The new European Directive on authors' rights

Will authors be able to consolidate their gains?

Cécile Deniard

Five years: that is the time that elapsed between the public consultations on a new copyright directive undertaken by the European Commission at the beginning of 2014 and the vote on the final text of the so-called DSM (Digital Single Market) Directive of April 2019.

The battle of the directive

The initial months of this battle gave authors cause for considerable alarm: the Commission's stated objective was to create a single market for works in the digital age, yet in its rhetoric copyright was systematically presented as an obstacle to the cross-border circulation of works, an obstacle that would have to be remedied with exceptions.

Meanwhile, the European Parliament commissioned Pirate Party MEP Julia Reda to produce a draft report on the implementation of the 2001 Copyright Directive. In her report the Deputy recommended expanding the scope of copyright exceptions in order to promote access to works, while prohibiting any financial compensation mechanism for authors and publishers. The effect of these highly dangerous proposals was to galvanise all advocates of copyright (authors, publishers and producers, collective management organisations) from across the creative sectors (books, music, visual arts, audiovisual) into coordinated action to emphasise the need to prevent these essential industries from being weakened. For their part, the majority of MEPs showed themselves to be sensitive to these issues, and in particular to the situation of authors, with the result that the text finally adopted in July 2015 has little to do with the 'Reda report'. From then on, the remuneration and contractual protection of creators was high on the European agenda.

Since that time, CEATL has continued to be part of the eventful journey of this reform, lobbying the Commission and MEPs (in particular to ensure that

Yüksel Arslan, **Le Capitale, Arture XXI**, *1973*

all provisions in favour of authors could be applied in full to literary translators) and engaging with authors and publishers when this was deemed in our best interest.

Major step forward for authors

Ultimately, we can congratulate ourselves on the fact that the directive includes an entire chapter (articles 18 to 23) which aims to rebalance the contractual relationship between authors and publishers, and thus to ensure that creators receive better remuneration for all their works (digital or otherwise).

This definition of a set of rights represents a major step forward in the construction of European copyright. The rights obtained are as follows: the affirmation of the principle of appropriate and proportionate remuneration; the definition of transparency obligations on the parties to whom works are licensed (in other words, the obligation to account for the exploitation of works); the possibility of adapting contracts when the remuneration initially provided for proves to be insufficient; the possibility of repossessing one's rights in the event of lack of exploitation; and finally, the obligation to establish out-of-court procedures for settling disputes concerning the transparency and adaptation of contracts.
This latter provision is of particular interest since it will oblige all States to set up an arbitration mechanism that includes authors' representatives. And the directive as a whole attaches considerable importance to the notion of collective action and collective management: for instance, it introduces the notion of extended collective management (already well known in Northern countries) in cases where it is important to provide access to a large repertoire of works at once (e.g. out-of-commerce books) while at the same time preserving the rights and interests of authors. There is also an emphasis on collective bargaining in order to reach agreements on transparency obligations,

but also to ensure fair remuneration. The frequently cited argument that collective agreements would be contrary to EU or national competition legislation should therefore no longer be used by publishers as a reason for refusing collective discussions on remuneration (e.g. to define scales or minimum fees).

The challenges of the transposition process

Nevertheless, in its philosophy and wording, the directive offers considerable latitude to States and stakeholders to define the specific ways in which its main principles are to be implemented (e.g. what is "appropriate and proportionate" remuneration?). By a strange twist of fate, this is partly in response to the demands of our own organisations which, faced with the Commission's first potentially destructive drafts, had to argue that the text should not undermine systems that were already working and that its provisions could be adapted by stakeholders to very different national contexts.

However, everything now depends on the ability of authors' representatives to ensure that the progress resulting from the directive is correctly transposed into national legislation and then applied – in other words, to make the case to the public authorities in the face of publishers who have every interest in a minimalist legal transposition, and then in a non-existent application. However, let us be under no illusions: whereas in the heat of battle the "defenders of copyright" (authors, publishers, collecting societies) managed to form a united front and all brandished the interests of authors as a banner of consensus (although somewhat paternalistically in the case of the publishers and with a fair measure of bad faith or incompetence in the case of the supporters of the Reda report), as far as the application of articles 18 to 23 is concerned, their interests are widely divergent.

> *"Everything depends on how the directive is transposed into national legislation"*

At the end of 2020, CEATL conducted a flash-survey on the transposition process. Its results indicate a high level of involvement of our associations, but also points to uncertainties as to whether the transposition process will lead to significant legislative progress. This will have to be assessed when it is completed (theoretically in June 2021, but there will undoubtedly be delays), but the process has been heavily disrupted by Covid, and has often been side-lined, with what attention there was left focusing on Articles 15 and 17 (on the press and content-sharing service providers). Furthermore, while the ability of cultural sectors to coordinate has proved very successful at European level, and while some countries have a strong tradition

A literary translator for the past twenty years, ***Cécile Deniard*** *has translated more than fifty books from English to French. She particularly enjoys alternating between fiction and non-fiction (history, political science). Having been a long-time activist on the ATLF Board, she is currently vice-president of the collective management organisation Sofia, and coordinator of CEATL's authors' rights working group.*

Cécile Deniard
Photo: Private Archive

of initiatives involving the various players (I am thinking in particular of Germany with the Verdi trade union and the Initiative Urheberrecht association, and the Netherlands with the Federatie Auteursrechtbelangen, which brings together creators, creative industries and collecting societies), in other countries, by contrast, the landscape remains very fragmented and the custom of fighting on a cross-sectoral basis has not taken hold, which may have been detrimental in this case (in France, for example, everything is structured by sector and it is only recently that creators have recognised their common interests). Five years for its adoption, two years for its transposition... but, come what may, the story doesn't end there! Even if the transposition process initially proves disappointing, the battle is not over and we must build on the progress achieved with this directive. At European level, by calling on the Commission to ensure that its own principles in favour of authors are respected, for example, in the framework of its translation support programmes. And, at national level, by focusing on these achievements as a reference point in our daily fight for translators.

Translated from French by Penelope Eades-Alvarez