetual.
Romania	Attribution, Integrity, Publication/ Disclosure, Withdrawal	Perpetual!
Slovenia	Attribution, Integrity, Publication/ Disclosure, Withdrawal	<p>All these rights are granted only to the original author of a work of authorship.</p> <p>There are two kinds of database right in the Copyright and Related rights act:</p> <p>a) a database as a work of authorship - if a database fulfills all the criteria to be considered a work of authorship (individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode) its author has all the mentioned moral rights, except for the right to withdrawal. The definition of a database in such case is that it is a collection of independent works, data or other materials in any form, arranged in a systematic or methodical way and individually accessible by electronic or other means.</p> <p>b) a database as sui generis - if a database does not fulfill the criteria to be considered a work of authorship, but fulfills the criteria for the database sui generis right (a collection of independent works, data or other materials in</p>

		<p>any form, arranged in a systematic or methodical way and individually accessible by electronic or other means, whereby either the obtaining, verification or presentation of its contents demands a qualitatively or quantitatively substantial investment), it is protected with related rights. In such case, there are no moral rights.</p> <p>If a database is a work of authorship, it can be protected by both - copyright and the sui generis rights. However, if it is not considered to be a work of authorship, but fulfills the elements for sui generis rights, it is “only” protected by sui generis rights.</p> <p>Attribution, Integrity and Publication/Disclosure last for 70 years after the death of the author. Withdrawal lasts until the death of the author. All these rights are non-transferable and non-waivable.</p>
Colombia	Attribution, Integrity, Publication/ Disclosure, Withdrawal	Perpetual for all
Guatemala	Attribution, Integrity, Publication/ Disclosure, Withdrawal	Life + 75
Mexico	Attribution, Integrity, Publication/ Disclosure, Withdrawal, refusal of authorship and modification (tied to integrity)	Perpetual in all cases and may be exercised by the author, his/ her heirs or, in case of public domain works, by the State.
China Mainland	Attribution, Integrity, Publication/ Disclosure	All moral rights, except Publication/Disclosure which exists for life time of the author plus additional 50 years, exist perpetually.



Japan	Attribution, Integrity, Publication/ Disclosure	Same as copyright duration (i.e., 50 years plus life time of the author) basically. (there are small exceptions after the death of the author, but I don't think it is important in this context)
Australia	Attribution, Integrity, Against false attribution	The right of attribution for films exists until the author (usually the director) dies.  All other moral rights last for the full term of copyright ie generally life of the author plus 70 for dramatic, literary, artistic and musical works; or 70 years from first publication for films or sound recordings.

23. May any of the moral rights granted in your jurisdiction ever be waived or licensed by the holder?

24. If you answered "yes" to Question 23, please describe which rights may be waived or licensed, and the circumstances under which that may occur and any formalities associated with doing so, if any.

Austria	Yes	Moral rights are not licensable or transferable. However, some can be waived in a license contract. On the other hand, this waiver is revocable by the author at any time. The right of attribution is completely unwaivable.
Belgium	No	
Denmark	Yes	In the Act it is said that rights of integrity and attribution cannot be waived except in respect of a use of the work which is limited in nature and extent. No formalities apply.
France	No	
Germany		There is only the possibility of a covenant not to assert any claims. Under no circumstances moral rights can be waived or transferred (only through succession after death). There are no special requirements for the covenant as it is an ordinary contractual obligation.
Luxembourg		"Moral rights can be sold or waived, all or in parts, independently of other rights, but under the condition that the author's reputation and honour is not damaged." Another flexible article...The usual reading is that the actual sale or waiver must not lead to damage of reputation or honour, but after that the author has no more moral rights. At the time of porting CC 3.0 Luxembourg, I stuck to a conservative reading as the lawyers wouldn't go further: even after the sale or

		<p>waiver, no damage of reputation or honour must take place. So I just stuck to the wording in the license "that moral rights remain unaffected". In view of a CC zero waiver, I would be bolder today. "Art. 11.</p> <p>Indépendamment des droits patrimoniaux d'auteur, et même après la cession desdits droits, l'auteur jouit du droit de revendiquer la paternité de son oeuvre et de s'opposer à toute déformation, mutilation ou autre modification de celle-ci ou à toute autre atteinte à la même oeuvre, préjudiciables à son honneur ou à sa réputation. L'auteur peut céder et transmettre tout ou partie de ses droits moraux, pour autant qu'il ne soit pas porté atteinte à son honneur ou à sa réputation." Loi du 18 avril 2004. (Mem. A - 61 du 29 avril 2004, p. 942; doc. parl. 5128) (same website as prior answer]</p>
Netherlands	Yes	The right of attribution may be waived, as well as the right to oppose alterations to the work. However, the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the name or reputation of the author or to his dignity as such is unwaivable.
Norway	No	
Poland	No	
Romania	No	
Slovenia	No	
Colombia	No	
Guatemala		No, but you can circumvent the provision saying that you will not enforce it, or that in any case it will be breached you accept as compensation a fixed obligation or amount of money.
Mexico	Yes	Non may be waived but integrity may be licensed or, more precisely, authorized.
China Mainland	No	
Japan	Yes	<p>Cannot be waived (Article 59 of the copyright law clearly state that moral rights are not transferable, and not waivable).</p> <p>However, all the rights can be "licensed" or subject to covenant not to assert rights. as for formalities etc, see Q12</p>
Australia	Yes	<p>A consent can be granted allowing certain uses, however the consent:</p> <ul style="list-style-type: none"> <li>- must be in relation to a specific work</li> <li>- must be in relation to a specific act of omission</li> <li>- must be in writing</li> </ul>

		<p>- cannot be the result of duress or false or misleading statements</p> <p>The exception to this is where an employment relationship exists - an employee may give his employer a general consent to cover all works produced during the course of his employment.</p> <p>It is also a defence to infringement of moral rights if the act is question was 'reasonable in all the circumstances'</p>
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25. Is an attempt to waive or abandon moral rights voidable in your jurisdiction as being against public policy or otherwise likely to cause the relevant legal instrument (e.g., CC0) to be invalidated in its entirety without reference to alternative licenses or other fall back alternatives?

26. If you answered "yes" to Question 25, then does a severability clause remedy this?

Austria	Yes	No
Belgium	Uncertain. will depend on the importance in such a waiver in the overall license	
Denmark	No	
France	Yes	Risk is hard to evaluate before additional research but I'm optimistic
Germany	The attempt is not likely to cause the relevant legal instrument to be invalidated entirely. If the legal instrument is considered as "general terms and conditions" (which CC0 most likely would) only the specific clause would be invalidated. General contract law would take its place.	A severability clause would be counterproductive as it violates the rule of transparency in the law of general terms and conditions.
Luxembourg	As long as you can prove that the author waived the rights and knew what they were doing, I can't see a	

	problem. If the reputation and honour was subsequently attacked, the author may get to demand retraction of the work, but very likely that it is on moral rights ground, more on libel or other.	
Netherlands	No	Yes
Norway	Yes	No
Poland	It could be construed as a contract not to exercise the moral rights, depending on interpretation of law.	
Romania	No	
Slovenia	Yes	Yes
Colombia	Yes	Yes
Guatemala	Might be the waiver or abandon of procedural rights to enforce moral rights.	Yes
Mexico	Yes	Yes
China Mainland	As being against value or moral principle.	
Japan	No	Yes
Australia	No	

27. If moral rights can be waived/abandoned, may the legal instrument provide that the waiver is irrevocable?

28. If you answered "no" to Question 27, then when may a waiver be revoked or terminated by the waiving party?

Austria	No	See above: anytime There is a weighing of interests, however. If a revoking of the waiver would be disproportional, it would be naught. As one can imagine, this is almost never the case - out of protection for the author.
Denmark	Yes	
Germany	As the moral rights themselves are not to be	

	waived or abandoned, the author can always exercise the rights. In doing so, s/he is in breach of contract (and must pay an according fine or sth. alike), which does not impair her ability to do so, however.	
Luxembourg	In principle no contract/license may be for perpetuity, but I can't see why a contract should not be irrevocable if it is legal and says so.	
Netherlands	Yes	
Guatemala	Yes, but again, the solution might be to waive the faculty to enforce it on court, or accept a fixed compensation.	
Mexico	Doesn't apply	
Japan	n/a (not waivable)	see Q6
Australia	Subject to duress etc, yes	

## VI. Equitable Defenses

29. Does your jurisdiction recognize any equitable defenses to claims of copyright infringement, such as estoppel, laches or unclean hands, that arise based on an act or a statement of intent by the author or copyright holder?

30. If you answered "yes" to Question 29, please describe those defenses, when they arise, etc.

Austria		I do not understand that question.
Denmark	No	
Germany		In a contractual relationship there is for example the rule of "venire contra factum proprium", which is very similar to "estoppel". According to this rule, the party to a contract may not act on basis of facts that he or she has created e.g. by certain statements and the other party put his or her trust in this.
Luxembourg		Equitable defenses? Estoppel? Laches? Sorry...
Netherlands	Yes	These are based on the general civil law principle of fairness and equity and 'rechtsverwerking' (difficult to translate but roughly equivalent to estoppel).
Norway	No	
Poland	Yes	There is a general clause in the Civil Code (art. 5) that no one can exercise their rights contrary to the (roughly translated) "nature of the right" and "rules of society". This is something similar to laches or unclean hands institutes.
Romania		These terms are specific to the common law system, I don't know them that well in order to make an assumption is a similar institution exists in the Romanian law, which is based on the French system.
Slovenia	Yes	If the publisher does not publish the work within the stipulated time limit, the author may rescind the contract and claim damages, in addition to the right to keep the remuneration received, or to demand payment of stipulated remuneration, as the case may be.
Colombia		Not sure
Guatemala		It has never been analyzed by a court, but such concepts are in our Judicial Organ Law and must be applied by any judge.
Mexico	No	
China Mainland	No	
Japan	Yes	We have a general principle of estoppel. However, it is a rather narrow principle, and we are not sure whether

		the court will actually apply the principle to a right holder who changed their mind in applying CC0.... there is a possibility, but remain unclear.
Philippines		Although estoppel, laches, or unclean hands are principles which apply generally to affect existing rights (including property rights), there is no known jurisprudence yet that would apply the same to copyright-related controversies.
Australia	Yes	see Q.12

## VII. Click-Wrap Agreements

31. Are click-wrap or browse-wrap waivers, licenses and contracts enforceable in your jurisdiction?

Austria	No
Belgium	Yes
Denmark	Yes
France	Yes, with a double-click provision
Germany	There still is some debate about this question, but the general opinion is that they are not enforceable.
Luxembourg	Simple answer: yes, but all legal requirements are hardly ever met and there is very little caselaw, as usual. iTunes, amazon, ebay (skype, paypal) all have their European headquarters in Luxembourg so I guess all variants are covered...
Netherlands	Yes
Norway	Yes
Poland	Depends (e.g., not clear in consumer relations), no case law
Romania	Yes
Slovenia	Yes
Colombia	Yes
Guatemala	Yes
Mexico	No waivers, yes licenses and contracts
China Mainland	Yes
Japan	Yes
Philippines	Possible. Section 16(1) of the Philippine e-Commerce Act (Republic Act 8792), provides that "Except as otherwise agreed by the parties, an offer, the acceptance of an offer and such other elements required under existing laws for the formation of contracts may be expressed in, demonstrated and proved by means of electronic data message or electronic documents and no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all of the elements required under existing laws for the formation of the contracts is expressed, demonstrated and proved by means of electronic documents." The provision appears to have broad application, although there is no test jurisprudence that tackles click-wrap and browse-wraps contracts.
Australia	The case law indicates that click wrap licenses - no case yet on browse wrap licenses are enforceable - browse wrap there is some question about



## VIII. E-Signatures

32. Does your jurisdiction recognize electronic or digital signatures?

Austria	Yes
Belgium	Yes
Denmark	Yes
France	Yes
Germany	<p>Yes it does. The German law has been enacted according to the EU Electronic Signatures Directive.</p> <p>Basic electronic signature: No special requirements, e.g. Name of Publisher.</p> <p>Advanced electronic signature: Usage of a secret key (one-time usage) and possibility to trace the author (not necessarily through a certificate).</p> <p>Qualified electronic signature: Usage of SSEE and a valid certificate. This is the only type of signature that can be used to fulfill the requirement of “written form”.</p> <p>Note: In German, the phrasing “digital signature” is often used in regard to a cryptographic method.</p>
Luxembourg	<p>Yes, they are recognized, but I can't help you more there...  <a href="http://ec.europa.eu/enterprise/ict/policy/legal/2006-bm-cr/luxembourg.pdf">http://ec.europa.eu/enterprise/ict/policy/legal/2006-bm-cr/luxembourg.pdf</a></p>
Netherlands	Yes
Norway	Yes
Poland	Yes
Romania	Yes
Slovenia	Yes
Colombia	Yes
Guatemala	Not yet, but Uncitral Model Law on Digital Signatures is one step away to be approved.
Mexico	Yes
China Mainland	Yes
Japan	Yes
Australia	Yes

## IX. Other CC0 Comments

33. Do you have any other comments on CC0?

Austria	<p>As you can see, CC0 would not work in any way in the Austrian Copyright Law (same goes for Germany, if I am not mistaken). I can see that there is a great deal of interest for CC0 in the US, where (as far as I have understood this) CC0 would work. However, CC0 would not work on an international level. You could of course publish it for the US only (or any other legal system where it would fly). Yet, when it comes to international rules of applicable copyright law, you can not "choose" the law of the state where it would work, you would be simply overruled by the Berne Convention and its following instruments.</p> <p>CC managed to build up a reputation as "the people who have a different approach but who know their stuff". This reputation could be damaged by publishing a license which simply would not work worldwide.</p> <p>kind regards from Austria, Florian</p>
France	<p>The answers above reflect a strict and traditional understanding of the law.</p> <p>Research should be led to find possible ways to circumvent part of the constraints.</p> <p>This is part of my research agenda for next year and I'm looking forward to working with you, other leads and CCi to define strategies. Many thanks for this well structured questionnaire.</p>
Netherlands	<p>CC0 would most likely be very difficult to enforce in the Netherlands and would most certainly have no effect down the chain of users of a work. At best CC0 could be enforceable as a contract, provided there is privity - therefore, such unilateral act would be not amenable to further licensing. The same could be said for a waiver of a right, a covenant not to assert rights etc.</p>
Guatemala	<p>I will like you to explore the possibility of neutralizing the effects of any possible legal claim on those jurisdictions where is not possible to waive moral rights. Perhaps by a compensation clause saying that if there is any infringement you will do X or Y thing, and will be enough as compensation, or a System ADRs online...</p>

Mexico	This is an excellent opportunity to build a legal instrument that may help push legal reforms under a global scope beginning by changes to WIPO/TRIPS treaties and then on local legislation.
China Mainland	Under the Copyright Law of China, moral rights are inalienable and unwaivable. To the extent possible in the relevant jurisdiction, we suggest that CC0 does not apply to moral rights.
Japan	I think it is one of the simplest ways to solve the copyright chaos, and there are some companies in Japan that are interested in the moves of CC0. It will also trigger a lot of discussions, as it may not be that stable....
Australia	The information provided on this form is based on our preliminary investigations only, and are not definitive statements about Australian law. Particularly in relation to issues such as the covenant not to sue and formalities for different contracts/licenses etc, we need to do further investigation.  Our general conclusions are that: <ul style="list-style-type: none"> <li>- CC0 would be an awkward fit under Australian law, and there is a real question as to whether it's moral rights provisions would be enforceable</li> <li>- A big question we see arising from the CC0 contract is whether the disclaimers etc would, in fact, follow the content, in the absence of privity</li> <li>- the Australian situation is complicated by our low originality requirement for protection, which results in even raw data potentially being protected by copyright (ie not a sui generis database right)</li> <li>- At least in the Australian context, a 'trimmed down' Attribution Only license (ie with TPM clauses etc) might be worth investigating</li> </ul>

34. Please use this space to expand on any answers provided above.

Belgium	The questions are written independently of the existence of a moral right that makes things rather more intricate. But also on a waiver of economic rights in copyright, the answer is not easy as it will depend on the nature of such rights, considered by some as 'human rights', thus unwaivable, or by others as property rights, that can be abandoned. It is thus difficult to answer on a yes/no basis to such a complex question.
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