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# Acquiring Digital Rights & Licensing Translation Rights for Digital Editions

## Panorama of international operating practices

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Bureau international de l'édition  
française

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Translation: Catherine McMillan

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Survey conducted by Karen Politis

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December 2013

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# ACQUISITION OF DIGITAL RIGHTS

## SUMMARY

### SYSTEMATIZING PRACTICES

#### DRAFTING THE CONTRACT

- Digital rights are acquired for primary exploitation but also, more and more frequently, for a subsidiary exploitation (with the possibility of transfer to a third party) including the right to license translation rights.
- In 90% of cases, publishers acquire verbatim rights for the work. They also frequently obtain the rights to produce enhanced content or multimedia versions.
- 80% of the publishing houses represented by the sample are reluctant to acquire digital rights separately from print rights.
- Digital rights are generally acquired for the same duration as print rights, with slight differences from country to country.
- The principle of a 'renegotiation' clause is now becoming a systematic part of transactions.

#### PRODUCTION

- Text only works constitute most of the available offer. Illustrated books still remain frequently excluded from the digital offer.
- Publishers do not simply digitalize new titles: for the great majority, the digitalization of their backlist is on-going.
- All the houses who participated use DRM to protect their files.

#### REMUNERATION

- When digital rights are acquired in an addendum, no publisher proposes a *refresher-advance* systematically.
- Concerning the remuneration of authors, the application of a rate between 21% and 25%, based on the publisher's net receipts, seems to be wide practice.

#### COMMERCIAL POLICY

- If national legislation permits, the most common promotional offer used by publishing houses involves a reduction in price for the digital version of a book.

### EMERGING PRACTICES

#### DRAFTING THE CONTRACT

- The refusal to grant digital rights has been observed, especially by backlist authors.
- The insertion of a termination clause applying exclusively to digital rights (minimum sales) appears in acquisition contracts.

## PRODUCTION

- Certain houses have established a ‘Good/OK for digital diffusion’, mostly for illustrated books.
- More and more houses now have their own virtual warehouses; the others stock their files on an exterior platform.
- Digital books are, in majority, diffused by downloading but the streaming offer is growing.
- Half of the respondent publishers have begun to develop applications.
- With the appearance of proprietary formats, more and more publishers are considering the possibility of no longer encoding their data in the future.

## REMUNERATION

- Requests for specific advances for digital sales are made, but rarely.
- Certain houses accept to operate graded remuneration.
- More and more houses send separate sales reports for digital versions.

## COMMERCIAL POLICY

- Publishing houses are more frequently approached by agents who seek to negotiate a maximum difference between the price of the print edition and the price of the e-book, and a maximum discount granted to the e-book distributor.
- Flexibility in price fixing: publishing houses are practising dynamic pricing policies.
- All houses now use the possibility for the reader to download a part of the work free as a marketing lever.

## PRACTICES STILL EVOLVING

### DRAFTING THE CONTRACT

- The definition of ‘out of print’ in the digital context has not been harmonized.
- The management of territories in the electronic diffusion context still poses some problems for titles in English, Spanish and Portuguese.

### PRODUCTION

- The practice of sending ‘proof of publication’ has not been standardised.

### REMUNERATION

- No homogenous practice seems to be emerging in terms of calculating the author’s remuneration for ‘special’ sales, e-lending to an individual borrower or e-lending to a library.
- Publishing houses are trying out new schemes of the *digital-first* or *digital-only list* type, without any homogenous practice in terms of author’s remuneration.

# LICENSING DIGITAL RIGHTS FOR TRANSLATION

## SUMMARY

### SYSTEMATIZING PRACTICES

#### DRAFTING THE CONTRACT

- Sometimes translation rights for digital publications are the object of a separate contract from print rights. In such cases, the licensee is systematically the publisher who acquired the print rights (and not a third party publisher).
- Digital translation rights are generally licensed for an identical period of time as the print rights.
- It is becoming systematic to include, in the initial contract, a clause providing for the review and renegotiation of certain terms.

#### REMUNERATION

- The remuneration of the licensing publisher is generally between 21 and 25% of the foreign publisher's net receipts. This seems to be widespread practice.

### EMERGING PRACTICES

#### REMUNERATION

- Certain houses (especially American and Japanese) request a sliding scale for royalties.
- Requests for specific advances for digital sales are made, but rarely.
- Half of the sample houses ask for separate accounts statements for digital publications.

### PRACTICES STILL EVOLVING

#### DRAFTING THE CONTRACT

- The simultaneous licensing of digital rights and print rights is often decided case by case.
- For a variety of reasons (especially financial: when parties do not agree on the royalty rate), several publishers or agents have already refused to license digital translation rights.
- The definition of 'out of print' in the digital context has not been harmonized.
- The management of territories in the context of dematerialisation still poses problems for titles in English, Spanish and Portuguese.
- The practice of sending evidence of publication has not yet been standardized.

#### REMUNERATION

- There is no homogenous practice for calculating the author's remuneration in the case of special sales, e-lending to an individual borrower or to a library.