

Business Models and Legal Aspects of Collective Licensing

Latrepro Collective Rights Management Seminar, 14 May 2014

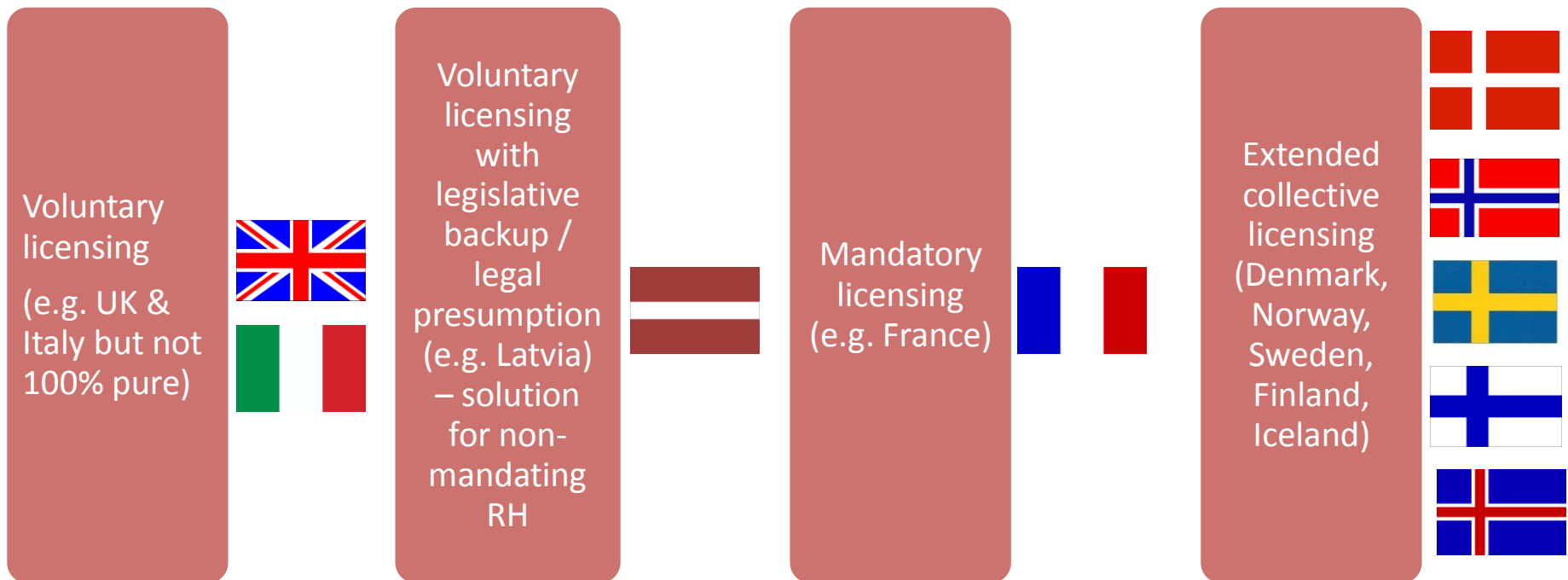
Kurt Van Damme

Deputy Managing Director - Head Legal & International Affairs, Reprobel



LICENSING/BUSINESS MODELS IN THE TEXT & VISUAL SECTOR

Voluntary (with or without legislative backup)



LICENSING/BUSINESS MODELS IN THE TEXT & VISUAL SECTOR (cont.)

Legal Lic.

Legal licensing (e.g. the Netherlands, Switzerland, Bulgaria)



Levy schemes (operator and/or equipment – e.g. Germany, Austria, Slovenia, Belgium, Poland, Greece)



Other

Taxation schemes (e.g. France for private copying)



State funded schemes (e.g. PLR in Scandinavian countries; Spain for private copying)



Usages that can be licensed

*Pyramidal structure: primary market – secondary market – exceptions
(remunerated / unremunerated) – licensing can be blanket or transactional*

Paper reproductions: photocopying & printing-out – single copy or multiple copy use

Digital reproductions: paper-to-digital (scan); digital-to-digital (download, digital copy, ...)

Direct licensing from own content or redirecting to RH databases

Course-packs & document delivery (internal / external)

E-mailing: internal & external

Linking & aggregating (e.g. press articles)

Posting: internal (secured or not) & external

Usages that can be licensed (cont.)

*Pyramidal structure: primary market – secondary market – exceptions
(remunerated / unremunerated) – licensing can be blanket or transactional*

Storing, format shift & preservation

Text & data mining / other data retrieval (free or paid)

Republication: new work/citation; translation/adaptation; print-disabled version

'In situ' consultation (terminals)

Lending: public or not; paper or digital

Hiring

Showing (cf. Powerpoint presentations in class; smart- or whiteboard usages; ...)

Certain performances (e.g. public exams)

Discover works & RH; etc.



Licensing schemes in Belgium (hybrid model)

Licensing schemes in Belgium

- (1) **Voluntary licensing** (e.g. by member CMO's for digital use / re-use of press materials & sheet music)
- (2) **Mandatory licensing** (e.g. cable network transmission)
- (3) **Legal licensing without levy scheme** (PLR; digital copying and making available via secured network for educational & scientific purposes)
- (4) **Legal licensing with levy scheme:**
 - Reprography:** operator & equipment levy
 - Private copying:** equipment levy
- (5) **Voluntary licensing with legislative back-up** / legal presumption or extended collective licensing: not yet, maybe when implementing *Orphan Works directive*?

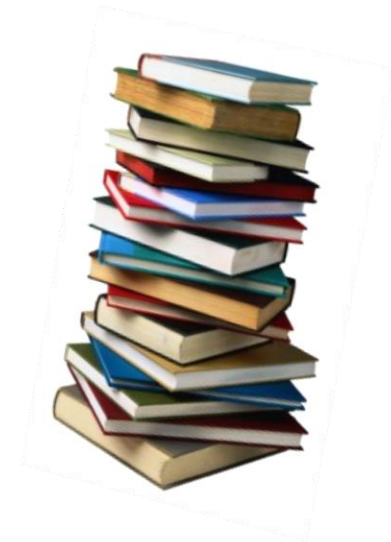


**FOCUS: legal
licenses in Belgium**



FOCUS: legal licenses in Belgium (1)

REPROGRAPHY



REPROGRAPHY

Art. 22, § 1, 4 & 4 bis (exception) & 59-61 (remuneration) CNRA 1994

Exception limited to 'short fragment' for books

Exception limited to photocopying but under review (cf. VG Wort ruling CJEU, 2013)

Based on art. 5.2.a 2001/29 Directive only

Royal Decree 30 October 1997 (tariffs) – under review

Operator levy: professional end users only (broad: companies, copy shops, educational institutions, libraries, public sector)

Equipment levy: levy on copiers, MFD, scanners & faxes – scanners will leave scheme, but printers will be included in the future (current scheme is 100% speed based, CPM)

Not compliant with EU law: extension towards print-outs & printers needed (draft Royal Decree & implementation legislation on the table)

Several lawsuits pending (inkjet devices), one of which is before CJEU (*Reprobel v. HP*)

Administered by Reprobel (www.reprobel.be)

FOCUS: legal licenses in Belgium (2)

PRIVATE COPYING



PRIVATE COPYING

Art. 22, § 1, 5° (exception) & 55-58 (remuneration) CNRA 1994

Limited to digital copying for home/family circle purposes only

No limitation as to size of source document

Based on art. 5.2.b 2001/29 Directive but scope is narrower (digital – no overlap with reprography)

New Royal Decree 18 October 2013 (tariffs): scheme recently extended to tablets

Equipment levy only, on both blank supports & equipment

Underlying implementation legislation extends beneficiaries to TI rightholders (as of 1 December 2013)

Administered by Auvibel (www.auvibel.be)

FOCUS: legal licenses in Belgium (3)

Digital copying & secured networks
(educational/scientific only)

PLR



DIGITAL COPYING & SECURED NETWORKS (EDUCATIONAL / SCIENTIFIC ONLY)

Art. 22, § 1, 4^{ter} & *quater* (exception) & 61^{bis-quater} (remuneration) CNRA 1994

Limited to *digital* copying & making available via *secured networks* for educational & scientific purposes

Based on art. 5.3 2001/29 Directive but mandatory compensation provided by national law (however, no compensation scheme in place yet – exceptions in place since 1998/2005)

Legal license with remuneration per ‘exploitation act’ but not a levy scheme

Covers both TI & music/audio-visual works

PLR

Art. 23 (exception) & 62-64 (remuneration) CNRA

Based on 2006 PLR Directive

Royal Decree 2004 replaced by Royal Decree of 13 December 2012 after ruling against State of Belgium by CJEU (*Vewa*, June 2011)

New scheme is based on both *library collections & number of loans* (instead of flat yearly amount per registered library user)

covers both TI & music/AV works

Tariff setting (legal licenses) in Belgium

Tariffs set by Minister (all legal licenses)
Royal Decrees

Reprography (1997, currently under review)
Private copying (2013)
PLR (2012)
Digital educational/scientific usages (no RD yet)

Reprography tariffs:

Operator levy: 0,01 – 0,03 EUR (2014, photocopies only, soon to be extended to print-outs)

Equipment levy: 5 - 1,800 EUR (copiers, MFD, faxes & scanners – to be extended to printers – 100% speed based (cf. Germany (speed/flat); Austria (speed / hybrid: % price with minimum & maximum fee); Poland (+ paper levy); Eastern Eur. (% price))

Tariff setting in Belgium (cont.)

Private copying tariffs:
flat (CD, DVD, ...) or
based on technical
capacity

PLR tariffs: library
collections / number of
loans (gradual increase
2013-2017)

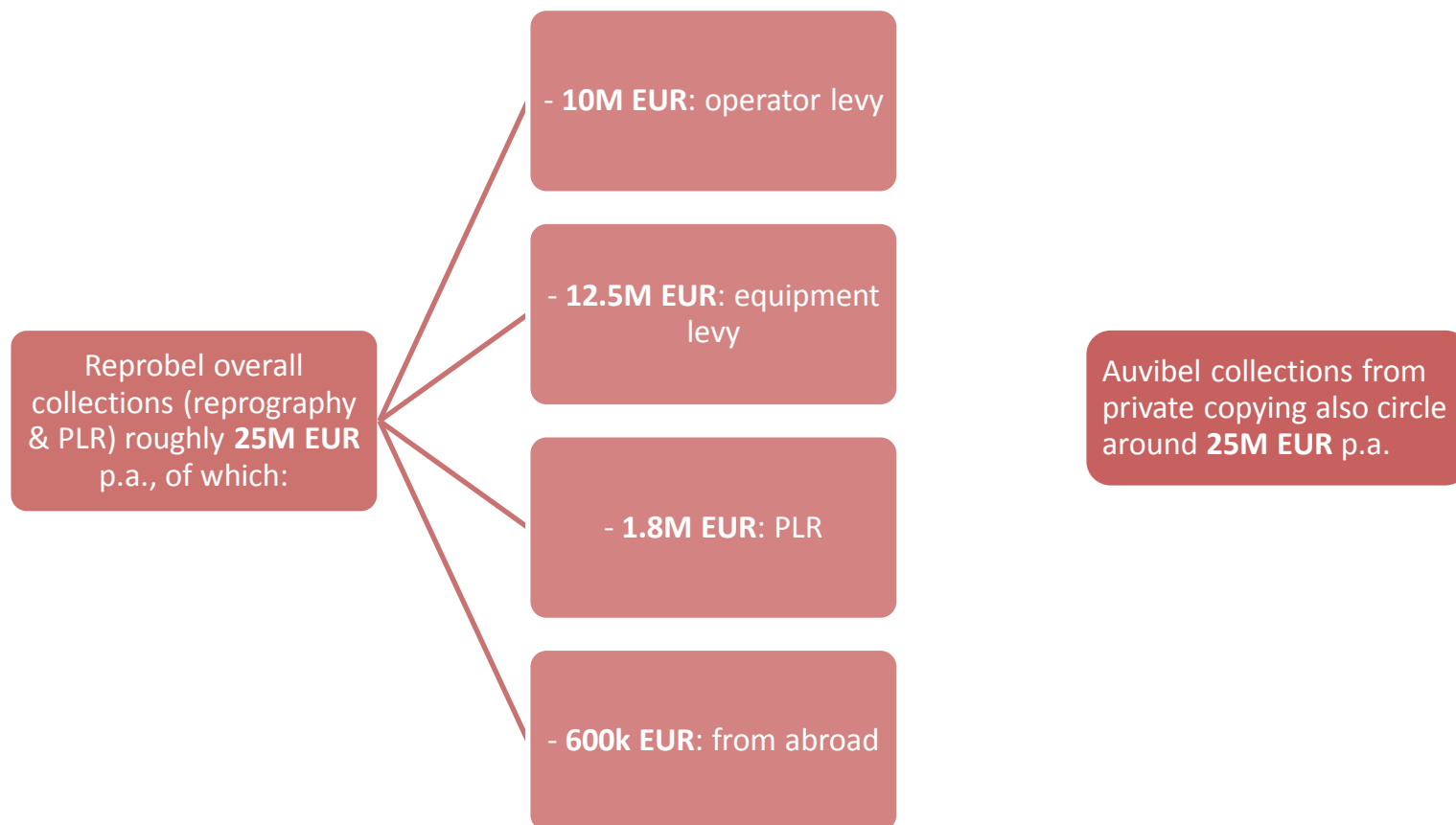
Digital
educational/scientific:
no tariffs yet

Voluntary licensing: set
by CMO's but under
Ministerial control

New **Code of Economic
Law** (Chapter XI, IP)
provides for **market
regulator** for CMO's

Control & transparency
of RRO & CMO's
enforced by 2009
legislation, prior to
2014 EC CRM directive

Reprobel Collections



Reprobel Collections (cont.)

Belgium has 11M inhabitants: that's roughly **4.5 EUR per Belgian p.a.** for all legal licenses combined (high compared to rest of EU)

Reprobel has **22 FTE** staff (only 2 FTE for equipment levy!)

Working cost percentage 2013: **13.7%**

Operator levy: 90% contract based, rest on the basis of yearly declarations

Equipment levy: monthly declarations by manufacturers & importers

Distribution of levy collections (Reprobel) - 'Waterfall system'

FIRST LEVEL: **author/publisher distribution split** by law
(50-50 reprography / contested before CJEU; 70/30 for PLR)

SECOND LEVEL: **distribution agreements** between author CMO's (in Authors' College) & Publisher CMO's (in Publishers' College) on the basis of **categories of works / supports** (surveys & negotiations)

THIRD LEVEL: **distribution agreements** in both Colleges (independent from each other) setting **individual CMO shares**

FOURTH LEVEL: payment out to **individual rightholders** (authors or publishers) – NOT by Reprobel but by **member CMO's** on the basis of their own statutes & distribution schemes

PS: PLR even more layered since 16.5% is paid out to Auvibel (music & AV share, mandate)

! Distribution can also be done directly to RH (e.g. Germany) and/or on a title specific basis

Reprobel: key facts & figures

Founded 1994	
Appointed RRO 1997 (reprography; PLR later)	
Started collections in 2000	
15 member CMO's (8 authors; 7 publishers)	
Represents all Belgian authors & publishers (legal license)	
35 bilateral agreements	
24-26M EUR overall collections p.a.	
22 FTE staff	
Bilingual: Dutch / French	
13.7% working cost	
General management: Benoît Proot (MD) – Kurt Van Damme (Deputy MD)	
Website: www.reprobel.be (Dutch / French / English / German)	
Address: Square de Meeûs 23/3, 1000 Brussels	

To end with: did you know that...?



... Paper reproduction volume of CW works in Belgium is **4.6 billion pages p.a.** (copies & print-outs combined) of which 1.9 billion photocopies & 2.6 billion print-outs – *Profacts survey*, 2013 (cf. *INRA*, 2002: 1.7 billion photocopies)

To end with: did you know that...? (cont.)



... The Belgian creative sector is worth **2.6% of the Belgian GDP**; 80,000 staff employed (*Partners in Marketing survey, 2013*)

... **PLR collections** are expected to double in size, from 1.6M EUR in 2012 to **3.2M EUR** in 2017

... **More than 10,000 Belgian authors** receive reprography funds, on average between **500 and 1,500 EUR p.a.**

... **25 publishing houses** in Belgium receive **more than 100,000 EUR p.a.** from reprography

**Thank you
for your attention**