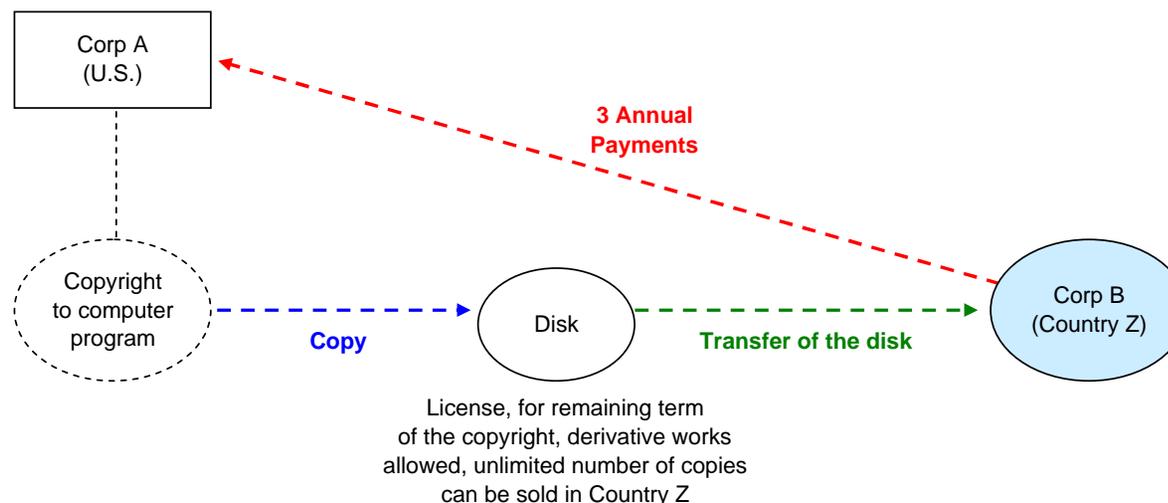


## Reg. 1.861-18(h), Example 5

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### "License" For 3 Annual Payments Treated as Sale of Copyright Rights



Corp A, a U.S. corporation, transfers a disk containing Program X to Corp B, a Country Z corporation, and grants Corp B an exclusive license for the remaining term of the copyright to copy and distribute an unlimited number of copies of Program X in the geographic area of Country Z, prepare derivative works based upon Program X, make public performances of Program X, and publicly display Program X. Corp B will pay Corp A a royalty of \$y a year for three years, which is the expected period during which Program X will have commercially exploitable value.

Although Corp A has transferred a disk with a copy of Program X on it to Corp B, because this transfer is accompanied by a copyright right, this transaction is a transfer solely of copyright rights, not of copyrighted articles. The disk containing a copy of Program X is a de minimis component of the transaction.

Applying the all substantial rights test, Corp A will be treated as having sold copyright rights to Corp B. Corp B has acquired all of the copyright rights in Program X, has received the right to use them exclusively within Country Z, and has received the rights for the remaining life of the copyright in Program X. The fact the payments cease before the copyright term expires is not controlling. The fact that the agreement is labelled a license is not controlling (nor is the fact that Corp A receives a sum labelled a royalty). (The result in this case would be the same if the copy of Program X to be used for the purposes of reproduction were transmitted electronically to Corp B.)