



Report by Belgian Book Publishers' Associations ADEB/GAU/GEWU for the FEP AGM

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1. Statistics regarding the book market in Flanders

In 2019, sales volumes decreased by 3.5% to 13.3 million books compared to the previous year – an evolution which supports the decline of the years before. Revenue, on the other hand, managed a small growth of 0.8%. to €189.54 million The average selling price grew by 4.5% to €14.3.

Noticeable figures are the rise in books sold online: growing 3.7% to total 21%. In overall revenue, online sales generated a rise 7.1% to a total of 26.2%. The top 100 most sold books are now worth 11.5% in books sold and 12.7% in revenue of the entire market, meaning respective growths of 4.1% and 3.9%.

The most popular genres in Flanders are fiction (26.4%), informative non-fiction (22.64%) and children's books (17.6%). E-books have become slightly less popular, decreasing 2.6% to a total of 3.5%.

2. Legislative developments

A. Copyright

i. Implementation of Directive on Copyright in the DSM 2019/790

ADEB and Boeck.be attended the consulting process organised by the Council for Intellectual Property which is the advisory body for the Minister for Economy in charge of copyright affairs. The text proposal is drafted by the Administration of the Federal Agency for Economy. The Council brings together experts (not always independent unfortunately), rightholders (book publishers requested formally to be invited and were granted attendance to the meetings) and users (amongst which Google!). Regrettably we were only allowed to attend the meetings till after the meetings regarding OOC works and text and data mining and educational exceptions had already taken place. We question the democratic nature of the consultation process by the Council as it stands.

A few observations:

In general: the exceptions of the Directive were transposed separately from existing exceptions which sometimes will lead to legal uncertainty regarding the application of exceptions. Especially in the field of preservation and use of works for educational purposes. Many provisions also attribute special power to the King (Minister for Economy) which we do not favour.

Article 3 and 4 (Text and data mining)

The definitions of the Directive were copied coherently with the Directive. The Flemish Community requested an explicit mentioning that academic hospitals also fall under the scope of application. The Text proposal calls for best practices that rightholders should agree upon with the other stakeholders. There is no fair compensation foreseen for rightholders for the introduction of this new exception.

Article 5 Educational exception

The exception was transposed literally from the Directive. Only partitions were excluded from the scope, text books were not (although suggested during debates at the Council)

We continue to plea for the notion of short extract within the exception for purposes of illustration of teaching and scientific research as it is already the case in our reprography exception.

It is worth mentioning that since the split operated by the law of December 2016 between the reprography exception and the exception for purposes of illustration of teaching and scientific research, the Belgian law kept the notion of extract for the books in the first exception but not in the latter (only a reference to the 3-step test was maintained).

It would also be interesting to provide a definition for the concept of extract or short extract within the Belgian law. Regarding the reprography exception, there is no definition of this notion in the preparatory work but it seems that if we refer to the customs in Europe, an extract implies that we should not be able to reproduce more than a chapter or 10% of a book (it is also this criteria that Reprobel uses in its contractual licences).

As with regard to the possibility of excluding textbooks of the exception and providing contractual licenses instead we see that it might also be interesting but isn't there a risk that by doing so our current legal remuneration (which is more or less of 5 million divided in equal parts between authors and editors) could be decreased?

Article 8 Works out of commerce

The proposal introduced recital 38 in the definition of OOC works, namely the sentence: « *The limited availability of a work or other subject matter, such as its availability in second-hand shops, or the theoretical possibility that a licence for a work or other subject matter could be obtained should not be considered as availability to the public in the customary channels of commerce.* » The definition also refers to the power attributed to the King to define what is a « *reasonable effort* ». The fact that the recital was integrated in the definition (in contrast with the Directive) in our opinion proves that the legislator wants to stimulate a broad application of the exception and that it was not done just for clarification purposes.

Another worrisome evolution is the power given to the King to define a) how rightholders can execute their right to opt-out because it is supposedly still unclear how this should be done via the BOIP and b) what is a "reasonable effort" and/or to define specific rules per genre/category of works e.g. a cut-off date.

Finally we are not amused with the introduction of one CMO (Reprobel or Auvibel) that will be appointed by the King as a one stop shop and representative collecting society for book publishers. Again, the user's perspective seems to have dominated the drafting of this provision instead of the interests of rightholders

The fact that publishers as rightholders can exert the opt-out mechanism is not specifically mentioned in the proceedings, only mentioned as 'part of the debate'.

Article 16 A fair remuneration for publishers

Today, in Belgium, private copy and reprography exceptions are sui generis rights (related rights) with distinct remunerations. We could see art. 16 as an opportunity to reintroduce these exceptions within the copyright regime that is more protective (and as it was the case before the law of December 2016).

According to Reprobel (central CMO for reprography in Belgium for publishers and authors) which made a risk assessment, article 16 does not prescribe how author / publisher sharing must be carried out (legal sharing, separate remuneration rights, other). In addition, a legislative debate on the reintroduction of legal author / publisher sharing risks jeopardizing the entire legal license (including current reprography prices).

Reprobel sent a draft revision of the two Royal Decrees of March 5, 2017 to the Minister in order to increase the perceptions for small and medium-sized undertakings. Reprobel is focusing on this rather than on a new legislative reform which outcome can not be predicted with certainty.

Article 17

For the time being, it seems that the scope of application only covers the communication to the public rights of the authors, producers, performers, broadcasters and it is not clear if the publishers are covered by this mechanism. We will recall that the publishers should benefit of it as well.

ii. Levies

- **Digital license of Reprobel**

Reprobel is currently developing a "residual" license for digital reuse (next to existing ones for photocopying / reproduction and printing) for the public and private sectors. This "residual" license will not limit or in any way infringe on any existing or future license of the right holders and CMOs members of Reprobel. This residual license would be offered to both private and public sectors (excluding education) as a product that stimulates the digital economy while offering businesses, professional federations and various administrations legal certainty for the multiple acts of reuse they practice (digital sending of a scan originally from a book, ...). Reprobel wishes to create a similar license for compilations in education in 2020-2021.

- **European Institutions stop paying for reprography**

Some European Institutions are currently refusing to pay the publisher's share of remuneration for reprography / reproduction. As this part does not fall under copyright law, the European Institutions regard it as a tax and therefore consider that they are exempted from it (as a result of an agreement signed between them and the Belgian State).

- **Private Copy exception**

A Royal Decree of 29.08.2019 (on the right to the remuneration for private copy basically allows the practical implementation of the remuneration for private copy for publishers from 01.09.2019. However, the tariffs and the basis of perception (devices and supports) have remained unchanged compared to the Royal Decree of 2013. Indeed, printers, multifunction printers, scanners, computers, e-readers, (NPVR and other "cloud") are currently not subjected to any remuneration.

iii. Open Access

A bill of 30 July 2018 installed the Open Access rules in Belgian law, based upon the European Horizon 2020 embargo periods (6 months for exact sciences, 12 months for human sciences). The Belgian legislator installed a right for every author with a Belgian link (nationality, employment, subsidy etc) to publish the revised manuscript (without lay-out) in open access. On regional level the Marcourt Decree installed slightly different Open Access rules for scientific authors.

The scientific section of ADEB (Association des éditeurs belges) and GEWU (Educational and Scientific Publishers Group) are currently jointly creating a website (www.open-access.be) in order to explain the federal law and the decree on open access. Many contradictions between the federal level and the regional level legislations can be observed. To cite but a few:

- On the one hand we have a federal legislation which establishes a right for researchers and scientists to make available their works in Open Access. Whereas, on the other hand, on the

decretal level, we have not a right but an obligation to put first the works in an institutional archive and second to make them accessible in open access.

- The federal law is retroactive whereas the Marcourt decree is not. According to the Federal law the researchers may use their right and make accessible their works that existed prior to the date of enforcement of the law.
- We also have two periods of embargo of 6 and 12 months. However, the federal law establishes that these periods can be lengthened by a royal decree (this possibility is not laid down in the Marcourt Decree).

Regarding the regional level (Marcourt Decree), ADEB is arguing that by forcing the researchers to make publish their works in Open Access, the regional legislator is creating a new exception in our copyright system which is not of its jurisdiction (but of federal jurisdiction). It also has a perverse effect since article processing charges might raise due to the obligations laid down by the decree. Certain researchers will have to pay article processing charges to their foreign editors in order to comply with their obligation to make their works accessible in Open Access.

iv. Review of publishing contract

The Group of Trade Publishers continued negotiations with the Flemish Authors Association for a revised model contract. This led to a new model contract setting out basic rules in two parts: the first part summarising the most important clauses for authors, the second part containing the general clauses governing the contract. Both parties also agreed upon the installation of an Ethical Committee (self-regulatory body) and the adoption of a code of conduct.

B. Deposit of e-books

The administration of the Flemish government commissioned a study on the legal deposit of e-books, conducted by the Flemish Heritage Library. According to the current Federal Deposit Legislation publishers have to deposit two copies of each publication in the Royal Library. The deposit of e-books by publishers is entirely voluntarily up until today. As a follow up of this study, another study was commissioned including a survey that was conducted. This survey pointed out that several publishers would agree to deposit ebook files as well. The Royal Library and the Group of Trade Publishers (GAU) recently met to negotiate a better flow regarding the current deposit of physical copies of books. In order to prepare Flemish book publishers to the future extension of the law GAU and GEWU will raise more awareness regarding this topic.

C. A regulated book price on regional levels

Since July 2017 Flanders has its regulated book price for a duration of 6 months (certain types of books are excluded e.g. second hand books, brochures, textbooks, scientific books) and certain types of sales of books. The publisher or importer sets the price for his publication which has to be maintained by retailers. Retailers are only allowed to give limited discounts to certain target groups (e.g. 10% to consumers) enumerated by the legislative text. Since the introduction of the Flemish decree on a regulated book price a similar decree was installed in the French speaking part of Belgium. Finally specific rules were also adopted for booksellers active in the region of Brussels.

The Group of Trade Publishers (GAU) is worried that the decree has not yet reached its goals since its adoption. The fact that the decree cannot be imposed on booksellers based outside Belgium but in the EU is harmful for Flemish booksellers and publishers. The growth of sales of physical books via e-commerce (20% market share) is entirely situated outside Belgium. Book chain stores maintained their market share but Independent booksellers have only seen a small increase of their sales which cannot

compensate the great loss of sales that can be observed in other sale channels. For that reason GAU lobbies for an earlier evaluation of the regulated book price to adapt certain rules.

For what concerns the application of the Decree in the French-Speaking part of Belgium (Communauté française), one of the main problems regarding the fixed book price is that law books are not excluded from it. Moreover, there is no discount for university students because the legislation focuses on school textbooks but not on university textbooks (B2C perspective). It is worth noting that books written in English or bilingual, as well as "books-apps" are excluded from the fixed book price. Finally, in order for the legislation to be applicable there is a requirement that 80% of the content of the book has to be written in French. As a result certain legal editors have started to publish increasingly more in English in order to bypass the legislation.

3. Promotion of Books and Reading

3.1. Antwerp Book Fair

The Antwerp Book Fair hosts Flemish members of the Flemish General Publishers Association, the Flemish Educational and Scientific Publishers Association and the Flemish Booksellers Association. The book fair offers a wide spectrum of books published in or imported to Flanders. The fair includes school/text books as well as scientific and trade books in the most general sense.

The 2019 edition continued the evolution set in motion in the previous year. The 2018-2020 project aims to reimagine the fair, leaving no stone unturned. Every aspect of the event was reviewed, challenged and improved if necessary. In 2020 the Antwerp Book fair wants to be a modern, forward-looking exposition with distinct goals and strategies to improve on the visitor experience in every possible way (infrastructure, content, value for money, means of communication...).

After the initial content revamp in 2018, the 2019 edition focused more on tangible improvements for visitors. As a result, the floor plans were remodeled to incorporate 'focus areas, including a children's zone of 2,500 m² and an art & lifestyle zone. A newly-built 'Hall 4XL' was called upon to accommodate renowned authors' lectures. The Antwerp Book Fair 2020 will continue the evolution process, completing the transition to the book-fair-of-the-future.

For the first time ever, a structural partnership was struck with Port of Antwerp, a global leader in maritime transport activities. They supported the Book Fair both on the floor as well as content wise by providing both the 'shipping journal' project – offering several views on the future of the Port of Antwerp – and a large stand, informing how the port is and will continue to influence our everyday lives.

The result was a diverse line-up of 800 activities on 6 stages and exhibitors' stands and more than 2,300 book signings during 12 days. The fair will continue to offer a great variety of workshops, conferences, creative work space areas to bridge the relation between authors/publishers and their audience.

3.2. Everybody reads campaign

The reading results of Belgian French-speaking students are decreasing year after year. To draw the attention of wide audience, business community and the world of education to this huge societal issue, the ADEB launched in 2018 the operation "Everyone reads". On April 23th (World Book Day), everybody (parents, children, teachers, workers ...) is called to stop everything and enjoy 15 minutes

of reading. Our action aims to establish a daily quarter of an hour of reading in schools. This year, our “April 23th” action received the High Patronage from Her Majesty the Queen.

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