

Media & Entertainment - France

New publishing contract rules: consecration of authors' digital rights

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New order

A new government order – widely anticipated by the publishing industry – has been issued to adapt the IP Code to the digital age. Following the amendments, publishing contracts will now distinguish printed editions from digital editions of literary works.

The order was published in the *Official Journal* on November 13 2014. The new text transposes the framework agreement concluded on March 21 2013 between the Permanent Council of Writers (CPE) and the National Publishers Association (SNE). Further, on December 10 2014 the minister of culture signed a decree extending to all authors and publishers the Code of Practice signed by the SNE and the CPE, which specifies the application of the new contract terms.

The reform of the rules covering publishing contracts for literary works is the result of a long and difficult process of bilateral inter-professional negotiations which began in 2007.

Changes

The order adjusts the general provisions regarding publishing contracts, while the decree sets out the precise application of these principles.

First, the definition of a 'publishing contract' has been modified to take into account the exploitation of the work in a digital format. Previously, the definition specified that the publishing contract involved an assignment of the reproduction right, an obligation to manufacture and a duty to exploit.

The author and the publisher must agree precise and distinct terms for both the physical and digital exploitation. Thus, it is now specified that the publishing contract shall distinguish the assignment of the reproduction right in a separate part of the contract from that covering the printed format of the work in cases where the publisher also offers digital publication to the author.

The order confirms the publisher's "permanent and continuous" obligation to exploit the work, but specifies that the termination of the contract, which can take place in case of an operating default, applies to the uninsured mode of operation, without effect on the other intended mode of operation provided by the contract.

Regarding payment, the order defines the scope of the publisher's accountability obligation. This requirement has been strengthened to tackle the specificities of digital publishing. The publisher is accountable for the calculation of its payment in a transparent manner at least once a year on the date scheduled in the publishing contract or, in the absence of a set date, at least six months after closure of the accounts.

Digital exploitation

Certain provisions of the order and the decree concern only digital publishing contracts. The order states that an author is entitled to receive fair and equitable payment on all revenue from the marketing and distribution of a digitally published book. In the case of a unit sale, the proportion of the revenues due to the author is calculated based on the wholesale price, excluding taxes. Further, authors now enjoy a proportion of all revenues, including those generated by advertising. For subscription models, the decree provides that the author will be paid on the basis of the price paid by the public in proportion to the consultations and downloads of the work. This implies that the publisher shall collect this information from the service provider.

In case of a lump-sum payment provided for in the publishing contract, the order specifies that the rate can be justified only for a determinate operation and that any new operation must be

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renegotiated. There is no general lump-sum payment for digital exploitation.

Considering the evolution of the economic model on which the assignment condition of digital exploitation rights is based, the parties to the framework agreement have agreed that the terms may be reviewed. The order provides that "the publishing contract includes a review clause for economic conditions of the assignment of the exploitation rights of the book in digital format" and the decree specifies that this may occur after a period of four years following the execution of the contract (or the entry into force of the new law for existing contracts).

All contracts concluded before the entry into force of the order on December 1 2014 must be amended to conform with it.

From December 1 2016 an author will be able to instruct his or her publishers to issue a digital publication of a book. If the author has assigned the digital format exploitation rights of the book to the publisher, he or she will be able to terminate the assignment of such rights if they are not exploited.

Contract templates

The CPE and the SNE have developed new templates to include the following changes:

- a clear separation in the contract of the assignment of the traditional printed exploitation and the digital rights;
- an enhanced accountability obligation, non-compliance with which results in termination of the contract;
- a definition of 'continuous and sustained exploitation' for both printed and digital formats; and
- a clause allowing the review of the economic conditions of the assignment of digital publishing rights.

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