

## ACQUIRING AND LICENSING OF DIGITAL RIGHTS: PANORAMA OF SOME INTERNATIONAL PRACTICES

**Bureau International de l'Édition Française**

**Study carried out by Perceval Pradelle**

**Summary note translated by Madeleine Laurencin**

**March 10, 2011**

### Summary note

In many ways, 2010 was a turning point for the e-book market.

In the USA, the year started off with Amazon pitted against five of the six major American publishers. The debate focused on the price policy of e-books. It ended with Amazon giving in and accepting the agency model – an agreement between the publisher and the retailer which states that only the publisher can set the sales price. A few months later, Andrew Wylie, an American literary agent, in an attempt to bypass publishing houses, announced his intent to sell the digital copies of the authors he represented directly through Amazon.

In Europe, the market evolution was underscored by the launch of various distribution platforms (usually set up by a consortium of publishing houses) like Librandia in Spain, launched in the summer, or Edigita in Italy which has been up since October. On the recently created markets, the digitization of catalogues, new releases and backlists, is growing, including in Japan, where the e-book readers and tablets trend is picking up, although the distribution of manga on cellphones is commonplace.

The arrival of a plethora of new reading platforms has widely contributed to the increase of sales last year, while reinforcing and broadening the potential readers' pool. The Sony Reader and the Kindle have clearly opened the way and created a first foray into the market in the last three years, the introduction in April 2010 of the iPad, the first digital tablet, is an important milestone in the digital revolution in consumer electronics. Since then the variety of e-book readers and tablets on offer has become incredibly varied – both from flagship products marketed by major technological companies, but also e-book readers with simplified features and sold directly by online bookstores.

Finally, the launch of Google eBooks – the e-book sales platform designed by Google – marked the end of the year as well as the entrance of Google on the e-book market. Alltogether, these events are proof of the development of a real market as well as of the fact that e-book reading is probably becoming commonplace.

Beyond all these current developments, the exact boundaries of the e-book ecosystem are only partially known, and since the market still broadly needs to be defined, many questions pop up: What is the extent of the granted rights? What is the price policy enforced? How do you connect hard and digital copy marketing of the same book? Are the assignor and assignees acting together in cases of piracy? What strategy to follow faced with the competition of retailers such as Google, Amazon and Apple?

Following the request of its members and with the support of the National Book Center (Centre national du livre) as well as the Ministry of European and Foreign Affairs, the BIEF has looked to various publishing industry professionals in Munich, Milan, Madrid, London, Barcelona, New York, São Paulo and Tokyo for answers. This study, focusing on assessing the situation and drawing up an inventory, has been conducted following the lead of fifty practical questions about contractual, technical, economic and commercial issues. The destination as well as the procedures of the survey were defined by a piloting committee whose members are active participants in the development of e-books on the national and international scene.

The results of this inventory are detailed in the subsequent pages as well as the necessary annexes for those who would like to know more.

The main observations and conclusions of the study are as follows:

- The simultaneous acquisition of digital and print rights and, generally, their inclusion in a single common contract, appears to be an established practice for all the publishing houses with which we met. Another practice that has become established is to have an amendment to the publishing contract for backlist items.
- Digital rights are now exclusively considered as first rights and are thus an extension of the publishing contract.
- The areas and territories of exploitation are the same for the paper and digital rights.
- The licensing of rights almost always concerns the *rights verbatim*, i.e. those necessary to produce an e-book strictly identical to the printed issue.
- Many of the publishing houses and agents we met with acquire and license digital rights for the same length of time as print rights, although there were some slight differences depending on the countries we visited.
- The refusal to license digital rights along with the print rights is still minor and highly unusual.
- With regards to the author's royalties, a 25% rate is often applied on the international market, based on the net receipts that the editor gets.
- The insertion of a revision clause about royalties conditions in contracts is common, especially in Europe.
- The practice of a global advance, reimbursed on hard copy and digital sales, seems to be gaining ground.
- Rights statements related to digital rights are usually attached to the hard copy statements and produced with the same frequency.
- The production of files is outsourced by most of the houses surveyed.
- Various file storing and distribution schemes are possible: houses having their own platform, group of publishers using a common platform, using the retailers platform or a combination thereof.

- All the houses interviewed now use DRM encoding systems to protect their files.
- Most of the illegal offer in digital format comes from scanned hard copies which are then uploaded. The need for publishing houses to cooperate to fight against this phenomenon appears to be essential, whether through publisher associations or by sharing infrastructures (data bases). On a technical level, the activity of monitoring and searching for pirated copies on the internet is often outsourced.
- An overwhelming majority of publishing houses have not yet implemented standardized practices when it comes to sending digital complimentary copies to the author or the holder of the rights, even in Japan and English-speaking countries, where sales are well developed.
- Text-based works make up the majority of the available digital offer, except in Japan, where the main digitally-published genre is manga. The production of works with illustrations and enhanced content is still a very small fringe.
- Unsurprisingly, the breadth of the digital offer is all the bigger if the publishing house is important and the local digital publishing market developed. The major British, American and Japanese publishing houses are those whose digital catalogue is the most well-stocked.
- The reduced price applied to digital versus hard copies depends greatly on the countries, the publishing houses interviewed and publication types. Moreover, the variety of fiscal regimes makes the comparison of existing price policies on the different national markets difficult.
- Most publishers publish digital and hard copies simultaneously. While some publishing houses are experimenting with new practices (offering the first chapter for free download, using social networks, one-time promotions), the major part of the interviewed publishers claim not to have separate marketing practices to promote digital sales, relying on the practices used for print editions.