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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

December 2013

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## *Our Thanks*

We would like to thank all those working in publishing houses and literary agencies who were kind and patient enough to answer the 130 questions of our on-line questionnaire.

This survey is the fruit of the expertise and experience they were willing to share, concerning digital rights management and the contractual methods employed in digital publishing.

We would also like to express our gratitude to the members of the piloting committee listed below. Their professionalism, availability and assistance throughout the project have greatly contributed to the successful planning and conducting of this survey. Our sincere thanks to all of them.

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- Vincent Piccolo (Lamartinière)
- Carole Saudejaud (Fayard)
- Lore Viale-Touraille (SNE)

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Survey conducted by **Karen Politis**

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# CONTENTS

PRELIMINARY NOTES & METHODOLOGY .....	4
<i>ACQUISITION OF DIGITAL RIGHTS.....</i>	<i>7</i>
SUMMARY .....	8
A -DRAFTING THE CONTRACT .....	11
B - PRODUCTION.....	23
C - REMUNERATION.....	31
D -COMMERCIAL POLICY .....	38
<i>LICENSING DIGITAL RIGHTS FOR TRANSLATION.....</i>	<i>45</i>
SUMMARY .....	46
A -DRAFTING THE CONTRACT .....	48
B - REMUNERATION.....	55
C- COMMERCIAL POLICY.....	62
<i>ANNEXES - QUESTIONNAIRES .....</i>	<i>63</i>
ACQUIRING DIGITAL RIGHTS: WHAT ARE YOUR PRACTICES ? .....	64
LICENSING DIGITAL RIGHTS: WHAT ARE YOUR PRACTICES ? .....	69

# Preliminary notes & methodology

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In March 2011, at a time when the contours of the digital book ecosystem largely remained to be defined, BIEF published a survey entitled 'Acquiring and Licensing of Digital Rights: Panorama of Some International Practices'.

Based on interviews with publishing professionals in Germany, Spain, the United Kingdom, Italy, the United States, Brazil and Japan, it covered a range of concrete questions that were contractual, technical, economic and commercial in nature.

It was warmly received by BIEF's members and welcomed by foreign publishers. Consequently, BIEF took the decision in 2013 to organizing a second chapter.

## A 'second chapter' with a wider range

As for the first survey, a piloting committee (made up of publishers, rights managers and jurists) identified the key themes and subjects for our questions to foreign partners.

But a new methodology was applied to this second part, because the manner of assembling the responses has been profoundly altered. On-line questionnaires (130 semi-open questions) were addressed to publishing professionals. Because of the degree of precision requested in certain responses, they were treated in such a way as to ensure the anonymity of the respondents.

Moreover, the scope of the sample was extended: as well as the professionals in the book industry we had met in 2011, who were invited to participate once again, 30 new contacts accepted to take part in the project and Argentina joined the seven countries represented in the first survey.

## Two distinct questionnaires

Problems relative to the digital publishing contract appear in a different light to those acquiring and those licensing rights.

That is why it appeared more appropriate and practical to establish two distinct questionnaires: the first questions book industry professionals about their practices of acquiring digital rights (from their authors or from foreign publishers), the second focuses on their procedure when licensing digital rights for translations.

## A wide range of subjects treated

One single contract or a separate contract for digital rights; the term of the license to exploit digital rights in relation to the term for print rights; possibilities of renegotiation; conditions of termination of the contract; definition of territories in the context of digital diffusion... all these issues are encountered by those acquiring and licensing digital rights. Consequently, they were treated in both questionnaires, as were questions relative to the remuneration of authors: the request for a specific advance, the basis on which royalties are calculated, definition of net

receipts, average rates, calculating remuneration in case of subscription, lending to a third party or a library, frequency of reporting accounts, etc.

On the other hand, different subjects were specifically addressed to buyers of digital rights. For example, technical questions about production formats, as well as technical measures of protection and the fight against piracy. Economic and commercial practices also entered into the survey: the type of offer and the pricing policy, promotional campaigns, etc.

### Foreign partners share our interests

41 people representing agencies or publishing houses (of all sizes) responded to the questionnaire on the practices of acquiring digital rights, while 31 completed the part on the practices of licensing digital rights.

Since the area of the sample for the two questionnaires was not strictly identical, 53 different people accepted to take part in the survey – and this in spite of the strategic issues raised by certain questions on subjects that were sometimes confidential.

The questionnaires were completed in their entirety, which would tend to prove that the questions posed were pertinent and that our foreign partners share an interest in the themes treated.

### The aim of the survey

A summary and analysis of the responses are published here. Certain results may comfort existing intuitions and convictions already widespread in the profession. Others will cast new light on subjects less frequently discussed.

In any case, given the size and the nature of the sample, the ultimate aim of the survey is not to present statistically precise conclusions.

Our aspirations are more modest: we hope that the international dimension of this survey and its innovating nature may contribute to enlighten and enrich discussions between authors and publishers in France.



## *ACQUISITION OF DIGITAL RIGHTS*

# Summary

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## 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.
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## 1/ 20 DESCRIPTION OF THE SAMPLE

### Q.1 TO 7→PROFILES OF THE RESPONDENTS: PUBLISHING HOUSES, AGENTS

41 people working in the book industry responded to the questionnaire on acquiring digital rights for translation. They answered all of the 91 questions.

29 of the respondents work in a firm whose principal production is text-only books, and 8 work in a firm whose main product is illustrated books.

*Identification of the respondents*

Country	Type of publication	Post held in the firm (literal transcription of the replies)
Argentina	Text only	Editor
Argentina	n/a	President
Argentina	Text only	Editor
Argentina	Text only	Director
Brazil	Text only	Digital Manager
Brazil	Text only	Executive Publisher
Brazil	Text only	Marketing
Brazil	Text only	Rights Coordinator
Brazil	Text only	Executive Director
Brazil	Illustrated	Director for children's books
Brazil	Illustrated	Manager
Brazil	Text only	Editorial director
United Kingdom	Text only	Translator and online marketing assistant
United Kingdom	Text only	Digital Rights Manager
United Kingdom	Text only	Publisher At Large
United Kingdom	Text only	n/a
United Kingdom	Text only	Digital Product Manager
Germany	Text only	Manager Foreign Rights
Germany	Illustrated	Contracts Manager
Germany	Text only	Editor in chief
Germany	Text only	Head of Rights
Germany	Text only	Editor
Germany	n/a	n/a
Germany	Illustrated	Publishing director
Germany	Illustrated	International Sales Director
Germany	Text only	Productmanager
Italy	Text only	Editor in chief
Italy	n/a	Rights & Acquisitions Director
Italy	Text only	Rights And Acquisitions Director
Japan	Illustrated	General manager
Japan	Text only	Editor in chief
Japan	Text only	VP & Board Member
Japan	Text only	Manager
Spain	Text only	Foreign Rights Manager
Spain	Illustrated	Digital content manager
Spain	Text only	Publisher Director
Spain	Text only	Head of Mass Market & Digital Dept.
Spain	Illustrated	Publishing director
United States	Text only	VP, Director of Subsidiary Rights
United States	Text only	n/a
United States	n/a	Director

# A -Drafting the contract

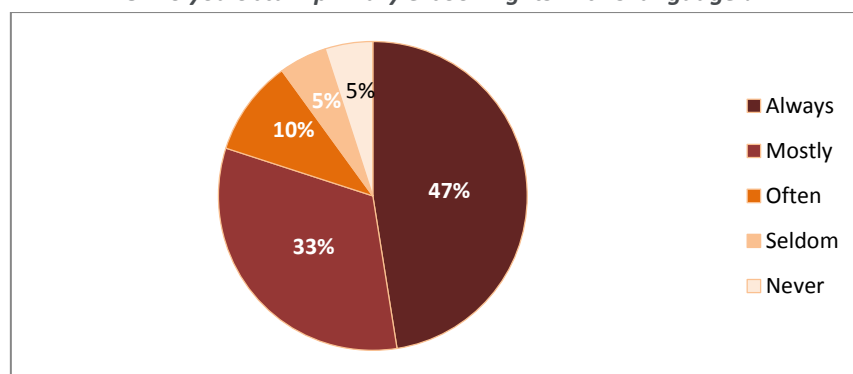
## 2/20 HEAD CONTRACT WITH AN AUTHOR

### Q.8 → ACQUISITION OF DIGITAL RIGHTS: PRIMARY EXPLOITATION

The first part concerns the head contract drawn up with an author (directly or via the author's agent) who writes in the language of the publishing house.

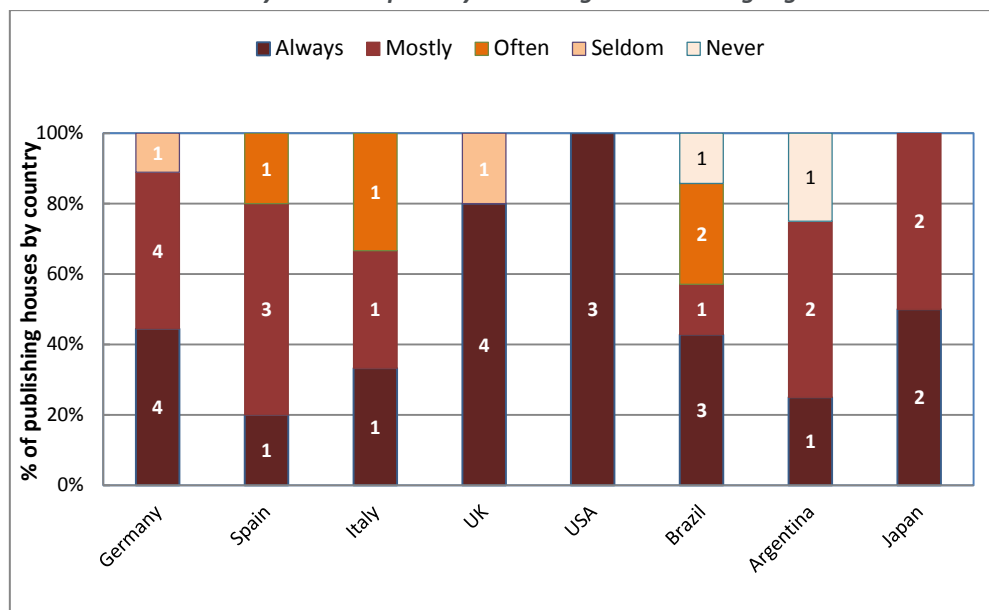
The first observation is that the digital rights for the initial exploitation are widely obtained. 80% of the sample publishing houses (32 out of 40) obtain these rights almost systematically.

**8. Do you obtain primary e-book rights in this language ?**



(40 responses)

**8b. Do you obtain primary e-book rights in this language ?**

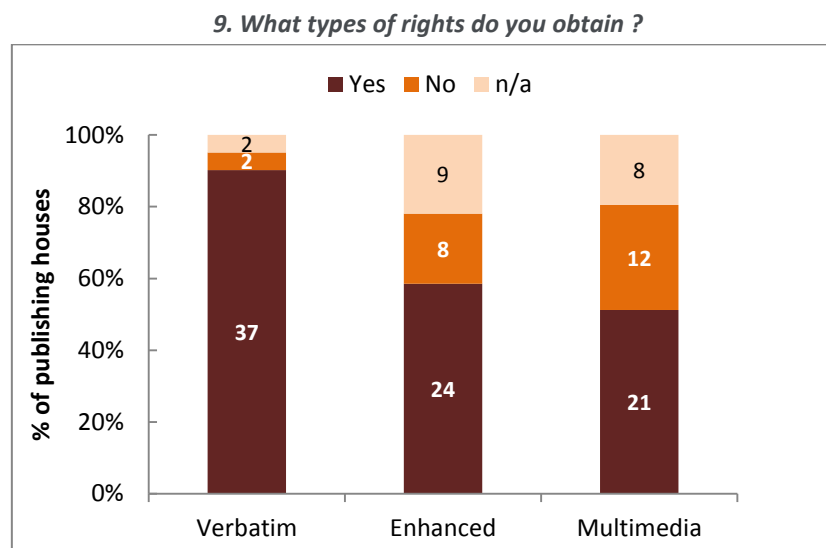


(40 responses)

## Q.9 → TYPE OF DIGITAL RIGHTS ACQUIRED

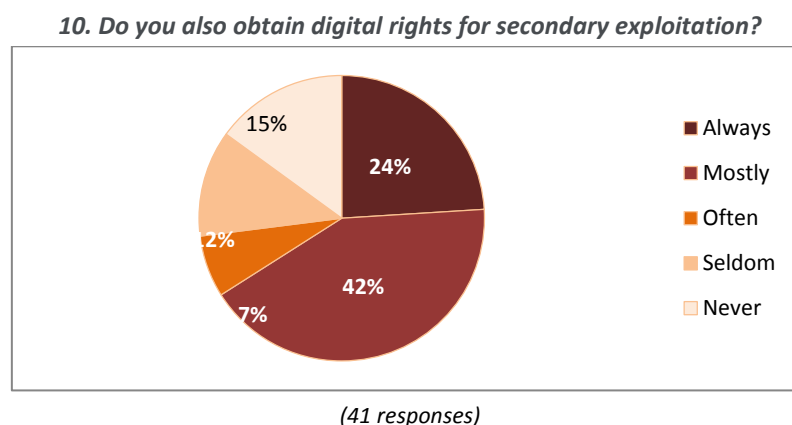
As was the case in 2011 for 90% of the publishing houses, the acquisition of digital rights refers to *verbatim* rights, i.e. the authorizations necessary for the production of a homothetic version of the print version (texts and images digitalized).

However, while the acquisition of digital rights for an augmented version of the work (enhanced or multimedia) was still limited in 2011, it has become much less so in 2013: 24 houses out of 41 (58%) obtain the rights holder's agreement to produce enhanced content and 21 houses (51%) obtain the rights to produce multimedia content.

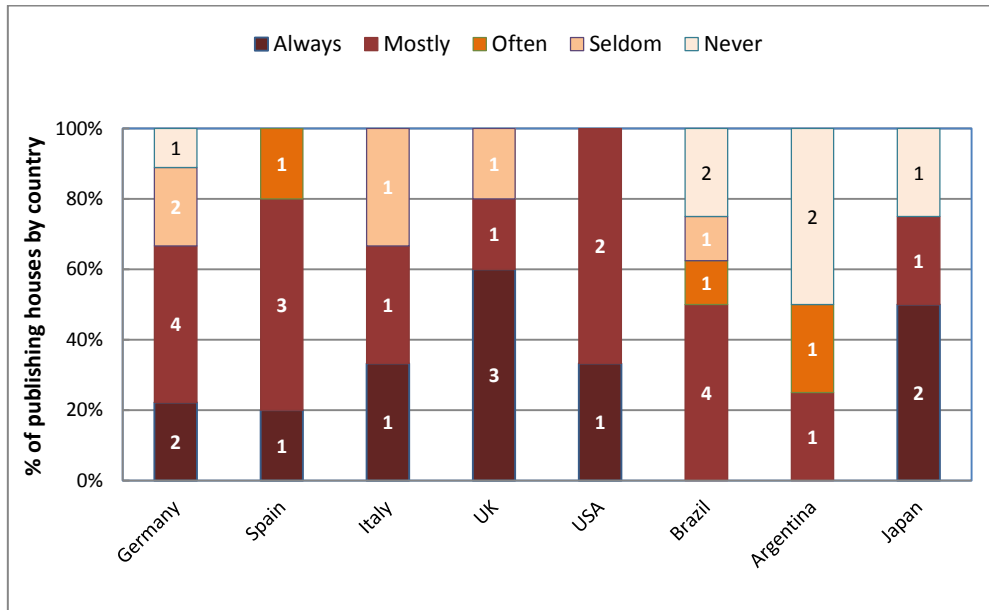


## Q.10 → SUBSIDIARY EXPLOITATION

Two thirds of the sample publishing houses (27 out of 41) – when they obtain digital rights for primary exploitation – also frequently obtain the rights for a secondary exploitation, i.e. the possibility to license digital rights to a third party.



**10bis. Do you also obtain digital rights for secondary exploitation ?**

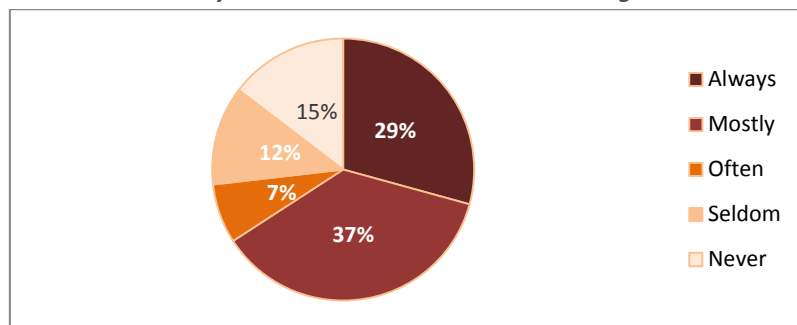


(41 responses)

**Q.11 → LICENSING FOREIGN LANGUAGE RIGHTS**

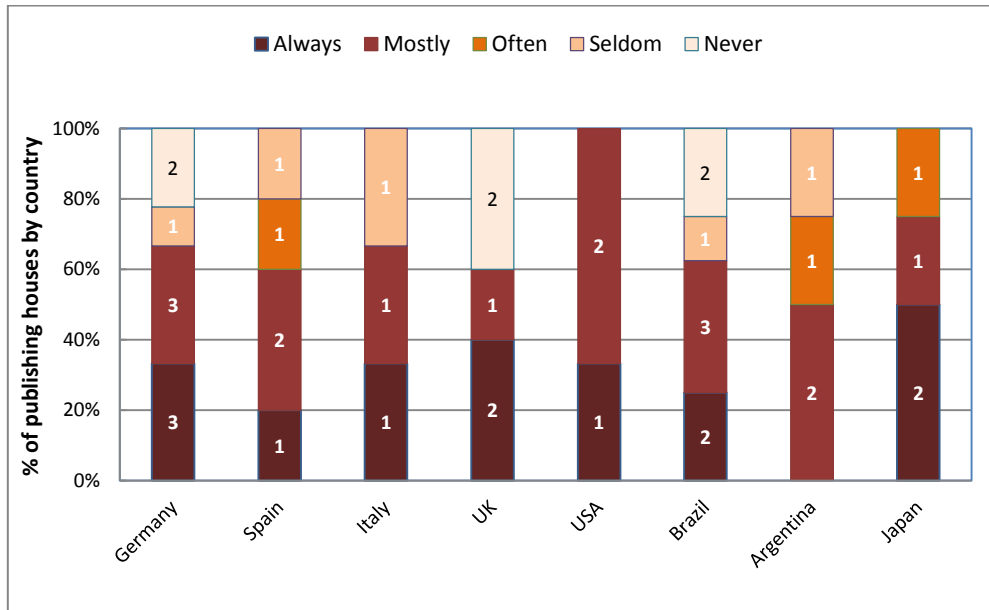
As for secondary exploitation rights, two thirds of the sample (27 out of 41) also frequently obtain digital translation rights from their authors (to be later licensed by their foreign rights departments).

**11. Do you also obtain e-book translation rights?**



(41 responses)

**11b. Do you also obtain e-book translation rights?**



(41 responses)

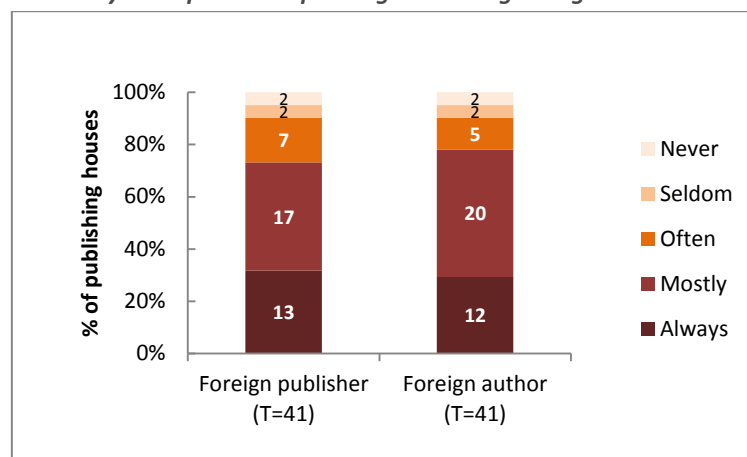
### 3/20 ACQUISITION CONTRACT FOR A FOREIGN TITLE

Next, we asked participants about their procedure when acquiring the digital rights of a foreign title (for translation and publication by them), whether the rights are acquired from a foreign publisher (directly or via a local subagent) or from the author (generally represented by his/her agent).

#### Q.12 AND 14 → ACQUISITION OF PRINT RIGHTS AND DIGITAL RIGHTS SIMULTANEOUSLY

When buying the rights for a foreign title, it has become general practice to acquire digital rights and print rights at the same time.

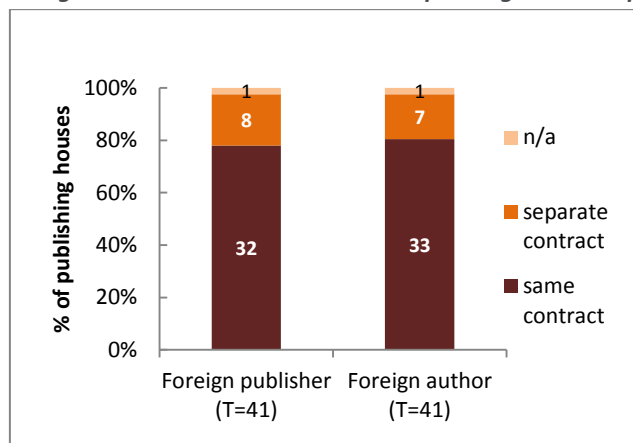
**12 and 14. Do you acquire both print rights and digital rights at the same time?**



### Q.13 AND 15 → IN ONE CONTRACT OR SEPARATE CONTRACTS

Digital rights and print rights for a foreign title are generally transferred in the same contract.

*13 and 15. Digital rights: in the same contract as the print rights or a separate contract ?*



**Q.16 →** If the publisher has obtained both the print and digital rights to translate and publish a title, our questionnaire asked who would retain the property of the translation itself when/if the publication contract with the original copyright-holder comes to an end.

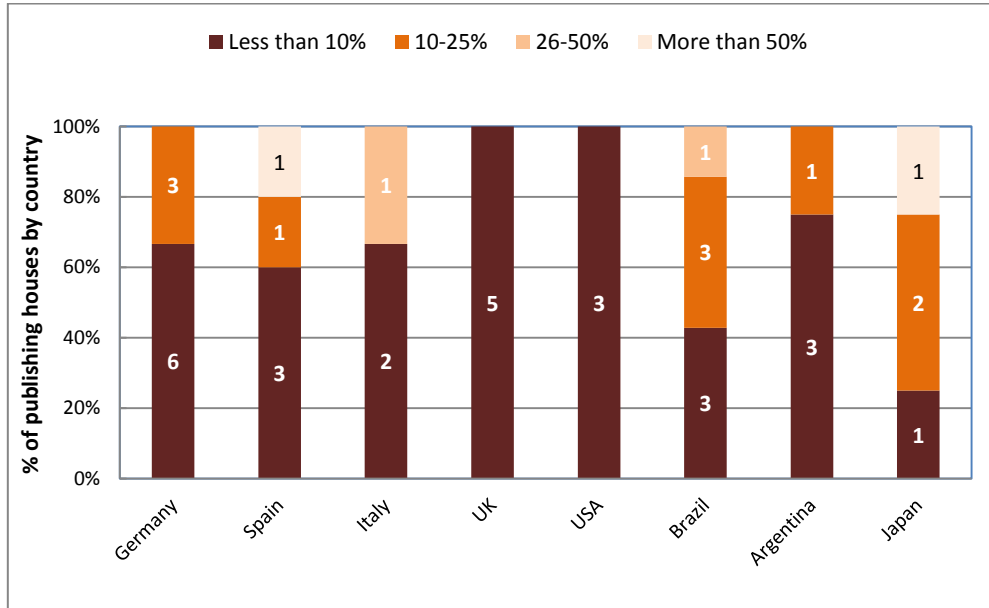
Out of 39 houses, 31 replied that they would retain the legal property of the translation. The other 8 houses replied that the translator would retain the rights, which means, in this case, that they would lose all recognition of the added value of their editorial work.

### 4/20 AUTHORS AND THEIR DIGITAL RIGHTS

The uncertainty surrounding the development of digital publishing often weighs on the relations between authors and publishers. However, it is difficult to know if those authors who are reluctant to grant their digital rights to a publisher are more or less in number than two years ago. Indeed, the percentages of authors who reserve their digital rights are generally low (less than 10%). They also vary according to the extent of development of digital publishing in each country.

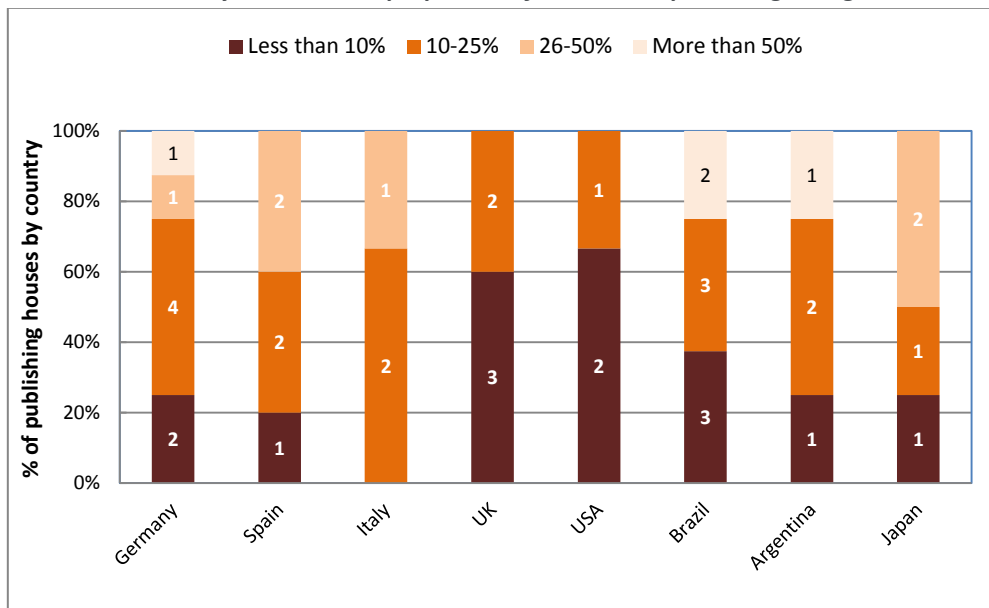
It may also be true that certain backlist authors 'reserve' their digital rights quite simply because the publishing house has never attempted to acquire them...

**17. In the past year, what proportion of authors kept their digital rights?**



(40 responses)

**17 bis. On your list, what proportion of authors keep their digital rights?**

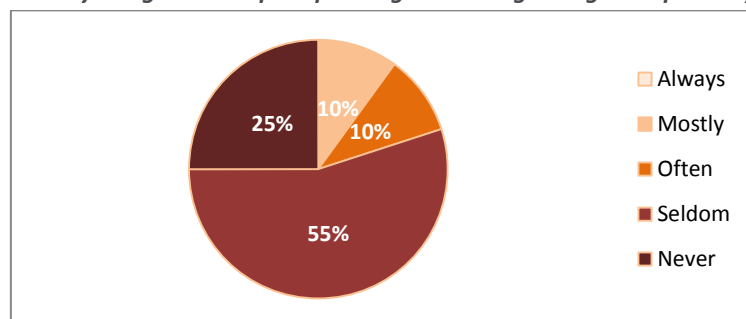


(40 responses)

### Q.18 → NEGOTIATION WITH AUTHORS: WHAT LEEWAY DO YOU HAVE?

When dealing with authors who want to separate the grant of digital rights from that of print rights, 80% of publishing houses (33 out of 41) are little – or not at all – disposed to negotiate.

18. Do you agree to acquire print rights and digital rights separately?



(41 responses)

### Q.20 → THE 'ALL OR NOTHING' POLICY

If an author refuses to grant digital rights at the same time as the print rights to publish a work, certain publishing houses are prepared to cancel the whole transaction. This 'all or nothing' policy, which is dissuasive, is practised by English language publishers: 2 American houses out of the three participants refuse to acquire print rights if the digital rights are not included and 3 British houses (out of 4) cancel the transaction if the digital rights are refused.

Publishing houses in other countries are more flexible in their negotiations, two exceptions being one German and one Brazilian house.

### Q.19 → REASONS FOR REFUSALS

When an author refuses to grant digital rights, the reasons given are principally of a commercial nature.

The most common reason for disagreement is the amount of the remuneration: the rate of royalties (given by 23 houses) or the amount of the advance (12 houses).

Since it was possible to give several responses to this question, other differences motivated the refusal: for example, certain authors are tempted by self-publishing and consider commercializing a digital version of their work directly (response given by 12 houses). Others plan to grant their rights to another publisher of exclusively digital works (2 houses).

Publishing houses insist on the fact that certain authors refuse to grant their rights because they are wary of (and even hostile to) digital technology, or it may be their agent who refuses. For others, there is a fear that a digital version of the work will harm the sales of printed copies. At the opposite end of the scale, one American house gave the example of an author who refused to grant his digital rights because he had self-published his book in digital format before even approaching mainstream print publishers.

## 5/20 ENHANCED CONTENT AND COPYRIGHT

### Q.21 → OWNERSHIP OF CONTENTS

‘Who owns the additional enhanced material?’ To that open question, some houses did not reply, probably because of one simple fact: they have not yet produced an e-book with additional enhanced content.

Among those who did reply, the majority said that the publishing house holds the rights for additional enhanced content.

However, certain large publishing houses – who no doubt produce enhanced e-books more frequently – pointed out that their house was not the proprietor of these rights except in cases where the additional enhancements had been designed and produced in-house.

If this were not the case, we may assume that the additional material was the object of a contract between publisher and a developer. The developer then holds the rights for the software, source codes and the interface of the enhanced content and grants the rights of exploitation to the publisher.

### Q.22 → WHO OWNS THE TECHNICAL FILES?

‘Who owns the technical files?’ The response to this open question was almost unanimous: the publishing house is the proprietor of technical files. A minority of publishing houses made one exception, pointing out that they were the proprietor of technical files only if they had in effect produced them.

## 6/20 DURATION OF EXPLOITATION OF DIGITAL RIGHTS AND THE ‘RENEGOTIATION’ CLAUSE

Bearing in mind the general uncertainty about how the digital market will develop, it appears that authors and publishers have decided not to undertake obligations that may bind them too rigidly or that may become obsolete. This is even more true than in 2011. Clauses limiting the duration of licenses (even in countries where contracts are made to cover the period of intellectual property), or providing for the renegotiating of terms after a few years (especially those concerning remuneration) are becoming more and more frequent.

### Q.23 → SAME DURATION AS FOR PRINT RIGHTS OR LIMITED DURATION?

Although it is reasonable to suppose that publishing houses remain reticent to accept a limited duration for digital rights – which would oblige them to renegotiate the remuneration or oblige them to compete with other publishers – we must recognize that more than a third of the sample (16 out of 41) do not obtain print rights and digital rights for identical periods. This is a real evolution if we compare with 2011, when houses who did not obtain these rights for identical periods were an exception.

Among these 16 houses, four are Spanish, which is not surprising, because in Spain, the law forbids an author to grant rights for longer than 15 years. On the other hand, this difference in the duration of license between print and digital rights also concerns countries like Japan (2 houses out of 4), Germany (4 out of 9) and Argentina (2 out of 4).

#### Q.24 AND 25 → EVEN IF IT IS NOT GENERAL PRACTICE, THE 'RENEGOTIATION' CLAUSE IS NOW FREQUENTLY INCLUDED IN CONTRACTS

Although there may be no time limitation for the licensing of digital rights, a clause permitting renegotiation seems to be more frequently included when drafting contracts. 80% of the houses (33 out of 41) affirm that they include in their contracts a possible renegotiation of terms and conditions for digital exploitation – after a certain number of years.

Among the houses that include such a clause, 13 do so systematically and 20 occasionally.

In practice, this clause is rarely implemented. In our sample, only seven houses had actually renegotiated the terms for digital rights (Japan, Brazil, Italy, Germany, US and two in Spain).

This 'lack of concrete examples' means that we cannot surmise what might happen in the case of failure to reach an agreement between author and publisher when the renegotiation of terms in the contract takes place.

Q.26 → However, the majority of responses seem to suggest that if the parties could not reach an agreement at the time of renegotiation, they would consider terminating the part of the contract that concerns digital rights, but not the entire contract (print and digital).

#### 7/20 TERMINATION OF THE CONTRACT, REVERSION OF RIGHTS AND DEFINITION OF 'OUT OF PRINT'

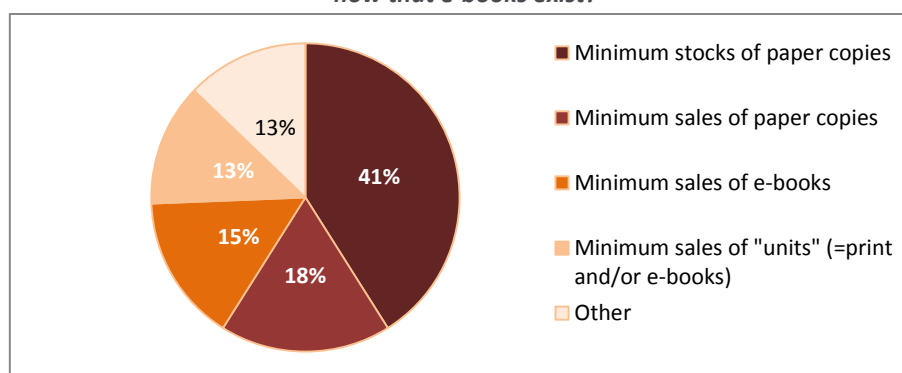
How do you define 'out of print' now that e-books exist?

Q.27 → The responses to this question reveal that common practice has not yet been established and that for the moment, one tendency for each country has not emerged.

It is interesting to observe that 16 publishing houses out of 39 remain attached to the notion of 'out of print' - as applied to print books - to justify the reversion of rights.

What is new is the number of houses who consider sales to be the motivating factor for the termination of a contract and reversion of rights. Also significant, the fact that rights holders agree that the minimal sales clause - which provides for reversion of rights - should include sales of the digital version.

27. If, in your contracts, the rights revert if the work is 'out of print', how do you define 'out of print' now that e-books exist?



(39 responses)

## Q.28 AND 29 → REVERSION: CLAUSE AND PROCEDURE

In 2011, none of the houses in the sample used a specific reversion of rights clause for digital editions. However in 2013, when answering the question 'Are you often asked to include a minimal sales clause?' 17 houses replied yes and 22 replied no.

On the other hand, few authors still ask that the master copy of the file be destroyed if the publishing house is no longer exploiting the digital rights.

29 houses said that they were not asked to destroy the source file. 7 houses replied that they were, including three out of four respondents in Japan.

## 8/20 E-BOOKS AND TERRITORY

Q.30 → Digital technology having radically altered the notion of territory in the publishing market, we asked publishing houses how they ensured that their e-books were sold only in the territories authorized by the contract.

Situations vary from country to country and according to how necessary it is to exercise control. For houses in certain countries, the question of territory is less important because their linguistic area of diffusion is limited. Hence, publishing houses in countries like Germany, Italy or Japan say that when acquiring digital rights, they opt for world rights. So there is no need for verifications.

For those houses who do exercise controls, the responses were varied, certain being more lax than others. Whatever the case, whether they use surprise or systematic checks, these controls are exercised *a posteriori*, based on sales reports.

The best way to prevent sales outside the specified territories remains the method of working with distributors.

Some houses choose to work exclusively with firms who guarantee distribution within the national territory.

But most often, whatever the country, publishing houses make sure one of the clauses in their contracts with partners (distribution platforms, retailers, bookshops) include the territories in which each title can be sold.

One house in the UK explained that they have one distributor for North America and another for the rest of the world, and that they do not have any problems if the territories are clearly mentioned in the contract.

This technical obligation for the distributor to ensure that the books are not sold outside the authorized territories is sometimes accompanied by a DRM, or software with position determination technology in the metadata (or both).

**Q.31 →** How has the existence of e-books affected your decision-making process over which territories to obtain rights for?

Perhaps because it is an embryonic part of their activity, perhaps quite simply because publishing houses continue, as before, to begin by acquiring world rights, but digital technology does not, at the moment, have a strong impact on editorial policy.

However, it should be noted that two international groups say that now their acquisitions are exclusively with world rights, in order to guarantee the possibility of selling e-books without territorial limitations.

## 9/20 SUBLICENCES

### **Q.32 AND 33 → SUBLICENSE TO A THIRD-PARTY PUBLISHER AND AGREEMENT OF THE RIGHTS HOLDER**

Sublicensing digital rights to a third-party publisher (for a book club edition, for example), doesn't appear to be a very widespread practice. Only 9 publishing houses out of 41 said they had already sublicensed digital rights.

They were also asked if digital rights holders had refused to give their permission for a sublicense to a third-party publisher. Apart from three very large houses (who make a great many contracts), all the other houses gave a negative reply.

### **Q.35 → CHAPTERS AND EXCERPTS**

Publishing houses were asked if they had already acquired digital rights for excerpts or chapters of the book.

12 houses out of 41 replied that they had. It should be noted that six of the twelve were Brazilian publishing houses.

### Q.36 → CROSS MEDIA, “360° MODELS”, LINKS AND COMPETITION

6 publishing houses out of 40 (15%) have obtained the digital rights for an illustrated book which was an adaptation of a film or a video game. The positive responses came mainly from publishing houses in two countries (Japan and Germany), as well as Spain and Brazil.

Although the questionnaire did not specifically ask the question, we can surmise that the publishers could run into short or mid-term problems when trying to obtain digital rights to make enhanced books or apps, because they would be entering into competition with the producers. In fact, it is easy for producers to position themselves in the domain of digital production because they have already invested in the production of film or multimedia content. This tendency must be carefully observed, all the more so because in English language markets, contrary to European practice, agents and authors generally grant film rights to film studios rather than to their publishing house.

# B - Production

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## 10/20 PRODUCTION

### Q.37 → THE AUTHOR'S MORAL RIGHTS: THE DIGITAL 'GOOD FOR PRESS'

In order to avoid disputes and legal proceedings at a later date, certain publishing houses have established a system of validating files of a digital work prior to its diffusion, like the 'good for press', or 'ok to print' for printed books. Out of the 41 publishing houses who were asked if the licensor demanded the right of approval before the production of an e-book, only 8 replied yes, among them 3 houses whose production is mainly illustrated books. 4 of them were in Brazil, 2 in Japan, 1 in Argentina and 1 in Italy.

### Q.38 → STORING FILES

In order to store files and make them available to the public (directly, or via an on-line book shop), the publisher can create its own platform and be its 100% proprietor. In 2011, this option was chosen by a minority of publishers, because of the heavy investments required, which must be borne entirely by the publishing house.

Another option is to store files on an external platform which may be used by several publishers (e.g. Librandia in Spain) or, may be the property of an on-line distributor (such as Amazon).

Today, all the big publishing houses in the sample store their files on an in-house server, which permits them to maintain direct control over all the source files. What is more surprising is that medium-sized houses and even small houses have also adopted this system in spite of the costs it entails.

Out of 41 houses in the sample, 18 now have their own virtual warehouse while 20 store their files on an exterior platform. Two houses use both systems simultaneously.

## 11/20 PRODUCTION: FORMATS AND READING DEVICES

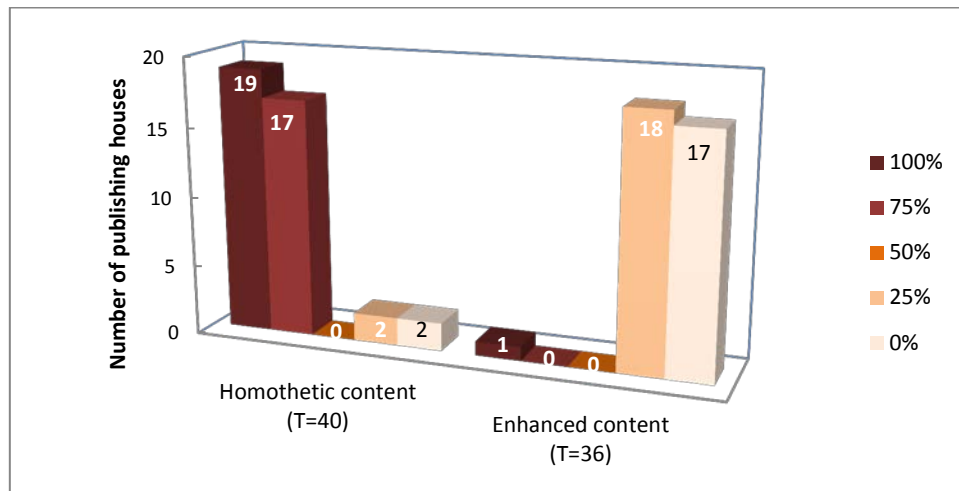
### Q.39 → THE DEVELOPMENT OF ENHANCED CONTENT

The production of enhanced content remained extremely limited among the sample publishers in 2011, but there seem to be more promising experiments underway in 2013.

Of course, half of the houses who answered this question do not produce enhanced content. But the other half (18 houses) claim that 25% of their production of e-books is enhanced.

Indisputably, the arrival on the market of new reading devices like the iPad (and their enduring success in the market), then the cheaper Android devices, has incited publishers to explore new technical possibilities and interactive functions. However, questions remain concerning the economic viability and the conditions of exploitation of enhanced e-books.

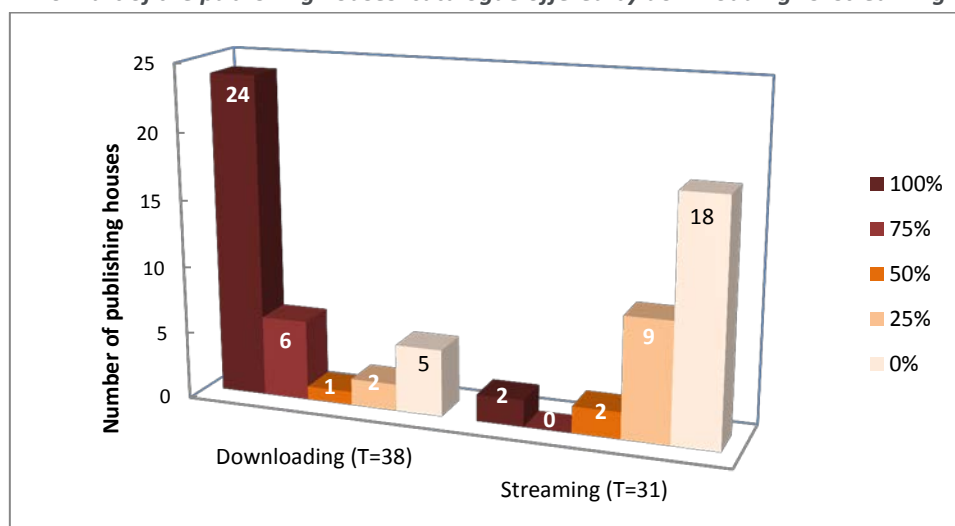
### 39. Homothetic content vs. enhanced in the digital catalogue of sample publishing houses



### Q.40 → MEANS OF DIFFUSION: DOWNLOADING AND STREAMING

Most digital books are diffused by downloading: 31 publishing houses out of 39 propose between 75% - 100% of their catalogue to be downloaded. Streaming is less frequent but more common than two years ago. In 2011, it was almost inexistent; apart from in Japan, because of the significant offer of manga for cell phones. In 2013, we observe that 11 publishing houses offer between 25%-50% of their catalogue by streaming. Two European houses (one Spanish, the other British) have now made their entire catalogues available by streaming.

#### 40. Part of the publishing houses' catalogue offered by downloading vs. streaming



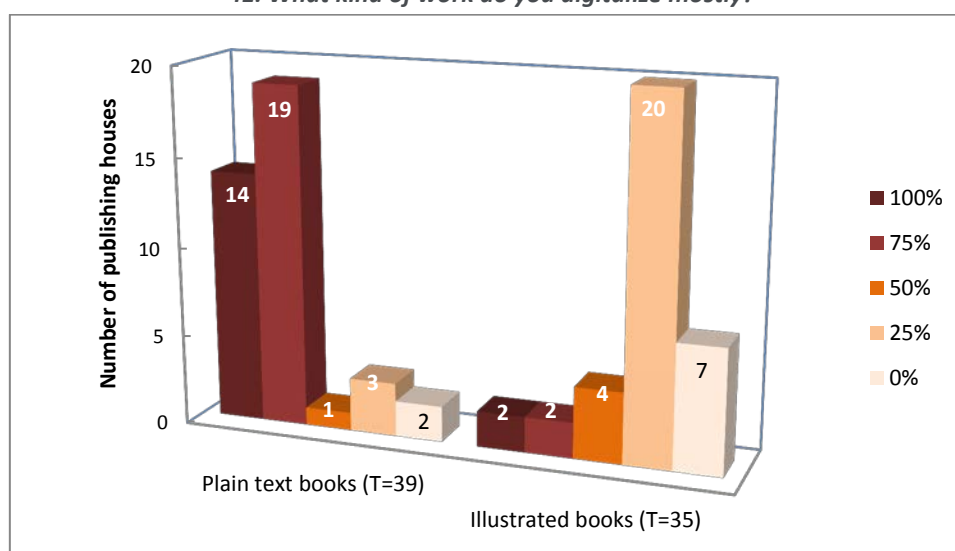
#### Q.41 → ILLUSTRATED BOOKS ARE STILL RARELY DIGITALIZED

The majority of sample publishing houses digitalize mainly text only books: they account for between 75% and 100% of their digital production.

Only eight houses said that half or more of their digital production were illustrated books. Among them are three Japanese publishing houses – where the most frequent type of digital publication is the manga.

Hence illustrated books remain, as in 2011, frequently excluded from the digital offer (or represent a small part). This can be explained by technical difficulties, or by questions of legal complexity. Illustrated books require publishers to verify that they hold the digital rights for each image – this can be a long procedure with uncertain results.

#### 41. What kind of work do you digitalize mostly?



#### Q.42 → PRODUCTION FORMATS: JAPAN, A SPECIAL CASE<sup>1</sup>.

Originally developed with text only works in mind, *ePub* ‘reflowable’ or ‘dynamic’ enables text to be displayed on all kinds of devices, by adapting the presentation to the size of the screen. Not surprisingly, it is the standard production format for digital publications, used by the majority of publishing houses (23 responses).

With fixed layout *ePub*, it is possible to display richly illustrated content while conserving the exact page lay-out of a printed book (fixed lay-out). This format was used by six publishing houses, three of whom publish mainly illustrated books.

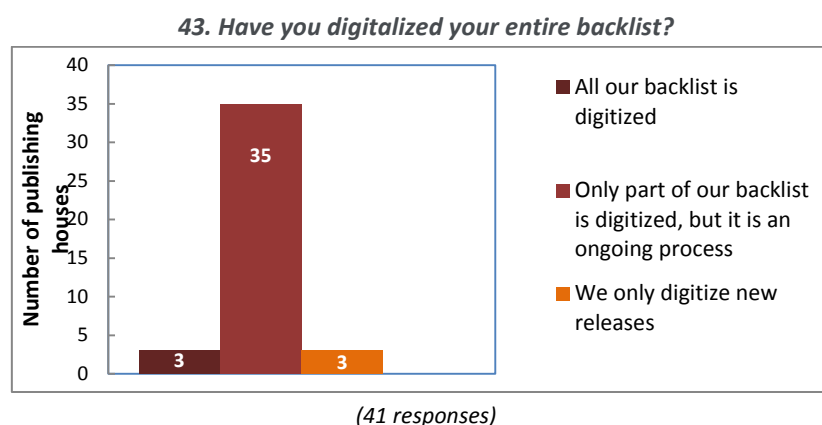
The last of these commonly used formats, *ePub 3*, offers supplementary functions which permit more interactivity and scenarization, as well as improved management of international languages such as Japanese. It is not yet supported by the majority of reading devices and is used by only six publishing houses at present.

In 2011, we mentioned one specific feature of Japanese houses, concerning the production of files. Since the *ePub* did not contain Japanese characters, it was rarely used: digital books were produced in other formats, particularly XMDF and DotBook.

The responses of the four Japanese publishing houses in the 2013 sample show an interesting evolution. The first publishes mostly illustrated works and uses *ePub fixed layout*. The second uses other formats than *ePub* and the third has shifted to *ePub 3*. The fourth uses the *ePub* format.

#### Q.43 AND 44 → DIGITALIZATION OF THE BACKLIST

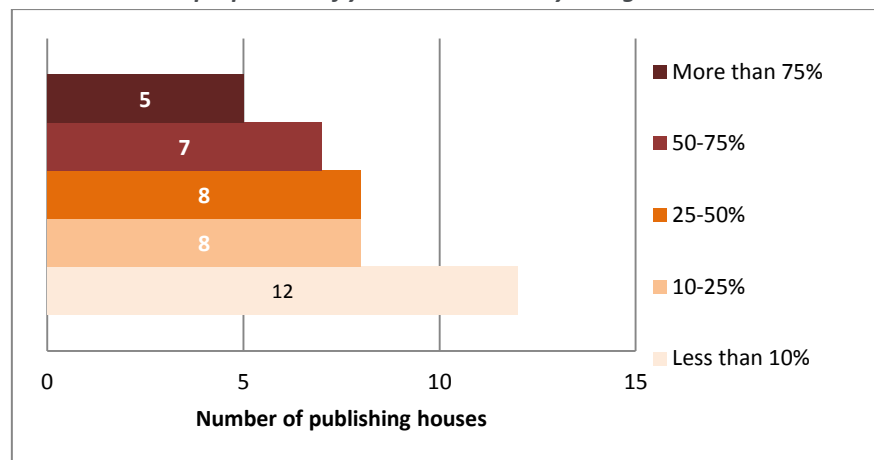
Most publishers are now in the process of digitalizing their backlists. Only three publishers out of 41 in the sample said they digitalized new titles only. For all the others, the digitalization of their entire catalogue is on-going.



<sup>1</sup> Source of technical definitions: ‘Guide du numérique à l’usage des éditeurs’, SNE, Normes & Standards group, March 2012

Unsurprisingly, the volume of backlist works digitalized is often greater in big houses or in countries where the domestic market is more developed (US, UK, Germany).

**44. What proportion of your backlist have you digitalized to date?**



(40 responses)

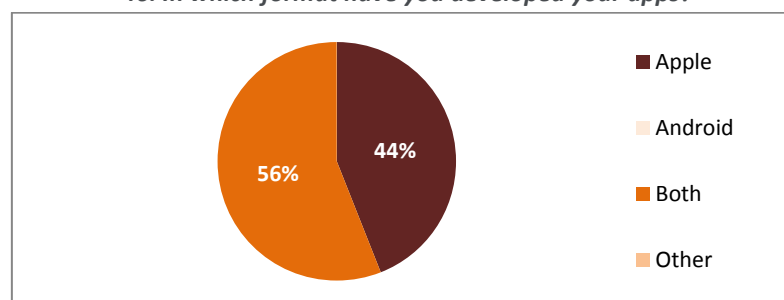
**Q.45 AND 46 → DEVELOPMENT OF APPS FOR THE ILLUSTRATED BOOK**

Half of the sample publishers (20 out of 40) say they have begun to create or develop apps for their illustrated books, and six others plan to begin soon. Compared with the results of the 2011 survey, the new figures show exponential growth. With low sales prices, the apps often sell better than the illustrated e-book, a fact that has doubtless encouraged many publishers to position themselves in this market.

Today, the publishers' choice between the app format and the illustrated e-book format is not a radical one: 27 publishers have digitalized illustrated books and among them, 20 have developed apps. Obviously each of these editorial choices is made in the light of complex economic equations, especially in terms of viability and return on investment.

On the other hand, all the publishers agree that Apple is, incontestably, the main channel for selling apps and indispensable for the diffusion of their e-books.

**46. In which format have you developed your apps?**



(25 responses)

## 12/20 CONTRACTUAL COPIES, FREE COPIES

### Q.48 → SENDING CONTRACTUAL COPIES ON PUBLICATION

When sending contractual copies on the diffusion of an e-book, practice has evolved somewhat since 2011. More publishing houses systematically send a copy of the e-book to the author or the agent than was the case two years ago; but there is still no standard practice.

Among the responses received, three groups are distinguishable:

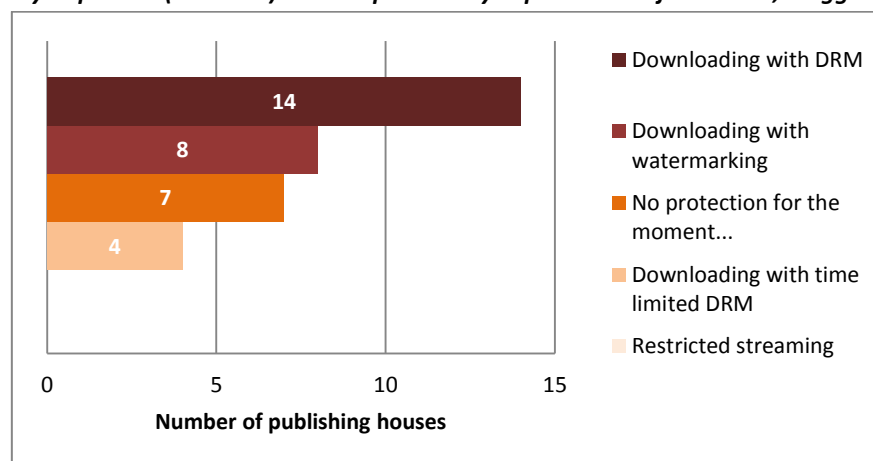
- Publishing houses who send no evidence of publication, or only on request, or who send a print copy.
- Houses who send one copy only: mostly in the form of a link or a 'voucher' to download the book directly from the distributor's platform.
- Houses who send two free copies or more (up to five); access codes for free downloads are sent to the author and/or the agent.

Other houses explain that they do not have any clear established policy on this point, others choose case by case (according to the title) while others have a contractual obligation to send a copy but acknowledge that they do not do so systematically...

### Q.49 AND 50 → PROTECTION OF COPIES SENT TO THE PRESS

Most publishing houses send copies to the press via a downloading system protected by DRM.

#### 50. Do you protect (and how) the complimentary copies sent to journalists, bloggers, etc.?



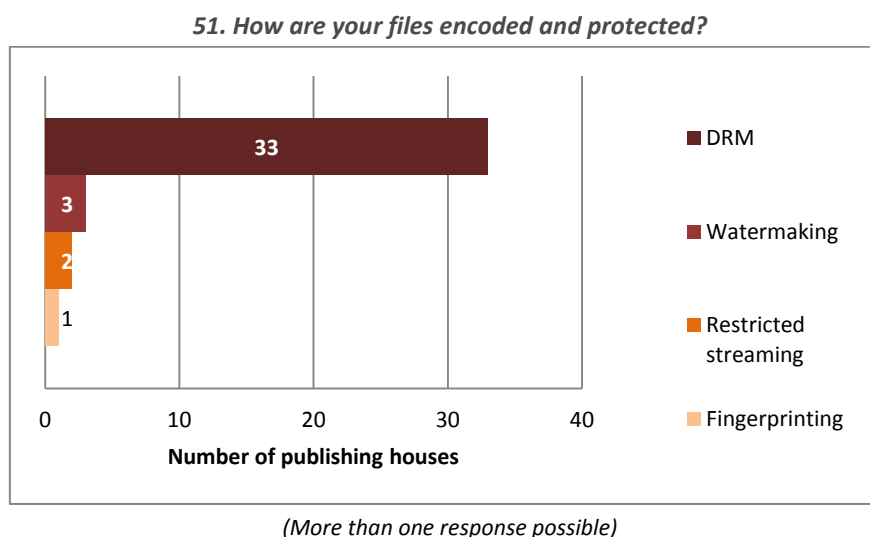
(More than one response possible)

## 13/20 PROTECTION AGAINST PIRACY

### Q.51 → ENCODING AND PROTECTING DATA

Almost all the sample houses use technical measures of protection or *DRM* (Digital rights management) to protect their files.

On the other hand, *watermarking* techniques (digital tattooing) and digital *fingerprinting* are very rarely used by the sample houses<sup>2</sup>.



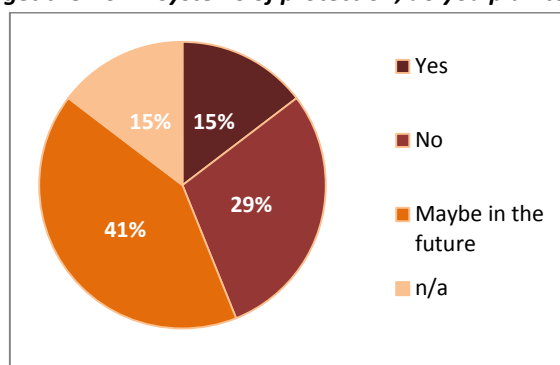
### Q.52 → PROPRIETORS' FORMATS: ADEQUATE PROTECTION?

Given that most big distributors of e-books protect their files with their own systems of protection, publishing houses were asked what their future policy will be: will they continue to use DRM, or will they count on the distributor's system to protect their files?

The answers do not reveal any clear practice: 17 are considering the possibility, in the future, of no longer encoding of their data.

<sup>2</sup> N.B. 'These technologies, grouped under the heading '*forensic content protection technologies*' (legal digital investigation for the protection of copyright), do not prevent unauthorized use of content, but they do enable a search for displayed copies on the Internet, in order to prove that content has indeed been the object of unauthorized use', Cf. Assises du livre numérique, *DRM et moyens techniques de protection : quels enjeux ?*, 8.11.2012

**52. As the main retailers get their own systems of protection, do you plan to stop encoding your data?**



(41 responses)

### Q.53 → PIRACY: MEANS OF TAKING ACTION

Apart from the technical measures of protecting data, there are other measures used by publishing houses to fight piracy.

Certain houses have an in-house department whose job is to find illegal copies on the Internet and take legal action. Others outsource this task to lawyers who deal especially with the house's best-sellers and take legal action when necessary.

When piracy has been proved, several houses contact inter-professional associations such as the ABDR<sup>3</sup> in Brazil, the CEDRO<sup>4</sup> in Spain, the AIE<sup>5</sup> in Italy, the ©IP<sup>6</sup> in the United Kingdom. Certain of these organisations manage reproduction rights but are also empowered to take legal action when they learn of sites that host illegal copies.

<sup>3</sup> ABDR : Associação Brasileira de Direito Reprográficos

<sup>4</sup> CEDRO : Centro Español de Derechos Reprográficos

<sup>5</sup> AIE : Associazione Italiana Editori

<sup>6</sup> ©IP : The Publishers Association's Copyright Infringement Portal

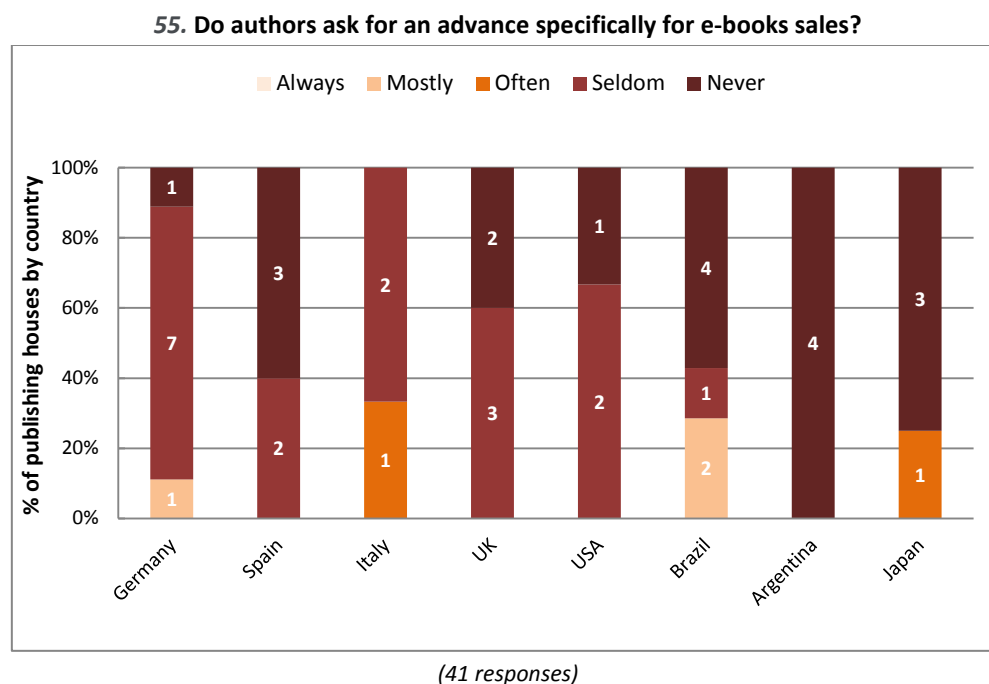
# C - Remuneration

## 14/20 REMUNERATION: ADVANCES AND ROYALTIES

### A. Specific advance

#### Q.55 → ADVANCE ON DIGITAL SALES

In 2011, the practice of a global advance, on account of sales of both print and digital copies, seemed to be widespread and none of the sample houses, at that time, had paid a specific advance for digital rights. In two years, sales of digital copies having increased, publishing houses now find themselves, more often than before, dealing with authors who claim a specific advance on account of sales of digital copies of their work. However, we do not know if publishing houses agree to pay them.



#### Q.56 AND 57 AN ADVANCE ON ACCOUNT OF DIGITAL SALES WHEN DRAFTING AN ADDENDUM FOR A BACKLIST TITLE

Almost all the sample publishing houses (37 out of 41) have already signed an addendum to acquire the digital rights for one of the titles already in their catalogue.

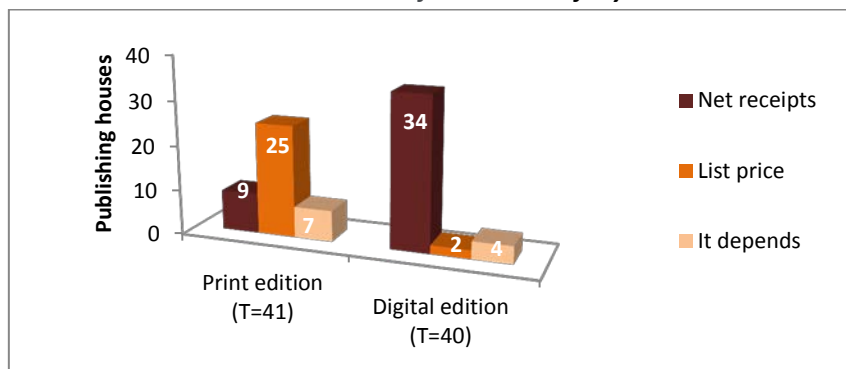
When the addendum is being drafted, none of the houses systematically proposes to readjust the advance for future digital rights (*refresher advance*). On the other hand, 11 houses out of 40 (28%), generally bigger houses, say they do this occasionally.

## B. Royalties

### Q.58.59.60.61 → BASIS FOR CALCULATING THE ROYALTY RATE

While the author's royalty rate for print books is generally based on the public price not inc. VAT, (25 houses out of 41), in the case of digital sales, the rate is almost always based on the net receipts (34 houses out of 40). Since the digital publication is destined to be commercialised for a wide variety of devices, it seems more practical to base the royalty rate for a digital book on the publisher's net receipts than on the retail price.

58 and 60.58. Basis of calculation of royalties



### Q.62 → DEFINITION OF NET RECEIPTS

At first glance, the definition of net receipts seems to vary, but in reality, it is quite consensual (publisher's turnover, not including taxes and costs).

Each of the respondents defined 'net receipts' as the term is understood in their publishing house. Here is a copy of their answers:

<b>Argentina</b>	what I receive of each sale
<b>Brazil</b>	10% of the amount sold to the distributor / bookstore.
	The amount effectively received from the e-tailer, which means the sale price less the e-tailer comission.
	upon sales
	Cover price minus the discount.
	the amounts paid to Publisher minus discounts granted to distribution partners
<b>United Kingdom</b>	value the publsing house receives from the bookstore
	Gross receipts minus distribution costs.
	the amount of money we receive after the retailer and the distributor have been paid.
	net cash received before vendor's commission
<b>Germany</b>	Receipts from retailer, sometimes minus sales commission
	retail price less vat less discount and allowances
	retail price minus 50% (trade/book sellers discount, representants provision, stock fees).
	retail price less VAT

	“net receipts” shall mean the money received from the sales of the Work less VAT and discounts or charges paid to distributors
	gross proceeds less VAT and trade discounts.
	Net price minus costs
<b>Italy</b>	download price less VAT (21% in Italy) less discount to retailers and platform costs
	Download price less VAT less commission to e-retailers, less distribution costs if any
	Total minus distribution
<b>Japan</b>	definition is difficult. Sometimes Publishers include translations fees for example but we try not to do so
	receipt of money
<b>Spain</b>	Retail Sales Price minus Retailer Commission
	The amount received by the publisher after taxes and distributor platform retains.
	List price minus VAT

The definitions of publisher’s ‘Net Receipts’ are not exactly identical from country to country or even from one publishing house to another. Typically, national tax laws and tax rates are also very diverse. Naturally, these differences influence the amount of royalties received by authors on sales of digital works, even when the royalty rate is the same, and based on the same elements.

#### Q.63 AND 64 → AVERAGE ROYALTY RATES

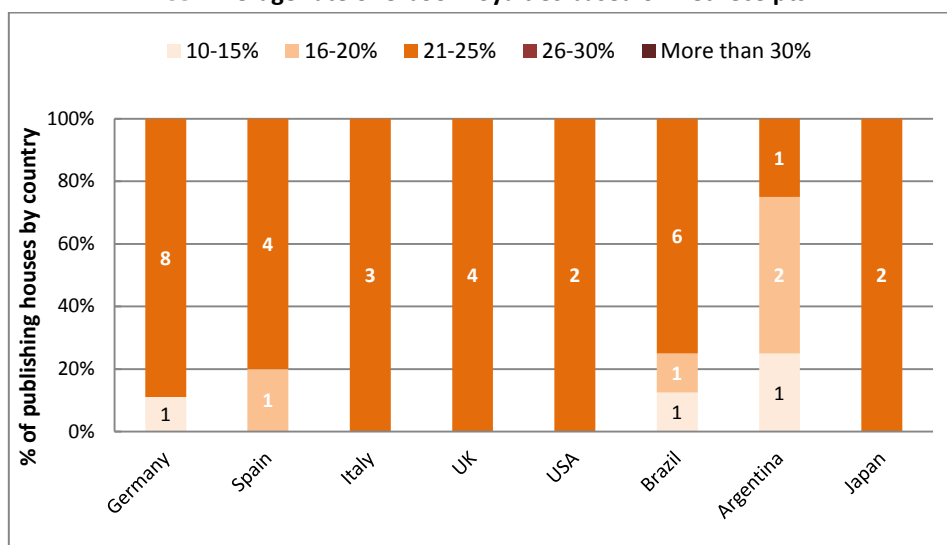
As far as the author’s remuneration is concerned, the application of a rate between 21 and 25% of the publisher’s net receipt seems to be widespread practice.

Even Germany – which was an exception in 2011 with a consensus of 20% of net receipts in the profession – seems to have evolved, and has now adopted the 21-25% rate.

Some university presses or small houses in Brazil and Argentina offer their authors rates between 10 and 20%.

None of the sample houses, even the English language publishers, pay authors a royalty rate above 25%.

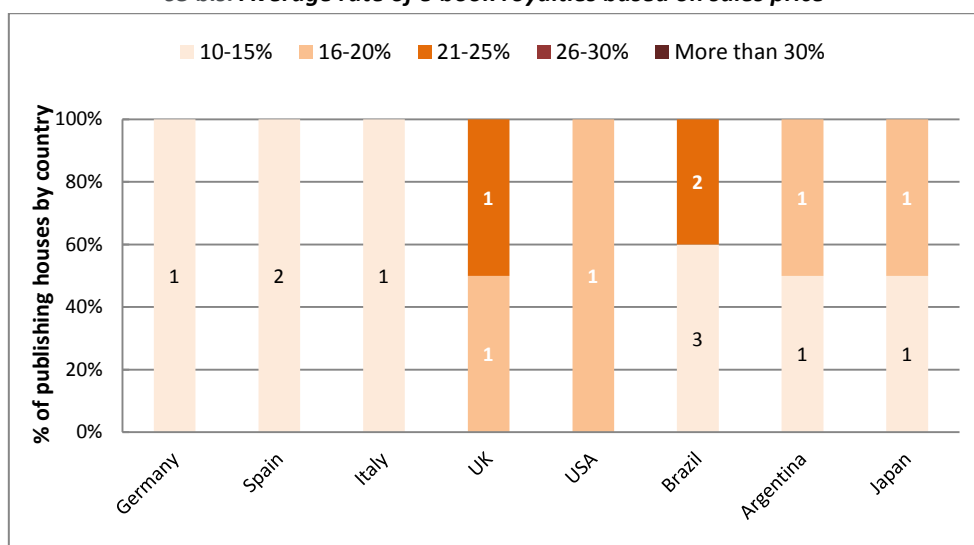
**63. Average rate of e-book royalties based on net receipts**



(39 responses)

Although the majority of publishing houses base the author's royalty rate on net receipts, some propose to base them on the sales price of the digital book, or the 'downloading' price. The rates are then generally between 10 and 15%, sometimes 16 and 20%, rarely 21 and 25%.

**63 bis. Average rate of e-book royalties based on sales price\***



\*(on the basis of 17 responses only)

#### Q. 64 → IS THE ROYALTY RATE FIXED OR ON A SLIDING SCALE (DEPENDENT ON SALES).

In 2011, all the sample houses practiced fixed rates, confident that the sales of digital works were too limited to justify a sliding scale. In 2013, 12 houses out of 41 (or 30% of the sample) said they sometimes apply a fixed rate and sometimes a sliding scale.

#### Q.65 AND 66 → ARE ROYALTY RATES LOWER FOR ENHANCED E-BOOKS?

Publishing houses were asked if they had planned different royalty rates for authors if their e-books had been enhanced.

A dozen did not reply simply because they have never published enhanced content (cf. to question 39, they had said that 0% of the digital production was enhanced).

10 houses said the royalties remained identical but we cannot consider their responses relevant because they have in fact never published enhanced content (they had relied 0% to question 39).

Among the 15 houses who declared that up to 25% of their digital production was enhanced, 13 pay authors an identical royalty rate as for a homothetic publication.

Only two houses (one British and one Brazilian) said they modify the royalty rate when the digital work is enhanced – whether the content has been enhanced by the publisher or by the licensor.

In this case, the Brazilian house explained that when the sum invested to produce the digital book justifies it, the royalty rate was decreased.

#### Q.67, 68 AND 69 → CALCULATING THE AUTHOR'S REMUNERATION FOR SPECIAL SALES, E-LENDING TO AN INDIVIDUAL OR A LIBRARY.

There are several cases when the method of calculating royalties becomes more complex. For example, how do we calculate royalties when the reader pays a subscription to a platform offering a 'bouquet' of works, or for special sales (e.g. sales of a print book + e-book)?

The percentage of respondents who did not answer this question was high (more than 50%). About a dozen of the houses who did respond said that they had never encountered this type of commercialisation or that they didn't have any clear ideas on the subject.

We might quote some of the rare answers:

- 25% of the net receipts: one Spanish house and one British
- 10% of the net receipts: one Brazilian house
- Same method of calculation as for any other sale: one German house
- Based on net receipts: one Spanish house

The question takes on all its relevance in the case of e-lending, but apparently, publishers have not yet found solutions. In the case of lending an e-book to an individual, publisher's responses are very imprecise and cannot be usefully exploited here. For e-lending to a library, three houses (United Kingdom, Spain, Germany) calculate – or plan to calculate – royalties based on 25% of net receipts. One Italian house explained the principles of its cooperation with libraries

(maximum of 60 loans possible then the library is obliged to repurchase the e-book) but they did not reply to the question concerning the author's remuneration.

#### Q.70 ET 71 → *DIGITAL-ONLY LIST AND ROYALTIES*

In niche sectors, and to widen their audience by reaching new readers, 21 publishing houses out of 41 (all countries included) plan to launch or have already launched series of titles exclusively in digital format (*digital-only list*). In these cases, they do not intend to push up the royalty rate. 5 houses announce a rate of 25% on net receipts and one other, between 15 and 25%. Three houses propose between 20-30% or a 25% rate but they do not mention what the basis of the calculation will be. One Italian house proposes the same royalties as for books published directly in paperback format. Finally, one Spanish publisher suggests a 40-50% rate without mentioning on what basis.

#### Q.72 → *DIGITAL-FIRST LIST*

We note that more and more publishers are interested in the 'digital first' strategy, where the e-book is the first format of publication. They can later decide whether or not to publish a print format. 19 out of 40 respondents, from all countries, say they have considered developing a *digital-first list*.

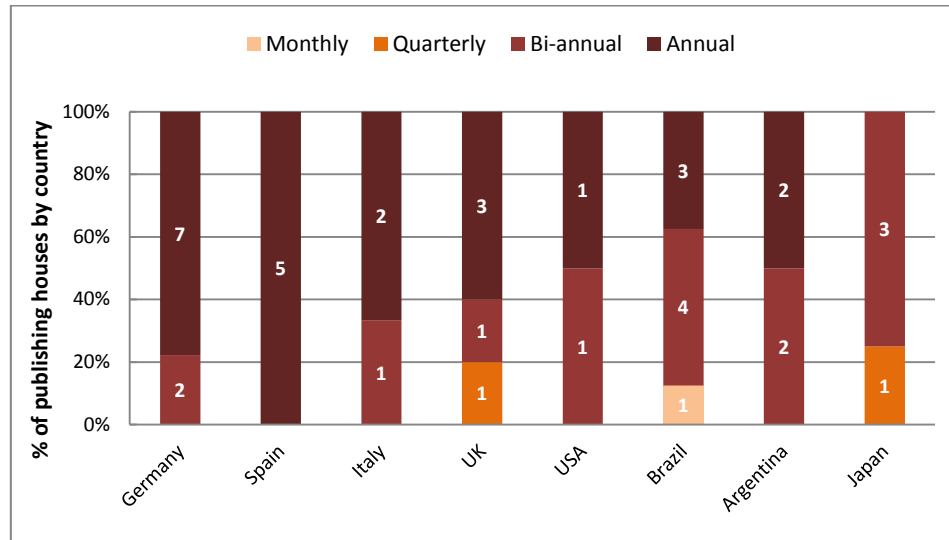
### 15/20 ACCOUNTS: SENDING ROYALTY STATEMENTS

#### Q.73 AND 74 → ROYALTY STATEMENTS: SEPARATE? HOW FREQUENTLY?

In 2011, we observed that payment to authors of their royalties, in the majority of cases, was made in a grouped manner – the statements included both print and digital sales. The 2013 survey shows that this practice has clearly evolved in favour of greater precision: 21 publishing houses out of 41 now send separate statements for digital sales.

Statements of digital sales are made annually or biannually in most countries. The frequency of payments is noticeably higher in Japan.

**74. What is the frequency of payment of e-book royalties ?**



(41 responses)

**Q.75 → INSTANT ACCESS TO SALES INFORMATION**

Like self-publishing and e-publishing platforms, publishers have no plans to make information on the number of e-books sold instantly available to authors. Only 11 publishers out of 40 would like to install such a system, providing up to the minute information on sales available to authors. Among them, there are large international groups and university presses.

# D -Commercial policy

## 16/20 COMMERCIAL POLICY: PRICING

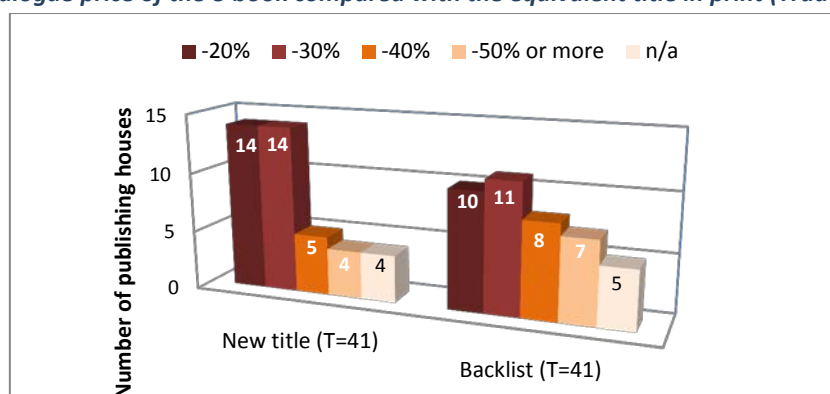
### Q.76 AND 77 → OBSERVING SALES PRICES

The relatively limited sample does not permit a detailed and representative analysis of the average reduction in price between the printed book and the e-book, especially since certain houses did not wish to communicate their pricing policy.

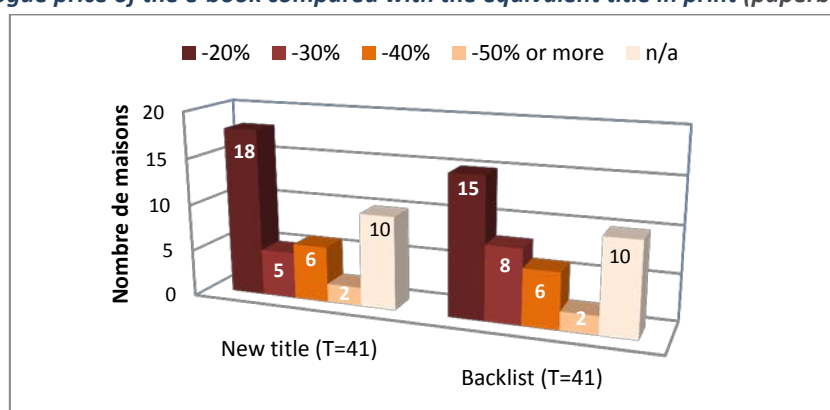
For smaller houses, or those with little experience in digital publishing, it is not at all certain that strict rules are followed, and the multiple choice questionnaire did not permit them to give more detailed replies.

The differences in taxation between digital and print publications is also an important factor in pricing (in certain countries, VAT on the digital book more or less swallows up the reduction in the e-book price relation to the price of the print edition or the paperback).

#### 76. Catalogue price of the e-book compared with the equivalent title in print (Trade edition)



#### 76. Catalogue price of the e-book compared with the equivalent title in print (paperback edition)



## Q.78 AND 79 → THE AGENT'S ROLE IN FIXING THE SALES PRICE

In 2011, agents were involved in fixing prices only in a minority of cases. Today, this seems to be more frequent. 12 publishing houses out of 40 (30% of the sample) say they are frequently approached by agents who wish to negotiate the difference between the e-book list price and the paperback list price, so imposing a maximum reduction for the e-book sales price.

Without imposing a minimum sales price, agents are also more active than before when it comes to negotiating the maximum discount granted to e-book distributors. 12 houses out of 40 have already been approached by agents on this point and 11 agreed to their request. 3 other houses have never been approached on this point, but they say that they would agree if it should happen.

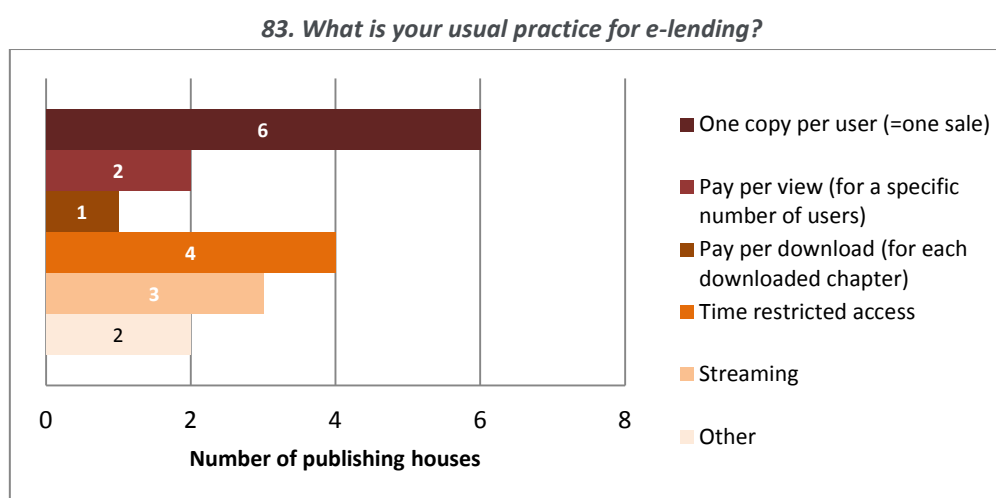
## 17/20 COMMERCIAL POLICY: E-LENDING

### Q.81, 82 AND 83 → E-LENDING, USUAL PRACTICE

This question was not asked in 2011. But e-lending has become so widespread that it now concerns a quarter of the sample houses. The 10 houses, having already elaborated and commercialised an e-lending offer, targeted libraries. Most of them are big, international publishers.

Only one British house commercialises two types of offer: one for libraries and one for individual borrowers through a distributor (e.g. Amazon's *Kindle Owner's Lending Library*).

It is not yet possible to draw conclusions about publisher's commercial e-lending offers (only 10 houses in the sample is too narrow), but the following chart gives a first glimpse of the most common practices.



## 18/20 COMMERCIAL POLICY: SALES ESTIMATIONS

### Q.84 AND 85 → INCREASE IN REVENUES FROM DIGITAL SALES

When we asked publishers if the revenue from digital sales had increased over the last two years, the majority, unsurprisingly, say yes (32 houses out of 41). Some houses decline to reply at present because they only began commercialising digital publications recently. Only three houses esteem that their digital sales have remained constant over the last two years.

The available sample does not permit us to conclude - in terms of the publishing firm (small, medium-sized, large, university press, etc.), or in terms of the market sector (developed as in the US or emergent as in Argentina) - where the revenue from digital sales has progressed most. We simply observe that in certain houses revenue has increased, in absolute terms, exponentially.

#### *85. Percentage increase in revenue from digital sales over the last two years*

<b>Publisher's country of origin</b>	<b>% increase</b>
<b>United States</b>	2-4%
<b>Spain - Italy</b>	20%
<b>Japan</b>	30%
<b>Germany (x2) - UK - Brazil</b>	50%
<b>Spain</b>	70%
<b>Germany</b>	80%
<b>Germany (x2) - Italy</b>	100%
<b>Brazil (x2) – UK - Spain</b>	200%
<b>UK</b>	300%
<b>UK</b>	500%
<b>Spain</b>	x 7

### Q.86 → DO DIGITAL SALES 'CANNIBALIZE' PRINT SALES?

'Did digital sales increase to the detriment of print sales?' Naturally, this question was a source of concern for some houses in the 2011 sample. Certain feared that digital sales would 'cannibalize' the market for print books. In 2013, seven houses answered this question positively. It is interesting to note that for each of the countries represented (United States, Germany, Japan, Brazil, Italy), these positive responses came from very big publishing houses.

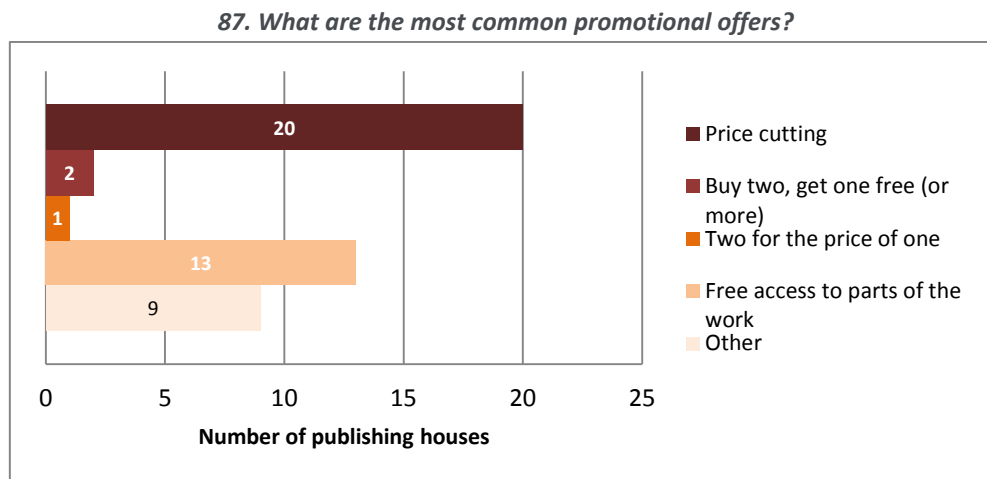
## 19/20 COMMERCIAL POLICY: PROMOTION

### Q.87 AND 88 → NATURE AND FREQUENCY OF PROMOTIONAL OPERATIONS

Publishing houses were asked what type of promotional operations they use, if their national legislation permits.

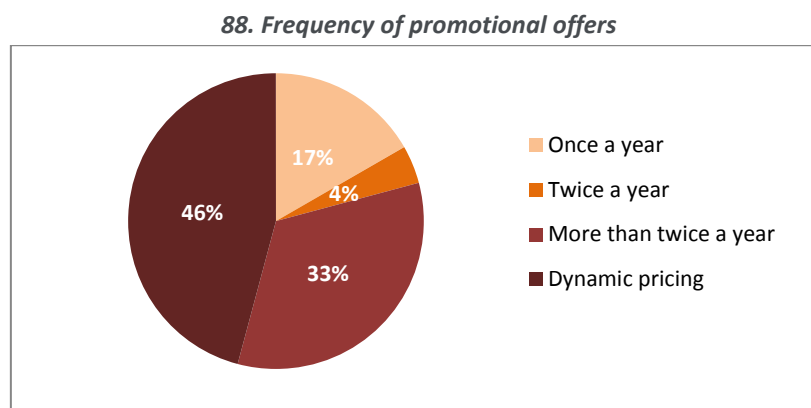
Not all the respondents answered this question, especially houses in Argentina and some small Brazilian houses, because of their lack of experience.

As to the others, the reduction in price is quoted as the most frequent action to promote e-books. To give the reader the possibility to access part of the work free of charge comes second. But the sample houses seem to be less familiar with offers of the 'Buy 2 get 1 free' type. Other types of promotion were mentioned, such as the possibility to have the first book in a series free if you buy the second book in the same series, special 'free downloading' days, thematic promotions (which result in a price reduction).



*(More than one response possible)*

Apart from a small group of publishers who offer promotions once or twice a year at the most, for the majority of houses in the sample, special offers and promotions are an integral part of their commercial policy. Most of them have adopted a dynamic pricing policy, with electronic tools permitting them to change their prices almost in real time. This huge flexibility in pricing allows us to assume that their promotional offers on e-books do not necessarily follow a seasonal programme.



*(25 responses)*

### Q.89 → ROYALTIES AND PROMOTIONAL OFFERS

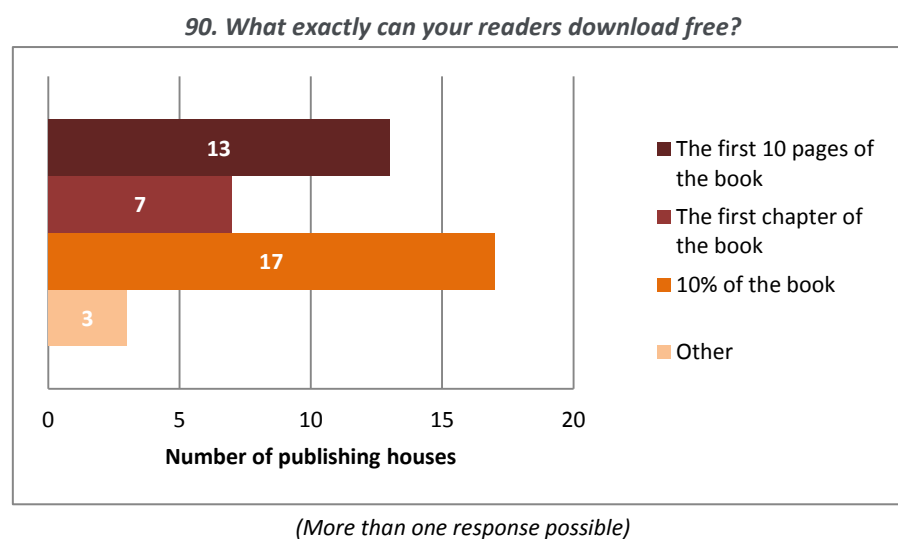
Since promotional offers have the greatest impact on the sales price of e-books, publishing houses were asked how they integrated these price variations into the author's royalty statement.

The majority of houses who replied gave a clear answer: royalties are paid only on net receipts. In other words, the percentage of royalties does not change, even if the net revenue varies (and in this case, falls).

Two German houses gave more complex answers: the first pays royalties according to what is stipulated in the contract (without entering into details or describing the different possibilities). The second stated that this point should always be discussed with the author when the contract is being signed, adding that the authors generally receive 25% of the **net amount based on the cheapest price**. Moreover, if the house gives an e-book free for a short period, the authors must give their approval in advance and they do not receive any remuneration.

### Q.90 → FREE ACCESS

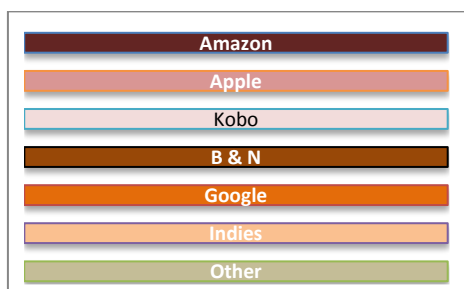
Digital technology offers innovating marketing possibilities, like offering readers a free download of one part of a work. In 2011, this promotional tool was essentially used by big publishing houses, but now almost all the sample houses use it.



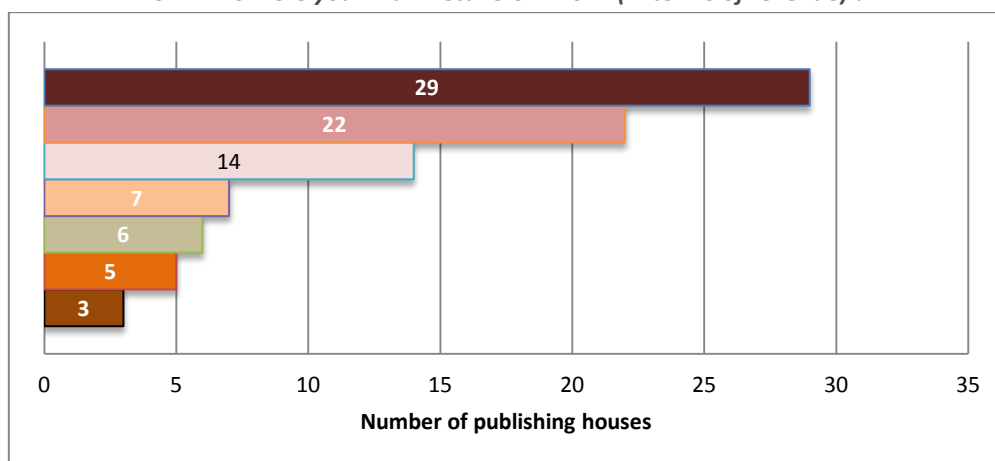
## 20/20 COMMERCIAL POLICY: DISTRIBUTORS

The last question we asked publishing houses aimed to identify the key players in the distribution of e-books. With the possibility of giving several answers, they were asked who their principal distributors were in 2012 (in terms of revenue).

The list shows a trio with a clear lead: Amazon, Apple and Kobo. A presentation of results by country shows a more colourful range, but given the modest size of the sample, it is not possible to draw statistical conclusions.

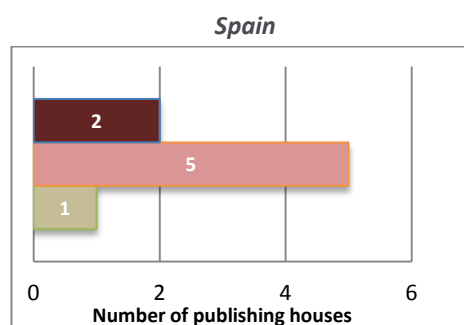
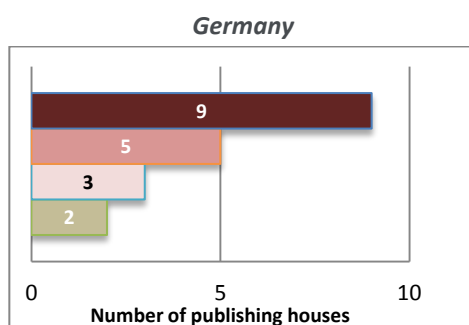


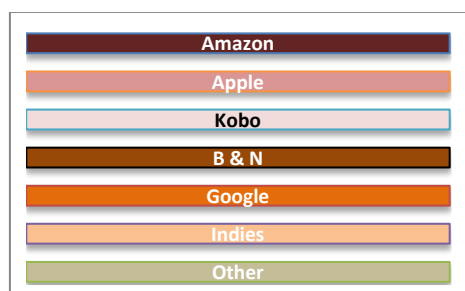
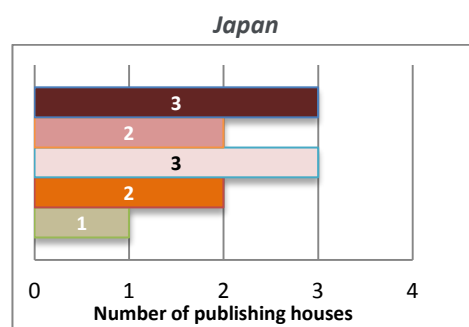
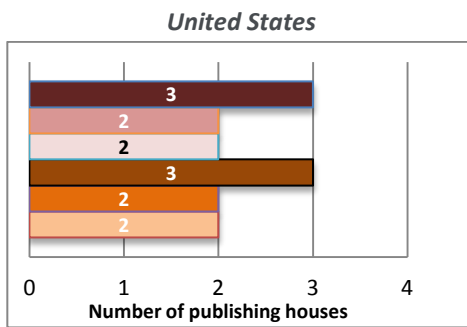
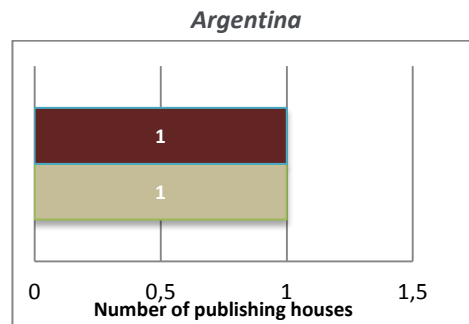
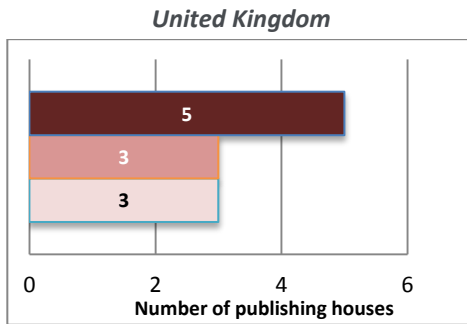
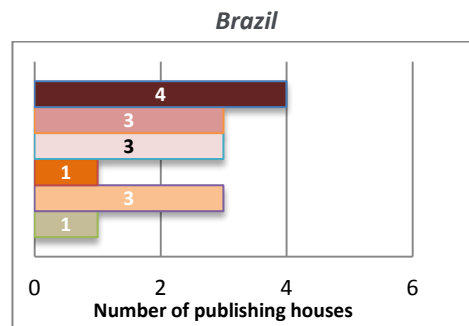
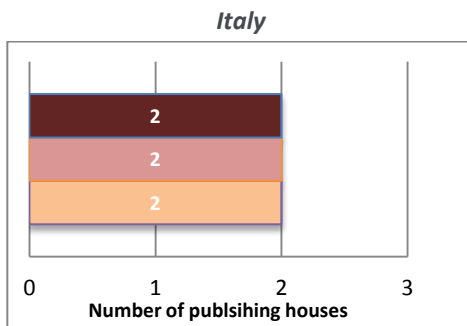
**91. Who were your main retailers in 2012 (in terms of revenue) ?**



*(More than one response possible)*

**91 bis. Responses by country.**





## *Licensing digital rights for translation*

# Summary

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## 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.

## 1/10 DESCRIPTION OF THE SAMPLE

### Q.1 TO 7 → PROFILES OF THE RESPONDENTS: PUBLISHING HOUSES, AGENTS

31 people working in the book industry filled in the questionnaire on licensing digital translation rights. They answered all of the 42 questions.

Among them, 27 work in publishing houses and 4 manage literary agencies (2 in the United Kingdom, one in Germany, one in the United States).

18 respondents work in a firm that publishes mainly text only books and 10 in a firm that publishes mainly illustrated books.

*Identification of the respondents*

Country	Type of publication	Post held in the firm (literal transcription of response)
Argentina	Text only	President
Argentina	Text only	Editor
Brazil	Text only	Editorial Director
Brazil	Text only	Executive Publisher
Brazil	Illustrated	Manager
United Kingdom	Text only	International Rights Manager
United Kingdom	Text only	Foreign Rights Director
United Kingdom	Text only	Managing Director
United Kingdom	Text only	Managing Director / Literary Agent
United Kingdom	Text only	Publisher At Large
United Kingdom	Text only	Digital Rights Manager
Germany	Illustrated	International Sales Director
Germany	Text only	Manager Foreign Rights
Germany	Text only	Editor
Germany	Illustrated	Rights Agent
Germany	Illustrated	Rights Director
Germany	Illustrated	Foreign Rights Manager
Germany	Illustrated	Rights Director
Italy	Text only	Director rights and acquisitions
Italy	n/a	Rights & Acquisitions Director
Japan	Illustrated	General manager
Japan	Text only	VP & Board Member
Japan	Illustrated	Senior Manager
Japan	n/a	Digital division chief
Spain	Text only	Foreign Rights
Spain	Illustrated	Digital content manager
Spain	Illustrated	Publishing director
United States	Illustrated	VP, Director of Subsidiary Rights
United States	n/a	President and owner
United States	Text only	Rights Director
United States	Text only	Rights Director

# A -Drafting the contract

## 2/10 DRAFTING THE CONTRACT

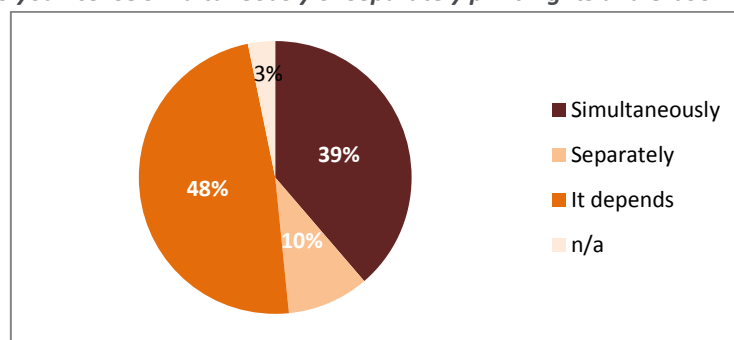
### Q.8 → LICENSING TRANSLATION RIGHTS FOR PRINT AND E-BOOKS

The first question was about professional practices. When they are responsible for licensing the translation rights of a work, do they grant print rights and digital rights in the same transaction or separately?

Twelve houses out of 31 said that they systematically granted print rights and digital rights together, while only three (two Japanese and one German) systematically grant print rights and digital rights separately.

However, the responses of more than half the publishers and agents showed that they do not have a strict, established procedure; they adapt their decisions to the case in hand.

*8. Do you license simultaneously or separately print-rights and e-book rights?*



(31 responses)

For several publishers and agents (including two big international groups), translation rights are granted, by default, for the print edition only. The digital edition is included only if the acquiring publisher makes the explicit request.

Certain houses stress the fact that their licensing policy varies depending on the nature of the work; text only or illustrated. For the former, the print/digital license is generally granted simultaneously. However for illustrated books, the procedure is more complex and digital rights are granted in a separate license.

One British agent pointed out that in Asian countries, translation rights for print books and e-books are often granted in separate licenses.

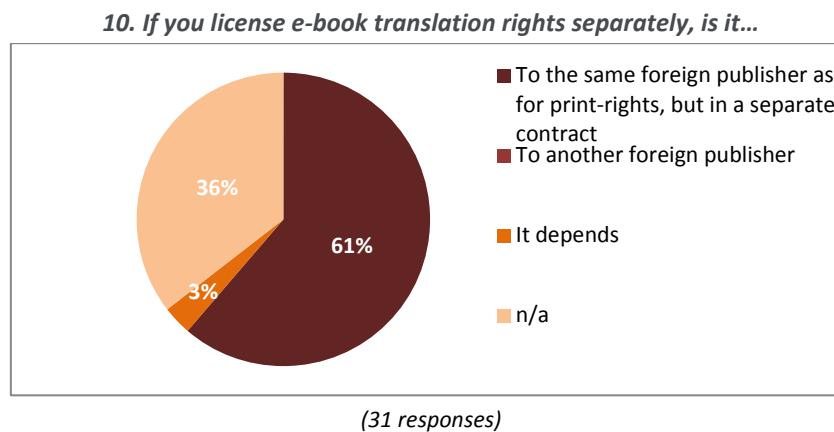
Another agent, also British, makes a distinction between new titles and backlist titles, explaining that in general, for a new title, print rights and digital rights are the object of the same contract. However, they do receive requests from publishers who wish to license only the digital rights, in cases where the print rights have been granted previously and have expired, or when there is no longer any demand, or very little, for the print edition. They also grant digital rights separately

for titles whose print rights were licensed several years ago (licence still valid) and the same publisher now wants to produce a digital edition.

#### Q.10 AND 11 → SEPARATE LICENSES: PROCEDURE

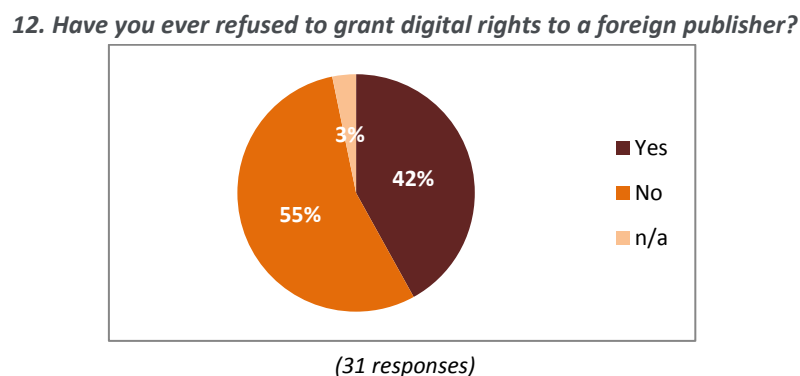
Certain publishing houses and agencies have already granted digital translation rights in a separate licence, but always to the publisher who had already acquired the print rights. To date, none of respondents has granted digital translation rights to a foreign publisher other than the holder of the print rights.

Bearing this in mind, one British agency explains that even if they have never done this, they reserve the possibility to grant digital rights and print rights to different foreign publishers – especially if the print rights holder does not publish e-books. They feel that they would lose too much, financially, if they authorized the foreign publisher to sublicense the digital rights to a third party (hence obliged to share earnings 50/50).



#### Q.12 AND 13 → REFUSAL TO GRANT DIGITAL RIGHTS

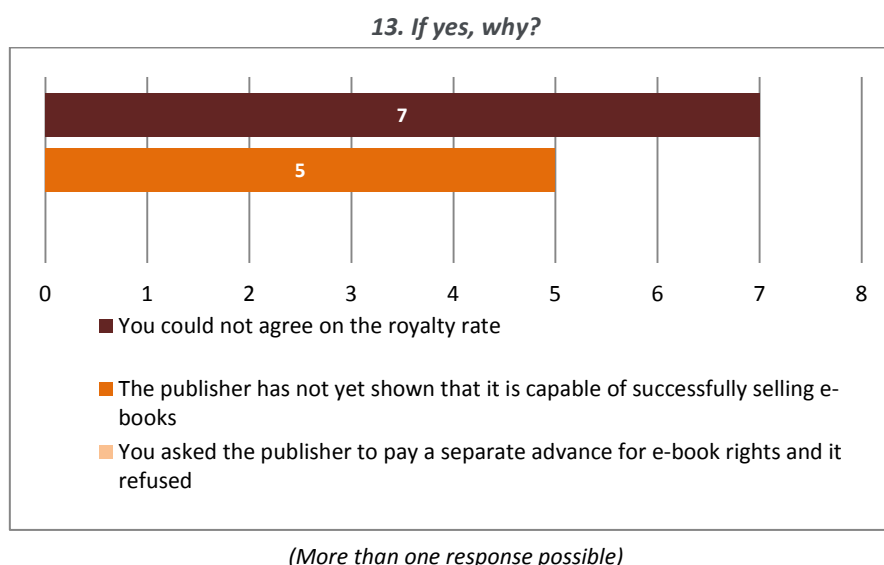
Refusals to grant digital translation rights seem to be fairly common. Responses show that 13 publishing houses and agencies out of 31 have refused to grant digital translation rights to a foreign publisher, almost half of the sample.



When there is a refusal, the main reason given is financial: the two parties have not been able to reach an agreement on the royalty rate.

One American agency gave more details, explaining that if a foreign publisher offers royalties that are not in keeping with usages in the industry (hence unfavourable for the author), they can grant an option on the digital rights until an agreement can be reached.

Among the other reasons for refusal, one agent quotes the case where an author/illustrator refused to grant digital rights to their publisher in the head contract. A German publisher also described a case where they refused to grant digital translation rights because the work was entirely illustrated.



### 3/10 DURATION OF EXPLOITATION OF DIGITAL RIGHTS AND THE 'RENEGOTIATION' OR 'REVIEW' CLAUSE

Bearing in mind the general uncertainty about how the digital market will develop, it appears that authors and publishers have decided not to undertake obligations that may bind them too rigidly or that may become obsolete. Clauses limiting the duration of licenses (even in countries where contracts are made to cover the period of intellectual property), or providing for the renegotiating of terms and conditions (especially those concerning remuneration) after a few years are becoming more and more frequent.

#### **Q.14 → SAME DURATION AS FOR PRINT RIGHTS, OR LIMITED DURATION?**

23 houses or agencies out of 31 (74%) grant translation rights for the same periods, whether for print or digital publications.

The remaining quarter do not grant digital for the same period as print rights, among them, 3 Japanese publishing houses out of the four in the sample, one German agent, and three publishers (UK, Spain and Italy).

## Q.15 AND 16 → THE 'RENEGOTIATION' CLAUSE IN PRACTICE

If there is no contractual time limit to the digital translation rights license, the principle of a 'renegotiation' or 'review' clause appears to be usual practice when drafting contracts. 24 houses or agencies (77%) say they provide for the renegotiation of terms and conditions for digital exploitation – after a certain number of years.

Among the houses and agencies who include such a clause, 15 do so systematically and 9 occasionally.

In practice, this clause has real effect because 6 houses or agencies out of 31 (19%) have already taken advantage of it to renegotiate the terms for digital rights licenses (three in the United Kingdom, one in the United States, one in Germany and one in Japan).

## Q.17 → CONSEQUENCES IN CASE OF DISAGREEMENT

If the two parties cannot reach an agreement on this occasion, the majority of respondent houses and agencies say that if the renegotiation does not succeed, they would consider terminating the digital part of the contract. The notable exceptions are two Japanese houses who say that such a failure of the renegotiation would cause the immediate termination of the contract in its entirety (print and digital).

## 4/10 TERMINATION OF THE CONTRACT, REVERSION OF RIGHTS AND DEFINITION OF 'OUT OF PRINT'

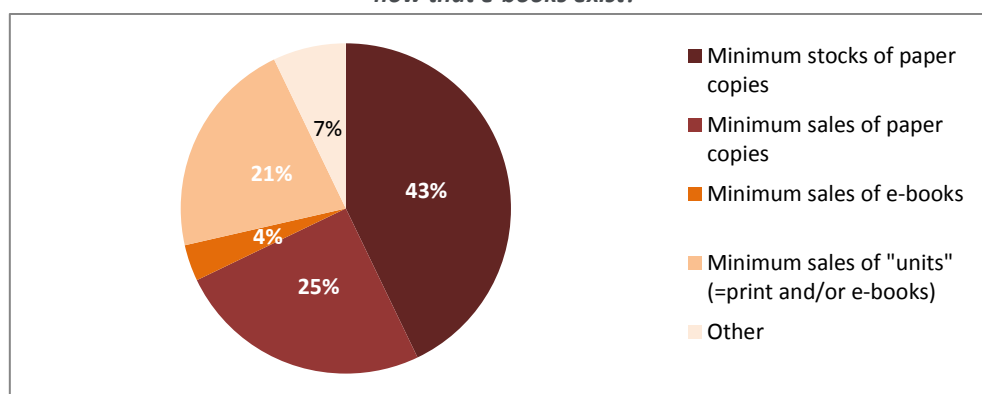
As soon as a digital version of a work exists, it is necessary to clarify the term 'out of print'. How do you define 'out of print'?

Q.18 → The responses to this question reveal that common practice has not yet been established and for the moment, no trends specific to each country are yet discernible.

It is interesting to observe that 12 publishing houses out of 28 remain attached to the notion of 'out of print' as applied to print books to justify termination of contract and the reversion of rights.

What is new is the number of houses who consider the level of sales of print copies, digital copies or even 'units' (print and digital copies) to be the motivating factor for the termination of contract and reversion of rights.

18. If, in your contracts, the rights revert if the book is "out of print", how do you define "out of print" now that e-books exist?



(28 responses)

## Q.19 AND 20 → PROOF AND TERMINATION PROCEDURE

If the contract licensing digital translation rights is terminated, 22 houses or agencies out of 31 replied that they do not ask the foreign partner to destroy their master copy.

6 houses said they did; notably the four Japanese publishing houses and two big German and British publishers.

However, these houses acknowledge that it is difficult to obtain proof of their destruction and insist on the necessary confidence between partners.

## 5/10 TERRITORIES GRANTED IN THE LICENCE

Q.21 → Digital technology having radically altered the notion of territory in the publishing market, we asked publishing houses and agents how they ensure that the e-books for which they have granted translation rights are sold only in the territories authorized by the contract.

Most of them acknowledged that they have few means of checking and they tend to trust the honesty and good will of the licensee.

Apart from having confidence in their foreign partners, several publishing houses also explained that for certain languages (notably French), they granted world rights – which solves the problem.

The question of territories is more acute when licensing works in English, Spanish and Portuguese. One big UK publisher explained that they have a rights and exports department whose mission is to ensure that translations are indeed sold in the authorized territories (which also permits them to identify pirated copies).

One British literary agency explained that when they grant rights for limited territories (for example Brazil or Portugal for the Portuguese language), they keep an eye on the principal on-line distributors to make sure there is no breach of contract.

**Q.22 →** How has the existence of e-books affected your decision-making process over which territories to grant rights for?

When it comes to territories, astonishingly, the majority of publishing houses and agencies say that the e-book has had little or no impact on their licensing policy. Probably this tricky issue is set aside (or rarely taken into account) because e-book licences are still an embryonic part of their activity, or because today, they follow the model of licenses for print books.

However, for 4 big publishers or publishing groups in the sample, this is not a futile question; they are the only respondents who gave more detailed answers.

Of the four, the British firm states that the territories in a license are defined as precisely as possible. The American explains that sometimes, they do their own edition in Spanish, so limiting the territories of a licensee. The Italian insists that the territories authorized in English depend on the advance offered. As for the Japanese, they say they are ‘deeply concerned’ by this question of territories but give no other details.

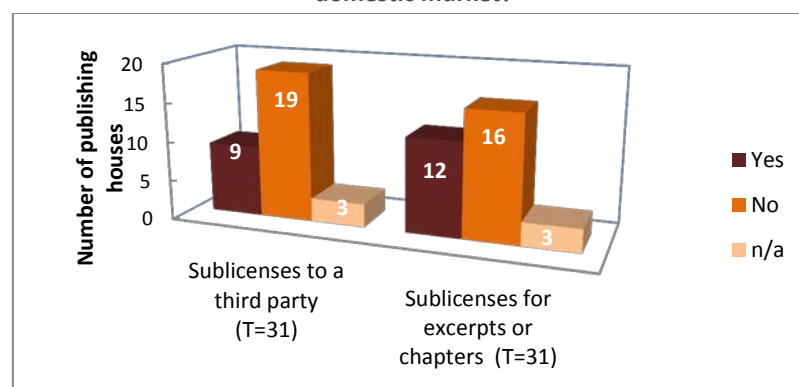
## 6/10 SUBLICENSES

### **Q.23 AND 24 →** SUBLICENSES: TO A THIRD PARTY PUBLISHER, BY CHAPTER OR EXCERPT

9 houses and agencies out of 28, when they grant digital translation rights, also include the right to sublicense digital rights to a third party in their domestic market.

12 houses and agencies out of 28 also stated that they authorize the licensee to sublicense digital rights for excerpts or chapters of the work in their domestic market.

**23 and 24. Do you authorize your licensee to sublicense e-book rights to a third party (clubs...) in the domestic market?**



## 7/10 EVIDENCE OF PUBLICATION, FREE COPIES

### Q.25 AND 26 → SENDING EVIDENCE OF PUBLICATION

When the licensee's version of the e-book has been published in their language, publishers and agencies who granted the rights are entitled to ask for evidence of publication.

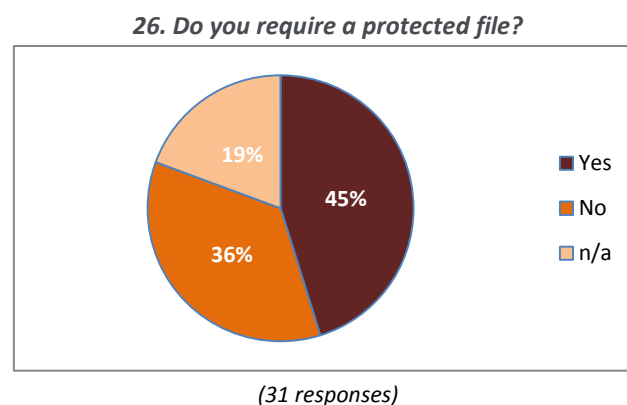
Some are content to receive a printed version and do not yet systematically request a digital version.

Others ask to receive the ePub file, or one or several 'vouchers' to download the e-book from an on-line retailer or directly from the foreign publisher's site.

Several houses say they are not entirely satisfied with these procedures (mostly because the links to download free copy simply do not work).

### Q.26 → PROTECTING FILES

When publishers or agents request a copy in evidence of publication, less than half of them request that the file should be protected.



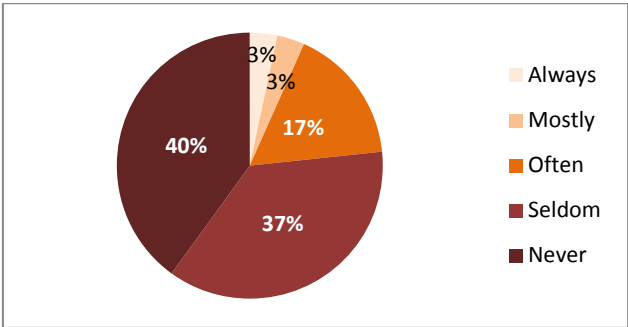
# B - Remuneration

## 8/10 REMUNERATION: ADVANCES AND ROYALTIES

### Q.27 → ADVANCE ON ACCOUNT OF E-BOOK SALES

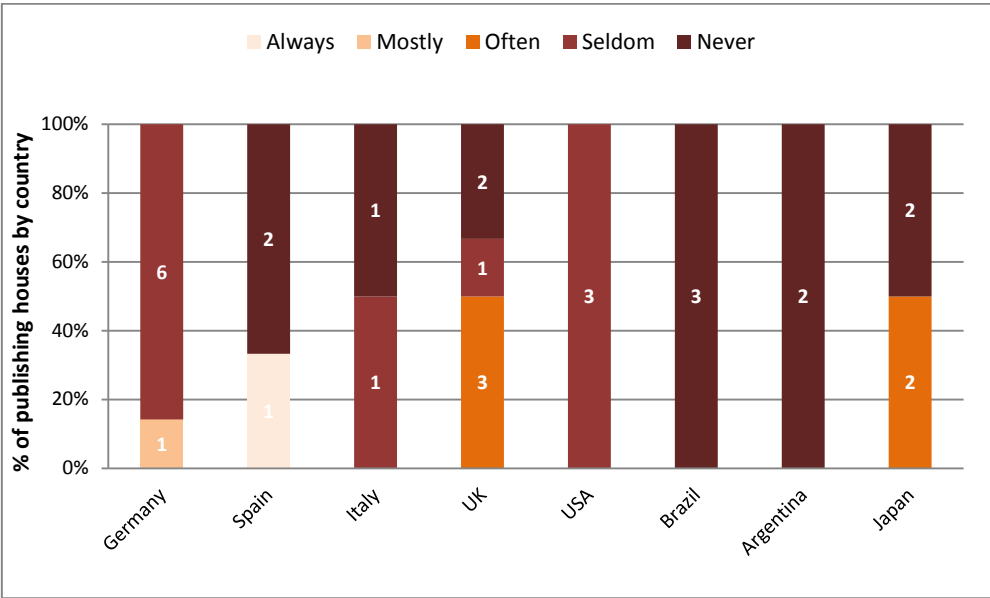
At the present time, the sample publishers and agencies do not demand a specific advance on account of sales of e-books (only one Spanish house does so systematically).

27. Do you ask for an advance specifically for e-book sales?



(30 responses)

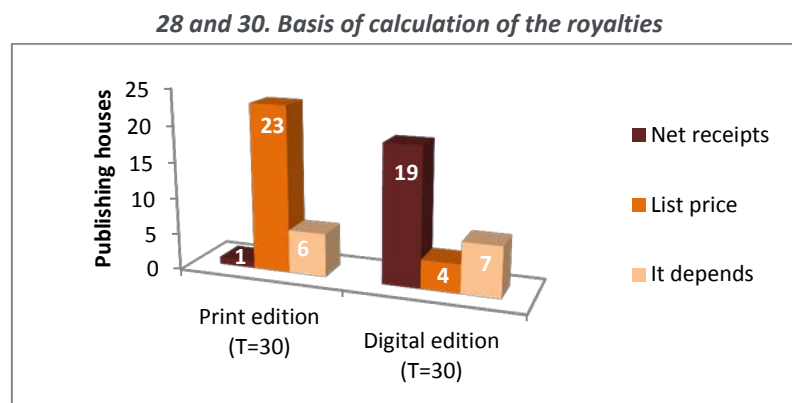
27b. Do you ask for an advance specifically for e-book sales?



(30 responses)

## Q.28.29.30.31 → BASIS OF THE CALCULATION OF ROYALTIES

When licensing print rights, royalty rates are usually based on the sales price not inc. VAT (23 respondents out of 30). However when licensing digital rights, this rate is usually based on the net receipts (19 out of 30).



## Q.32 → DEFINITION OF NET RECEIPTS

At first glance, the definition of net receipts seems to vary, but in reality, it is quite consensual (publisher's revenue, not including taxes and costs.

Each of the respondents defined 'net receipts' as the term is understood in their publishing house. Here is a copy of their answers:

<b>Brazil</b>	Gross revenues minus distribution costs.
<b>United Kingdom</b>	Amount received after tax, commissions and/ or any discounts
	what the publisher receives after paying the retail commission and the distributor's charges if he uses one.
	"Net receipts" shall mean the gross sums paid to the Publishers less VAT and or any unavoidable government levied tax for the sale of end user licences in the e-book edition of the Work.
<b>Germany</b>	Net receipts meaning the monies paid to the Publisher by its customers according to the net invoices on actual sales excluding VAT and less discounts.
	Net receipts meaning the monies paid to the Publisher by its customers according to the net invoices on actual sales excluding VAT and less discounts. Such discounts and allowances not to exceed 50 % (fifty percent) of the full published recommended retail price less VAT.
	List price minus VAT minus costs.
	Sale price minus VAT minus any discounts / handling fees by platforms (what the foreign publisher receives on his bank account).
	List price less VAT & discounts.
	Publisher's price: Retail price - VAT - discounts.

	Net-receipts = sales price - VAT - trade discount.
<b>Italy</b>	List price less VAT (if applicable) less retailer discount to a maximum of 30% (up to 50%). The price of the download, minus the VAT, minus e-retailer commissions.
<b>Japan</b>	Still difficult to define, need more discussion.
<b>Spain</b>	The amount received by the publisher after taxes and discounts.
<b>United States</b>	The sum received by the publisher after deducting costs charged by third party vendors.

Publishers' and agents' definition of net receipts is variable from country to country and even from firm to firm. National tax laws and taxation rates are also very diverse. Naturally, these differences affect the sum received for digital sales abroad.

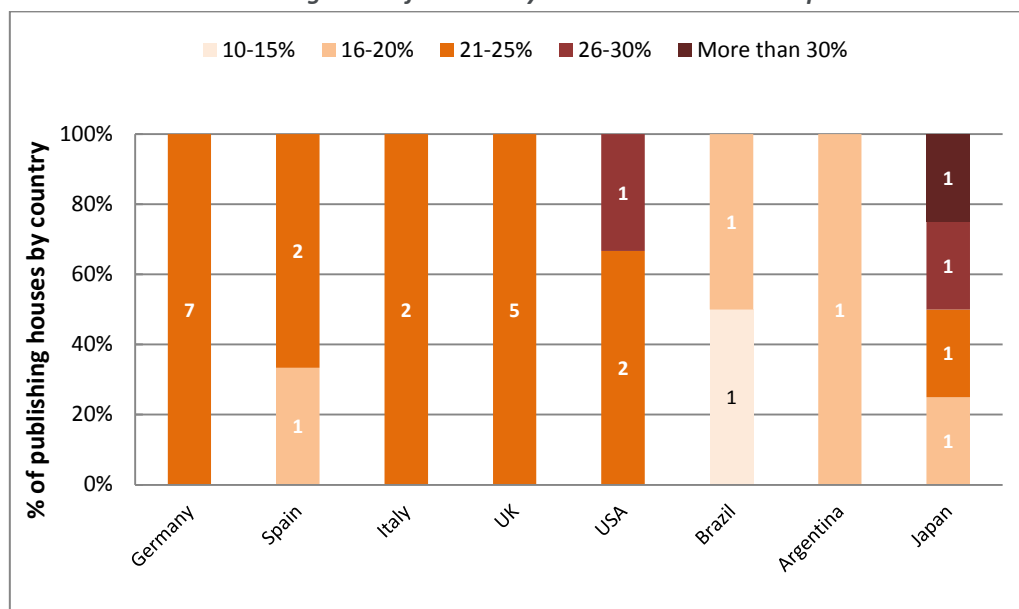
### Q.33 → AVERAGE ROYALTY RATES

The remuneration of the publisher who has licensed digital rights for the translation of a work is generally between 21 and 25% of the foreign publisher's net receipts. This seems to be widespread practice.

Certain university presses and small Brazilian and Argentinian publishers, with little experience in licensing foreign rights for digital works, ask for a lower rate, between 10 and 20%.

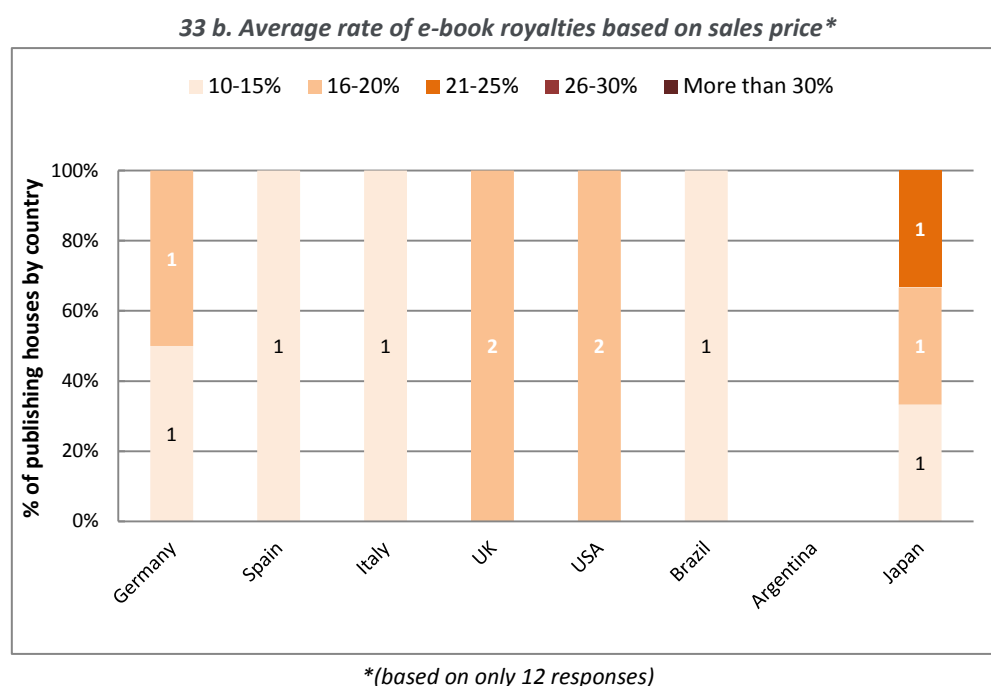
Apart from the United States and Japan (where practice, as revealed by this sample, is not uniform), none of the respondent houses or agencies ask for royalties above 25%.

**33. Average rate of e-book royalties based on net receipts**



(27 responses)

Although the majority of publishing houses and agencies base their rate of remuneration on net receipts, some of them ask for payment based on the e-book sales price, or the ‘download’ price. Such rates mostly fall between 10 and 15%, sometimes 16 and 20%, more rarely between 21 and 25%.

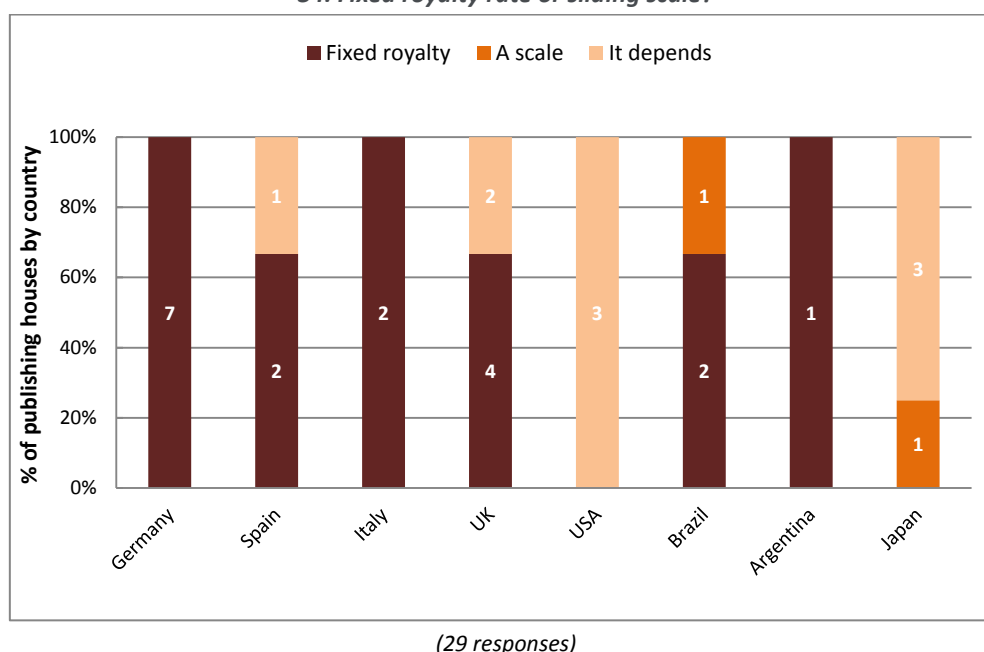


#### Q. 34 → FIXED OR SLIDING SCALE ROYALTY RATE (RELATED TO SALES)?

Probably because the sales are still too low to justify sliding scale royalty rates, 18 houses/agencies out of 29 (62%) ask for a fixed royalty rate when they are licensing digital rights for translation.

American and Japanese publishing houses are among those who most frequently ask for either a fixed rate, or a sliding scale royalty rate; two countries where the sales of digital translation rights are more developed.

### 34. Fixed royalty rate or sliding scale?



### Q.35 AND 36 → REDUCTION OF ROYALTY RATES FOR ENHANCED E-BOOKS?

Do publishing houses and agencies ask for different rates when licensing rights for enhanced e-books?

11 publishers out of 31 did not answer this question, probably because they have never granted translation rights for an enhanced e-book.

Among the 20 houses or agencies who have licensed translation rights for enhanced e-books, 17 ask for identical rates as they do for homothetic production.

Three respondents (a German agency specialist of illustrated books, one Brazilian and one British house) said they changed the royalty rate for enhanced e-books – whether they had produced the enriched material in-house or it was produced by the licensee. They did not, however, give details of the modification they make.

### Q.37, 38 AND 39 → CALCULATING THE AUTHOR'S REMUNERATION FOR SPECIAL SALES AND E-LENDING, TO AN INDIVIDUAL BORROWER OR A LIBRARY

There are several cases where the calculation of royalties is more complex. For example, calculating royalties when the e-book in a foreign language is sold on a platform where clients subscribe to a 'bouquet' of works, or for 'special sales' (for example sales of print + digital copies). And what about e-lending to an individual borrower or a library?

Many respondents chose not to answer this question (64%) and among the houses and agencies who did answer, many said it was too early to make a decision and that they had, as yet, no experience of this type of commercialisation.

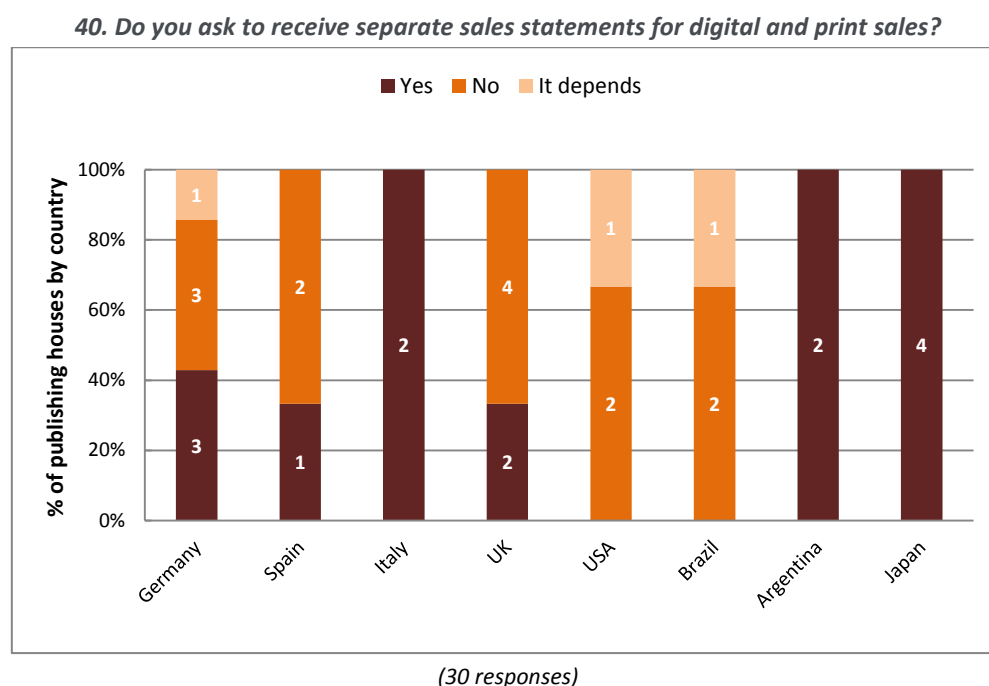
Among the rare responses, we can identify the following:

- One British house decided case by case for special sales, and asks for royalties of between 15% and 25% of net receipts for e-lending in libraries.
- One German house and one Italian say they request a rate of 25% based on the publisher's net receipts.
- One Japanese house say they let their foreign licensee choose the conditions for sales or e-lending when drafting the contract, but they give no details of remuneration.

## 9/10 SALES STATEMENTS AND PAYMENT

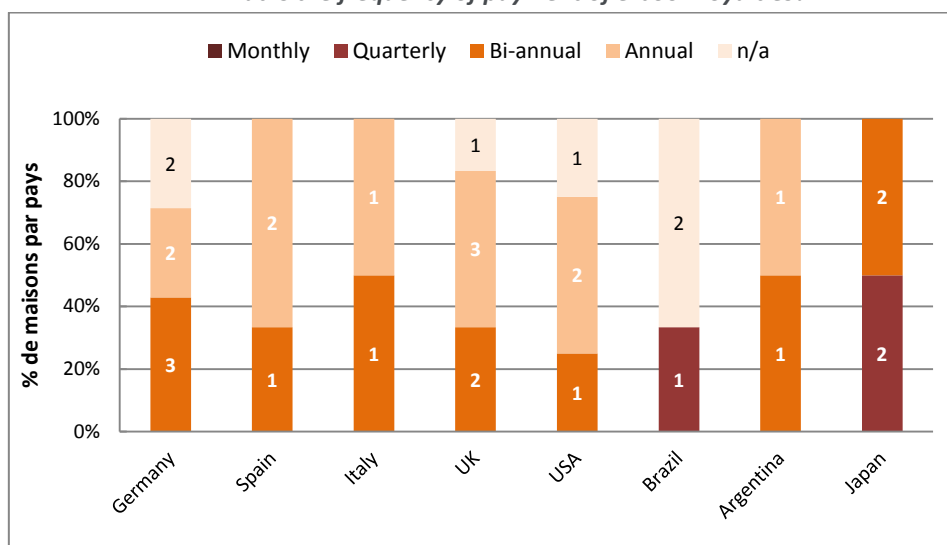
### Q.40 AND 41 → SEPARATE SALES STATEMENTS AND FREQUENCY

Today, half of the respondents request separate sales statements for print and digital sales – but it is not possible to provide a typical profile of these houses.



In the majority of cases, publishing houses and agencies ask to receive revenue from sales annually or biannually. The frequency of payments is noticeably higher in Japan.

#### 41. What is the frequency of payment of e-book royalties?



(31 responses)

## C- Commercial policy

### 10/10 COMMERCIAL POLICY: ESTIMATION OF SALES

#### Q.42 → GROWTH OF REVENUE FROM DIGITAL SALES

Publishing houses and agencies were asked how much their revenue from foreign digital sales had increased over the last two years.

The available sample does not permit us to conclude - in terms of the publishing firm (small, medium-sized, large, university press, etc.) where revenue has grown most quickly. However, the percentage increases reveal different degrees of development according to the market.

#### *42. Percentage increase in revenue from foreign digital sales in the last two years*

Country	% increase	
Argentina	No increase	(x2)
Brazil	No increase Don't know 5-10%	
United Kingdom	Don't know 1-5% 5-10% 10-15% 15%+	(x2)
Germany	No increase Don't know 5-10% 15%+	(x3) (x2)
Italy	1-5% 5-10%	
Japan	Don't know 10-15% 15%+	(x2)
Spain	No increase 5-10%	(x2)
United States	1-5% 5-10%	(x2)

## *Annexes - Questionnaires*

# Acquiring Digital Rights: What Are Your Practices ?

Dear Colleague,

In 2010 you were kind enough to answer to an international questionnaire on digital publishing. You will find enclosed a new one, to update the information on this rapidly evolving matter. We would be very grateful if you could answer these questions. They are all practical questions about contractual, technical, economic and commercial issues. We will, of course, keep you informed on the result about this survey.

Thank you so much for your participation !

## 1/20 Identification

Please note that your answers will remain totally anonymous

1. **First name**
2. **Last name**
3. **Position**
4. **Email address**
5. **Publishing company name**
6. **Main types of publication of your company**

Mainly plain text books

Mainly illustrated books

## 7. **Country**

USA

GB

Spain

Italy

Germany

Brazil

Japan

Netherlands

Argentina

## WRITING THE AGREEMENT

### 2/20 Head-contract with an author

This part concerns your head-contract with an author (direct, or via the author's agent) who writes directly in your own publication language

#### 8. **Do you obtain primary e-book rights in this language?**

Never

Seldom

Often

Mostly

Always

#### 9. **If so, which e-book right?**

*Une seule réponse possible par ligne.*

Yes No

Verbatim only

Enhanced

Multimedia

#### 10. **If you obtain primary e-book rights, do you also obtain subsidiary e-book rights (licenses to third parties) in your own language?**

Never

Seldom

Often

Mostly

Always

#### 11. **If you obtain all e-book rights in your language, do you also obtain e-book translation rights (to be then licensed by your Rights Department to foreign publishers)?**

Never

Seldom

Often

Mostly

Always

### 3/20 Acquisition contract of a foreign title

This part concerns your acquisition contract of a foreign title (to be translated and published by you)

#### 12. **If you acquire from a foreign publisher (direct, or via this foreign publisher's local subagent) the rights to a title for translation into your own language : do you acquire both print-rights and e-book rights ?**

Never

Seldom

Often

Mostly

Always

#### 13. **If you have been granted e-book rights:**

are they included in your paper-rights acquisition contract ?

or by separate contract (or contractual addendum) sent to you separately by the foreign publisher (direct, or via his local sub-agent)?

#### 14. **If you acquire from a foreign author directly (usually represented by his international agent) the rights to a translation into your own language: do you acquire both printrights and e-book rights?**

Never

Seldom

Often

Mostly

Always

#### 15. **If you have been granted e-book rights:**

are they included in your paper-rights acquisition contract ?

or by separate contract (or contractual addendum) sent to you separately by the foreign author (usually represented by his international agent)sub-agent)?

**16. If you have obtained both paper-rights and e-book rights to translate and publish a title : who will retain the property on the translation itself when/if your publication contract with the original copyright-holder comes to an end ?**

The translator

You

#### 4/20 Authors and their digital rights

**17. What proportion of authors keeps their digital rights?**

*Une seule response possible par ligne.*

Less than 10% 10-25% 26-50% More than 50%

In the past year

On your entire list

**18. Do you accept acquiring print rights and digital rights separately?**

Never

Seldom

Often

Mostly

Always

**19. If you have ever been refused e-book rights by the copyright holder, what reasons were given?**

*More than one response possible.*

Prefers to commercialize e-book directly

Plans on selling e-book rights to a digital-only publisher

Does not agree with the royalty rate

Author insists on receiving a separate advance which you are not prepared to offer

Other:

**20. If the author doesn't grant you the digital rights, do you cancel the whole deal?**

Yes

No

Other:

#### 5/20 Copyright ownership

**21. Who owns the additional enhanced material?**

**22. Who owns the technical files?**

(e.g. encoding process)

#### 6/20 Length of exploitation

**23. Do you obtain print and digital rights for the same duration?**

Yes

No

Other:

**24. In your agreements, do you systematically include a clause which grants the right to renegotiate the terms regarding the e-book rights after a certain term?**

Yes, always

Yes, sometimes

No

**25. If yes, have you in fact ever renegotiated the terms after the fixed amount of time?**

Yes

No

Other:

**26. If you do renegotiate, what are the consequences in case you can't agree on the terms?**

Termination of the entire agreement (print+ebook)

Termination only of the e-book part of the agreement

Other:

#### 7/20 End of the contract

**27. If, in your contracts, the rights revert if the work is "out of print", how do you define "out of print" now that e-books exist?**

Minimum stock of paper copies

Minimum sales of paper copies

Minimum sales of e-books

Minimum sales of "units" (=paper and/or e-books)

Other:

**28. Are you often requested a minimum sales clause?**

Yes

No

**29. When the contract for digital rights ends, are you asked to destroy your master copy of the file?**

Yes

No

#### 8/20 E-books and territories

**30. How do you make sure your e-book edition is only sold in your assigned territory?**

**31. How has the existence of e-books affected your decision-making process over which territories to obtain rights for?**

#### 9/20 Sublicenses

**32. Do you ever sublicense the e-book rights to a domestic third party (e.g. book club, paperback)?**

Yes

No

**33. Have you ever been refused by your licensor to sublicense e-book rights to a domestic third party?**

Yes

No

**34. If yes, what reasons were given?**

**35. Have you ever acquired digital rights for excerpts or chapters?**

Yes

No

**36. Have you ever acquired the digital rights of an illustrated work adapted from a previously existing film, video game etc.?**

Yes /No

## PRODUCTION

### 10/20 Production

If the following questions are not in your areas of expertise, please don't hesitate to fill them out with the help of your colleagues.

**37. Does your licensor request specific approval before production of your e-book?**

e.g. artwork, lay-out, etc.

Yes

No

**38. Where are the master copies located?**

On your internal server

On an other external platform (e.g. edistributeur)

Other:

### 11/20 Formats & Devices

**39. In your overall e-book production, what is the proportion of :**

*Une seule réponse possible par ligne.*

0% 25% 50% 75% 100%

Verbatim only

Enhanced content

**40. Do you propose downloading and/or streaming to readers?**

*Une seule réponse possible par ligne.*

0% 25% 50% 75% 100%

Downloading e-books

Streaming e-books

**41. Which kind of works do you digitize mostly?**

*Une seule réponse possible par ligne.*

0% 25% 50% 75% 100%

Plain text

Illustrated

**42. In which format?**

ePub Reflowable

ePub Fixed layout

ePub 3

Other:

**43. Have you digitized your entire backlist?**

Yes, all our backlist is digitized

No, only part of our backlist is digitized, but it is an ongoing process to digitize the rest

No, we only digitize new releases

Other:

**44. What proportion of your backlist have you digitized?**

Less than 10%

Less than 25%

Less than 50%

Less than 75%

Other:

**45. Have you started to create and develop apps for illustrated books?**

Yes

No

No, but we plan to do it in the future

**46. If yes, in which format?**

Apple

Android

Both

Other:

**47. Are your ePub files accessible on all devices? In which proportions?**

*Une seule réponse possible par ligne.*

0% 20% 40% 60% 80% 100%

E-ink readers

iOS tablets (Apple)

Android tablets (Kobo, Barnes &

Noble,etc)

Amazon tablets

Other

### 12/20 Free Copies

**48. Upon publication of the e-book, what kind of contractual copies, and how many, do you send to the author or the rights holder?**

**49. Is it a protected sending?**

Yes

No

**50. Do you protect (and how) the complimentary copies sent to journalists, bloggers, etc.?**

*More than one response possible.*

Downloading with DRM

Downloading with time limited DRM

Downloading with watermarking

Restricted streaming

No protection for the moment...

Other:

### 13/20 Protection of your commercialized ebooks against hacking

**51. How is the data encoded and protected?**

(DRM, watermarking, fingerprinting,etc.)

*More than one response possible.*

DRM

Watermarking

Fingerprinting

Restricted streaming

Other:

**52. As the main retailers get their own systems of protection, do you plan to stop encoding your data?**

Yes

No

Maybe in the future

**53. In case of infringement, how do you and the licensor defend your rights?**

Together

Separately

It depends

**54. Apart from the technical methods of protection, what steps are taken to fight against illegal copying?**

(Specific organization, frequency of actions, other...)

## **PAYMENT OF THE OWNER**

### **14/20 Advances & Royalties**

**55. Do authors ask for an advance specifically for e-books sales?**

Never  
Seldom  
Often  
Mostly  
Always

**56. Have you established addenda to acquire digital rights for backlist titles?**

Yes  
No

**57. In this case, do you propose a refresher advance for digital sales only?**

Yes, always  
Yes, sometimes  
No

**58. What is the basis of calculation of royalties for a digital edition?**

Net receipts  
List price  
It depends  
Other:

**59. If other, please comment**

**60. What is the basis of calculation of royalties for a print edition?**

Net receipts  
List price  
It depends  
Other:

**61. If other, please comment**

**62. What is your definition of net receipts?**

**63. What is the average rate of e-book royalties?**

*Une seule réponse possible par ligne.*

From 10% to

15%

From 16% to 20%

From 21% to 25%

From 26% to 30%

Above 30%

Net receipts

List price

**64. Is it a fixed royalty or a scale?**

Fixed royalty  
A scale  
It depends

**65. Are the royalty rates different for enhanced ebooks?**

*Une seule réponse possible par ligne.*

Yes No

Enhanced content provided by your licensor  
Enhanced content created by you

**66. If yes, how so?**

**67. How are the royalties calculated in special sales: subscriptions, packages, bundles...?**

**68. How are the royalties calculated in the case of e-lending to an individual?**

**69. How are the royalties calculated in the case of e-lending to a library?**

**70. Are you thinking of developing a digital-only list?**

Yes  
No

**71. If yes, what would be the royalties offered to the author?**

**72. Are you thinking of developing a digital-first list?**

Yes  
No

### **15/20 Accountings**

**73. Do you send separate royalty statements for digital and print sales?**

Yes  
No  
Other:

**74. What is the frequency of payment of e-book royalties?**

Annual  
Bi-annual  
Quarterly  
Monthly  
Other:

**75. Do you plan to give to your authors instant access to sales information?**

Yes  
No

## **TRADING POLICY**

### **16/20 Pricing Policy**

**76. What is your e-book's catalogue price compared to the equivalent trade print edition?**

*Une seule réponse possible par ligne.*

-20% -30% -40% -50% and more

New title

Backlist

**77. What is your e-book's catalogue price compared to the cheaper mass-market print edition?**

*Une seule réponse possible par ligne.*

-20% -30% -40% -50% and more

New title

Backlist

**78. Do agents often request to negotiate the differential between e-book list price and paperback list price?**

Yes  
No  
Other:

79. Do agents often request to negotiate the maximum discounts of e-book retailers?

Yes

No

Other:

80. If they do so, do you accept?

Yes

No

Other:

### 17/20 E-lending

81. Do you practice e-lending?

Yes

No

82. If yes, this e-lending offer is aimed at:

*More than one response possible.*

Libraries

Individuals via retailers (e.g Amazon)

Other:

83. What is your usual practice for e-lending?

*More than one response possible.*

One copy per user (=one sale)

Pay per view (for a specific number of users)

Pay per download (for each downloaded chapter)

Time restricted access

Streaming

Other:

### 18/20 Sales estimations

84. Did your revenues from digital sales grow in the past two years?

Yes

No

Unknown

Other:

85. If yes, what percentage increase?

86. If yes, did digital sales grow to the detriment of paper sales?

Yes

No

### 19/20 Promotions

If your domestic legislation gives you the possibility of promotional operations

87. What are the most common promotional offers?

*More than one response possible.*

Price cutting

Buy two, get one free (or more)

Two for the price of one

Free access to parts of the work

Other:

88. How many times per year?

Once a year

Twice a year

More than twice a year

Dynamic pricing

Other:

89. How does your royalty accounting take into account this promotional operation?

90. Do you allow the reader to access free of charge:

*More than one response possible.*

The first 10 pages of the book

The first chapter of the book

10% of the book

Other:

### 20/20 Retailers

91. What were your main retailers in 2012 (in terms of revenues)?

*More than one response possible.*

Amazon

Apple

Kobo

Barnes & Noble

Google

Indie booksellers

Other:

# Licensing Digital Rights: What Are Your Practices ?

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Dear Colleague,

In 2010 you were kind enough to answer to an international questionnaire on digital publishing. You will find enclosed a new one, to update the information on this rapidly evolving matter. We would be very grateful if you could answer these questions. They are all practical questions about contractual, technical, economic and commercial issues. We will, of course, keep you informed about the result of this survey.

Thank you so much for your participation !

## 1/10 Identification

Please note that your answers will remain totally anonymous

1. **First Name**
2. **Last name**
3. **Position**
4. **Email address**
5. **Publishing company name**
6. **Main types of publication of your company**

Mainly plain text books

Mainly illustrated books

7. **Country**

USA

GB

Spain

Italy

Germany

Brazil

Japan

Netherlands

Argentina

## WRITING THE AGREEMENT

### 2/10 Writing the agreement

8. **If you handle translation rights of a title, do you license simultaneously or separately print-rights and e-book rights ?**

Simultaneously

Separately

It depends

9. **If it depends, please comment**

10. **If you license separately e-book translation rights, is it?**

To the same foreign publisher as for print-rights, but in a separate contract

To another foreign publisher

It depends

11. **If it depends, please comment**

12. **Have you ever refused to grant the digital rights to a foreign publisher?**

Yes

No

13. **If yes, why?**

The publisher has not yet shown that it is capable of successfully selling e-books

You asked the publisher to pay a separate advance for e-book rights and it refused

You could not agree on the royalty rate

Other :

### 3/10 Length of exploitation

14. **Do you grant print and digital translation rights for the same duration?**

Yes

No

Other :

15. **In your agreements, do you systematically include a clause which grants the right to renegotiate the terms regarding the e-book rights after a certain term?**

Yes, always

Yes, sometimes

No

16. **If yes, have you in fact ever renegotiated the terms after the fixed amount of time?**

Yes

No

Other :

17. **If you do renegotiate, what are the consequences in case you can't agree on the terms?**

Termination of the entire agreement (print + e-book)

Termination only of the e-book part of the agreement

Other :

### 4/10 End of the contract

18. **If, in your contracts, the rights revert if the book is "out of print", how do you define "out of print" now that e-books exist?**

Minimum stocks of paper copies

Minimum sales of paper copies

Minimum sales of e-books

Minimum sales of "units" (=print and/or e-books)

Other :

19. **When the contract for digital rights ends, do you request the destruction of the master copy of the file?**

Yes

No

20. **If yes, how can this be proved?**

### 5/10 E-books and territories

21. How do you make sure the translated e-book edition is only sold in the assigned territory?  
22. How has the existence of e-books affected your decision-making process over which territories to grant rights for?

### 6/10 Sublicenses

23. Do you authorize your licensee to sublicense ebook rights to a third party (clubs...) in its domestic market?

Yes

No

24. Do you authorize your licensee to sublicense digital rights for excerpts or chapters in its domestic market?

Yes

No

## PRODUCTION

### 7/10 Free Copies

25. Upon publication of the e-book, what kind of complimentary copy do you request from your licensee?  
26. Do you require a protected file?

Yes

No

## PAYMENT OF THE OWNER

### 8/10 Advances & Royalties

27. Do you ask for an advance specifically for e-book sales?  
28. What is the basis of calculation of royalties for a digital edition?

Net receipts

List price

It depends

Other :

29. If other, please comment

30. What is the basis of calculation of royalties for a print edition?

Net receipts

List price

It depends

Other :

31. If other, please comment

32. What is your definition of net receipts?

33. What is the average rate of ebook royalties?

*Une seule réponse possible par ligne.*

From 10% to 15%

From 16% to 20%

From 21% to 25%

From 26% to 30%

Above 30%

Net receipts

List price

34. Is it a fixed royalty or a scale?

Fixed royalty

A scale

It depends

35. Are the royalty rates different for enhanced ebooks?

*Une seule réponse possible par ligne.*

Yes No

Enhanced content provided by you

Enhanced content created by your licensee

36. If yes, how so?

37. How are the royalties calculated in special sales: subscriptions, packages, bundles...?

38. How are the royalties calculated in the case of e-lending to an individual?

39. How are the royalties calculated in the case of e-lending to a library?

### 9/10 Accountings

40. Do you ask to receive separate sales statements for digital and print sales?

Yes

No

It depends

Other :

41. If yes, what is the frequency of payments of e-book royalties?

Annual

Bi-annual

Quarterly

Monthly

Other :

## TRADING POLICY

### 10/10 Sales estimations

42. Did the revenues from foreign digital copies grow in the past two years?

Yes: 1-5%

Yes: 5-10%

Yes: 10-15%

Yes: more than 15%

No

Unknown

Other