Briefing
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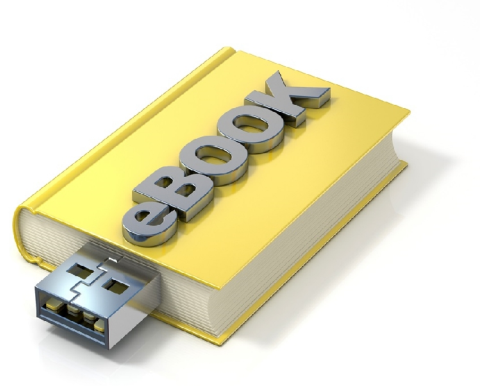
E-Books: Evolving markets and new challenges

SUMMARY

With an estimated value of US$151 billion, book publishing gradually evolved into a truly global business early in the 21st century. As yet, however, e-books are nevertheless significant only in a relatively small number of markets. These are led by the United States (13% of the book market) and the United Kingdom (11.5%), with Germany (5%) developing more recently. The e-book market in the EU has taken off only in recent years, and in 2014 it still represented only 1.6% of the total book market in the leading EU markets.

The advent of e-books transformed the usual linear supply chain into a global network, with competing distribution channels and retail outlets, pushing publishers and booksellers to establish a digital strategy. Indeed, e-books face specific challenges with regard to protection from piracy, lending, and copyright issues. More importantly, multinational digital companies choose to set up European headquarters in specific Member States due to their favourable tax regimes and/or lower value added tax (VAT) rates. To partly offset this phenomenon, the EU introduced new rules from 1 January 2015, according to which VAT on electronic services is levied where the customer is based, rather than where the supplier is located.

In contrast to print books, e-books cannot enjoy reduced VAT rates, since they are classified as 'electronically supplied services'. While the average VAT rate for print books across the EU is 7.6%, the corresponding rate for e-books stands at 19.9%, thus placing them at a disadvantage. The European Commission has already begun a reflection on the VAT regime, including considering the application of reduced VAT rates and is to announce its conclusions by the end of 2016.



In this briefing:

EPRS | European Parliamentary Research Service
Author: Ivana Katsarova
Members' Research Service

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Background

Book publishing is the 'oldest' of the media and content industries, as it can be traced back to the 1st century AD when the modern book format was introduced. The *codex*, a book made of a number of sheets of paper, gradually replaced traditional scrolls, which could only be accessed linearly. This new format allowed random access and is therefore considered the most important technological development before Gutenberg invented printing in 1440.

In recent years, readers around the world have been testing yet another new book format, the e-book. Beyond questions over the fate of the print book industry, the advent of e-books and digital readers has prompted activists to question the environmental impact of such a transition. The argument in favour of e-books makes intuitive sense. However, while digital books have the potential to reduce the impact of harvesting trees on forest conservation, that does not guarantee that they are a better choice from an environmental standpoint.

What is an e-book?

The term e-book can either refer to the physical object itself or its content. It therefore encompasses the media (electronic format), device (hardware), delivery (internet) and content (literature).

Although publishing's decline has repeatedly been predicted, the industry continued to progress at a steady pace through wars and depressions for most of the past century. In the next five years, however, the fate of books will vary significantly according to the country. In Germany, for example, e-books are set to remain a niche player in the near future, whereas in the USA and United Kingdom (UK), e-books are forecast to surpass print by 2018.

In this respect, experts argue that the digital revolution may well be just another phase in the industry's natural evolution. Others assert that decreasing sales in physical books do not mean that the industry is dead. To the contrary, they claim this new business model can provide untapped opportunities for an industry using an outdated technology.

What science tells us about reading

Reading is considered one of the activities which may possibly reduce the risk of developing dementia. But not all forms of reading prove equally beneficial for human cognitive development.

A 2013 study found that readers of a short text on a digital reader remembered the order of events worse than those who read the same story in paperback. According to the authors, texts printed on paper supports provide '... fixed spatial cues for text memory and recall,' which is not the case with screens. The brain 'reads' by building a mental representation of the text based on the placement of the page in the book and the word on the page. Before the internet age, the brain 'read' in a linear fashion, using sensory details in layout to remember where key information was in a book.

As readers increasingly use screens, their reading habits have adapted to skimming text rather than absorbing the meaning. Research shows that people reading on screens follow an F-pattern, reading the entire top line and then just scanning the text down the left-hand side. This sort of non-linear reading tends to reduce comprehension and make in-depth processing of information more difficult.

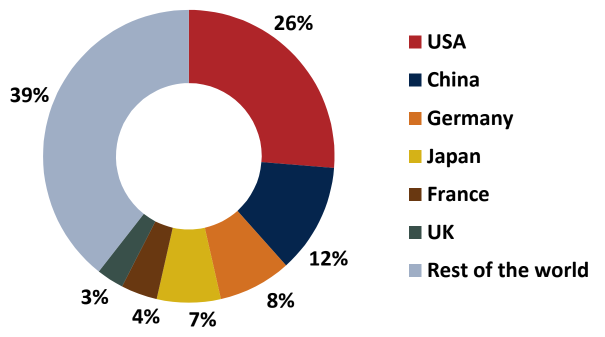
Chinese researchers have demonstrated that the brain and hand work together when learning how to read and write. They have found that the brain automates movement sequences when writing by hand and links them to specific letters. This, in turn, has led them to argue that new digital learning methods hinder learning, as writing by hand leads to better reading and comprehension skills.

More worryingly, data shows that one in five 15-year olds and many adults in Europe cannot read properly. European Union (EU) Education Ministers have set a target to reduce the share of poor readers from 20% to less than 15% by 2020. So far, only five Member States – Belgium (Flemish Community), Denmark, Estonia, Finland and Poland – have achieved this target.

Global perspectives in book publishing

Book publishing is the largest media and entertainment industry. With an estimated value of US$151 billion, books have out-distanced music (US$50 billion), video games (US$63 billion), magazines (US$107 billion) and even film and entertainment (US$133 billion).

Figure 1 – The six largest book markets globally



Data source: Rüdiger Wischenbart, Global e-book report, 2014.

For a long time, the book publishing industry was controlled by a small number of players situated mainly in North America and Europe, before evolving into a truly global business, early in the 21st century. In a growing number of emerging economies (such as China and Brazil), the market for books and publishing has expanded over the past two decades.

At global level, however, the industry is still dominated by just six countries. In 2014, the USA was the largest book market in the world, followed by China, Germany, Japan, France and the UK. Together, they account for almost two thirds of global value created by publishers. Interestingly, China has now become the world's second largest market overtaking Germany and Japan, which had been competing for this position for decades (see Figure 1).

Most importantly, it is becoming increasingly difficult to consider book publishing (and reading) separately from the adjacent content and media industries. Nevertheless, as yet, e-books are a critical factor only in a relatively small number of markets. These are led by the USA (13%) and the UK (11.5%), with Germany (5%) developing more recently. These are, however, key markets for the industry, both because of their size and because they host the headquarters of many of the global leaders in trade publishing (see Table 1).

Table 1 – World-leading publishing companies by turnover (2010, million euros)

Rank	Company	Country	Ownership	Country of ownership	Revenue
1	Pearson	UK	Pearson	UK	6 102.09
2	Reed Elsevier	UK/NL/US	Reed Elsevier	UK/NL/USA	5 387.47
3	Pearson Education	UK	Pearson	UK	4 880.51
4	Thomson Reuters	USA	The Woodbridge Company	Canada	4 297.93
5	Wolters Kluwer	NL	Wolters Kluwer	NL	3 556.00
6	Lexis Nexis	NL	Reed Elsevier	UK/NL/USA	3 073.12
7	Bertelsmann	DE	Bertelsmann	DE	2 897.00
8	Elsevier Science	UK/NL/USA	Reed Elsevier	UK/NL/USA	2 350.35
9	Hachette Livre	FR	Lagardère	FR	2 165.00
10	McGraw-Hill Education	USA	The McGraw-Hill Companies	USA	1 835.46

Data source: European Commission, Analysis of the media and content industries: The publishing industry, 2012.

The EU book market

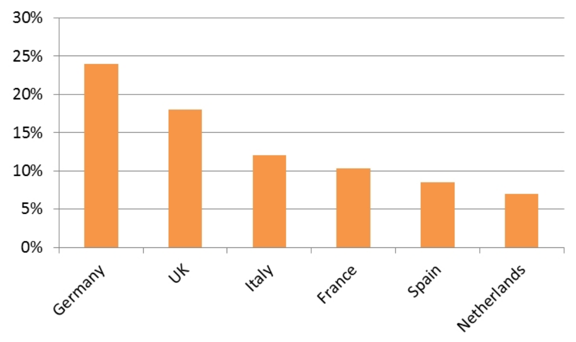
In Europe, publishers are part of a highly competitive media market. The publishing sector deals mostly with newspapers, magazines, books and directories.

In 2010, the EU publishing sector was composed of around 90 000 enterprises, collectively employing 900 000 persons and generating an estimated value added of €60 billion. Large enterprises (employing 250 or more) made up almost half (49.3%) of the sector.

Within the sector, in 2013, book publishing accounted for annual turnover of over €22 billion, provided 560 000 new titles, and employed 130 000 people. Across the entire book value chain – authors, booksellers, printers and designers – employment amounted to half a million.

In spite of the importance of a few EU book publishers, the fragmentation of the EU market, mainly along linguistic lines – but also in terms of structure, size and the role of the different players – is an inherent feature. Germany is the leading EU book publisher and took over this position from the UK in 2006 (see Figure 2). Much has been written about the falling figures in book publishing in the face of increasingly digitised media. However, in 2010, almost three in ten enterprises within the EU-27 publishing sector were dedicated to book publishing. The EU e-book market took off only in recent years, and in 2014 still represented only 1.6% of the total book market in the main EU markets (Table 2).

Figure 2 – Share of the six leading EU markets in book publishing, 2007



Data source: European Commission, Analysis of the media and content industries: The publishing industry, 2012.

Table 2 – E-book markets in the EU-5, 2008-2014 (billion euros)

	2008	2009	2010	2011	2012	2013	2014
Print	17.6	17.5	17.2	16.9	16.5	16.2	16
E-book	0.1	0.2	0.4	0.6	1	1.3	1.6

Data source: European Commission, Analysis of the media and content industries: The publishing industry, 2012.

From letters to pixels: evolving book markets

New paradigms and challenges

The commercial strategies implemented by both traditional and new players in the publishing industry are changing. 'Business as usual' appears to be a thing of the past, since the 'book' at present comes in a variety of formats, integrating components and engaging readers in novel interactive experiences. The old linear supply chain has become a global network, with competing distribution channels and retail outlets. Not only is digital content accessible across an increasing number of media platforms, but it can also be downloaded via various portable devices (e-readers) such as the *Apple iPad*, the *Amazon Kindle*, *Barnes & Nobles' Nook*, or *Kobo*. More importantly, e-books make the term 'out-of-print' obsolete. In this context, the industry faces many advantages and challenges. On the one hand, digital options reduce the costs of production and distribution while improving speed and efficiency. On the other hand, dematerialisation is affecting the industry, changing the role and relative importance of the various industry players (e.g. increasing risk for retailers such as book shops).

Adapt or die

The advent of e-books is pushing publishers and booksellers alike to establish a digital strategy. Failure to do so can be fatal, as demonstrated recently by the downfall of Borders, the second largest international bookstore chain behind Barnes & Noble. In February 2011, Borders filed for bankruptcy protection, and by September, the group had no choice but to close down all of its 659 stores. Among other things, the company's downturn is widely attributed to its failure to adapt to the changes and challenges in book publishing brought by the new digital environment.

Even if they represent just a few per cent of the revenue of their national book industry, e-books are caught in the middle of a complex economic, political, and cultural battlefield in which national governments and the leading global digital actors fight over power and control of the next decade's digital economy. However, only a few book markets – among them the USA, the UK, Germany, France, the Spanish language market, and China – are large enough to steer domestic developments. These markets reflect their own national cultural traditions and identities, resulting in the implementation of specific market conditions. An example is the national book culture in Germany and France, with almost unanimous consensus in the professional book communities over the value of the book as a cultural, not consumer good, and the understanding that it should evolve in a regulated market (see box).

State intervention in regulating book prices

Fixed book price (FBP) regimes have existed for more than 150 years and the debate about their validity or their extension to e-books continues. Under the system, books can be sold only at a price fixed beforehand by the publisher and booksellers. Most countries with strong book industries have such systems. They are generally governed by law or based on contractual agreements.

Opponents of FBP claim that industry functions best under free market conditions, and that FBP artificially increases the prices of books. They maintain that retailers should be able to freely determine the prices for their products, based on real demand. FBP opponents believe governments can better support the book industry by policies which enhance literacy and the development of creative industries. In Sweden, the fixed book price system was abolished some 35 years ago, at the initiative of the Swedish competition authority. In Finland, it was suppressed in 1991. In the UK, the 'Net Book Price Agreement' was abolished in 1995.

Supporters of FBP argue that books are cultural goods and deserve to be treated differently from other tradable commodities. They assert that FBP creates a level playing field for small booksellers and chain bookstores alike – and allow publishing houses to use the profits generated by bestsellers to subsidise 'riskier' ventures (known as cross-subsidisation). FBP schemes were introduced in various EU countries and are currently in use in Spain, France, Portugal, Greece, Austria, Denmark, Germany, Italy, Luxemburg, the Netherlands and Slovenia.

In 2011, France extended its FBP system to cover e-books. Fixed Book Price proponents assert that France currently has 2 500 independent booksellers, representing 22% of total sales, whereas in the UK, a third of independent bookshops have closed since 2005 and now have only 4% of the market.

In 2015, the European Parliament asked the Commission to confirm that FBP will not be challenged under the Transatlantic Trade Investment Partnership. In a written clarification, Trade Commissioner Cecilia Malmström asserted that national FBP systems will not be affected.

The impact of e-books on English reading

It has been argued that English reading worldwide will be boosted by the advent of e-books, since they travel long distances at low cost. While delivery costs are still an issue for print books, e-books can be downloaded instantly and are usually cheaper than print books. Readers of English are believed to be among the earliest adopters of e-books and e-reading devices.

This seems to be especially true for the central and eastern European (CEE) region where English as a second language is increasingly popular. Even though this development is currently difficult to quantify, British export statistics reveal that English books account for 10% to 15% of the local market in Slovenia, around 6% in Latvia, Lithuania, and Croatia, and 3% to 5% in all other CEE countries.[1] Data from research also indicates that in 2013, 70% of the 100 top-selling titles in the Slovene I-Bookstore were in English. In contrast, English titles accounted for only 1% of the top 100 titles in Germany, 2% in France, and 3% in Italy.

Taxation issues and e-book market strategies

Rethinking the taxation of digital business is challenging not least because differences in taxation between countries are the driving force for corporate profit-shifting. This leaves governments with a dual challenge. On the one hand, there is strong public demand for greater fairness in taxation. On the other hand, governments are under pressure to create tax systems that are attractive to multinational investors and internationally competitive. As a result, countries continue to stretch the boundaries of what is considered to be acceptable in tax competition, despite EU and Organisation for Economic Co-operation and Development/G20 attempts to tackle base erosion and tax shifting.

How corporate taxation shapes digital media markets

The co-existence of 28 different tax systems in an integrated market has gradually resulted in stronger tax competition between EU Member States.[2] Similarly, it has been reported that big digital players rearrange their company structure through series of highly complex tax arrangements – also known as 'tax rulings' (see box) – notably by establishing their headquarters in Member States offering favourable conditions with regard to corporate taxes, to enjoy competitive advantage over companies that operate mostly out of, or in, one market. In 2013, the US Senate's Permanent Subcommittee on Investigations unveiled a memorandum according to which between 2009 and 2012, Apple avoided paying tax in the USA on over US$100 billion profits, by setting up subsidiaries in Ireland. Apple also used a structure known as a 'double Irish' which allows royalty payments for the use of intellectual property to be sent to a company that operates in Ireland, but has its headquarters in a tax haven. Amazon and its Luxembourg-based company have been under similar investigation by tax authorities in the UK, France and Germany. The role played by large accountancy firms in advising big multinationals to devise structures which 'do not reflect the substance of their businesses and are instead designed to avoid tax' was highlighted by the UK's Public Accounts Committee. While such activities remain legal, they have been described as 'immoral'.

Tackling tax avoidance in the EU

Corporate tax avoidance is a lawful practice which arises when companies use aggressive tax planning to minimise their taxes. It is usually done through exploiting legal loopholes and mismatches between national rules, to artificially shift profits to low- or no-tax jurisdictions. In 2014, a journalistic investigation revealed tax rulings for over 300 multinational companies in Luxembourg to the public.

In March 2015, the Commission presented a package of measures aimed at strengthening tax transparency, notably through constraining Member States to share details of any tax rulings agreed. The new provisions recently adopted by the Council and set to come into force on 1 January 2017, will, however, only apply to cross-border rulings with no retroactive effect. The European Parliament – which was only consulted – considers this 'a missed opportunity' in bringing more transparency. The Parliament continues to shed light on Member States' practices through its special committee on Tax rulings.

The debate surrounding value added tax on the EU book market

Overview

Value added tax (VAT) in the EU is a general, broadly based consumption tax. From the buyer's perspective, it is a tax on the purchase price. From that of the seller, it is a tax on the value added to a product, material or service. It applies to more or less all goods and services that are bought and sold for use or consumption in the EU. Thus, goods which are sold for export or services, and which are sold to customers outside the EU, are normally not subject to VAT. Conversely, imports are taxed to maintain a fair system for EU producers, so that they can compete on equal terms on the EU market with suppliers located outside the Union. The collection of VAT is based on the place of supply and/or consumption of the goods or services provided.

Each Member State's national VAT legislation must comply with the provisions of the EU 'VAT Directive'. This sets out the basic EU VAT framework, while still allowing some degree of flexibility. The Directive requires Member States to have a minimum standard rate of 15% and entitles them to a maximum of two reduced rates – not lower than 5% – on goods and services included on a restrictive list annexed to the Directive.[3] The seemingly simple structure of the Directive is however complicated by a multitude of derogations set out by the legislator or previously granted to certain Member States, for example, through accession acts. Currently, the highest VAT rate in the EU is 27% (in Hungary) although Member States are free to set higher rates. Denmark is the only Member State without a reduced VAT rate.

The VAT Directive and (e)-books

Article 98 of the VAT Directive allows Member States to apply one or two reduced VAT rates, but only on goods or services enumerated in Annex III of the Directive, a list which includes books (point 6). Article 98(2) specifies, however, that these reduced rates cannot be applied to services referred to in point (k) of Article 56(1) of the Directive, which lists some 'electronically supplied services, such as those referred to in Annex II'. Annex II of the Directive lists the electronically supplied services referred to in point (k) of Article 56(1) without mentioning the supply of books among these services. The list is however indicative, not exhaustive.

Economic perspective

Experts[4] argue that VAT reduction is a form of subsidy which can be of substantial value to its beneficiaries, depending on the difference between standard rates and reduced rates. An e-book is generally defined as the electronic counterpart to a printed book. However, for legal and tax purposes, it is the format used that determines the VAT rate applied. Indeed, contrary to e-books – classified as 'electronically supplied services' – digital content delivered on a physical support – for example, books on CD-ROMs or USB sticks – qualifies for a reduced VAT rate (see Annex).

All EU countries except Denmark and Bulgaria, apply reduced VAT rates to print books. While Denmark levies the highest VAT (25%) on print books, the UK and Ireland use a zero rate. In contrast, the VAT Directive excludes all electronically supplied services from the scope of reduced rates because of the risks of distortion on the internal market. In spite of this, France and Italy currently levy reduced VAT rates on e-books (see next section). While the average VAT rate for print books across the EU is 7.6%, the corresponding rate for e-books stands at 19.9%. The widest difference between print and e-book VAT is found in Ireland (0-23%), Hungary (5-27%), the UK (0-20%) and Croatia (5-25%), (see Annex).

How Amazon takes advantage of its strong market position and the difference in VAT rates

Amazon is reputed to use its global scale to seek the most competitive tax arrangements. In the UK, where the VAT rate on print and e-books is respectively zero and 20%, Amazon wields considerable power over British publishers, with a near monopoly on the British e-book market, estimated at 95%. In 2012, it was reported that Amazon constrained British publishers to cover the cost of a 20% VAT charge on e-book sales, even though it forwarded only 3% to the tax authorities based on the fact that its European headquarters were located in Luxembourg. Amazon can thus increase its margin by the difference – amounting to an extra £1.38 every time it sells a £10 e-book in the UK.

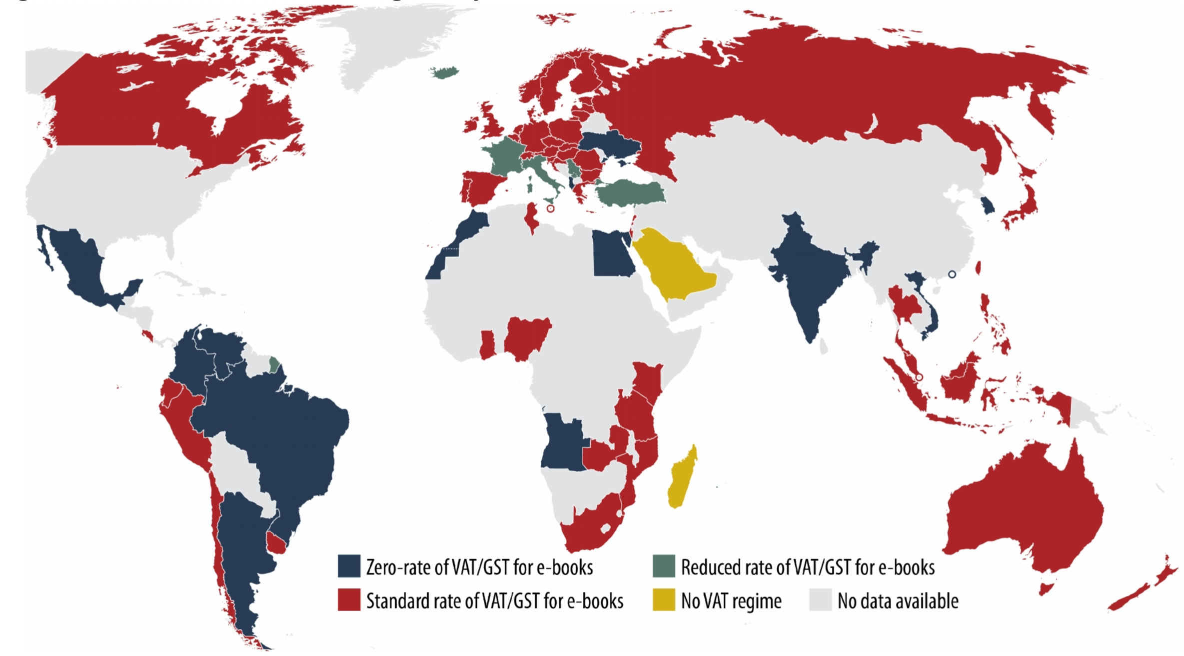
Since 1 January 2015, with the entry into force of new 'place of supply' rules, VAT on all telecommunications, broadcasting and electronic services is levied where the customer is based, rather than where the supplier is located. In other words, such goods and services are taxed in the Member State where the consumption takes place, therefore allowing for VAT to be paid to the treasury of the country where the buyer is based.

In September 2015, the European Commission launched a public consultation to help identify ways to further modernise VAT payments on cross-border e-commerce transactions. The information will be used to help draft its legislative proposals on the topic in 2016, as part of the Digital Single Market strategy.

VAT treatment of print and e-books worldwide

Data show that worldwide only 22% of countries apply the standard rate of VAT to print books, while a majority (69%) levy standard VAT on e-books. The average VAT rates applied both to print books (5.8%) and to e-books (12.3%) are considerably lower than in the EU. A higher rate of VAT is applied to e-books in 35 countries, while 37 countries tax print and e-books in the same way. The vast majority of Latin American countries apply a zero VAT rate both for print and e-books, (see Figure 3).

Figure 3 – VAT levied on e-books globally, 2015



Data source: International Publishers' Association, VAT/GST on Books & E-books, 2015. Map by EPRS.

Legal perspective

In January 2012, France and Luxemburg decided unilaterally to apply a reduced VAT rate to e-books. In letters of formal notice (the first stage of infringement proceedings) sent to both governments in July 2012, the Commission pointed out that the downloading of digital books is regarded as a service supplied electronically, which is not included in the list of goods and services on which Member States are permitted to levy reduced VAT rates under the VAT Directive and therefore cannot be taxed at the reduced rate.

The Commission warned that the situation was creating serious distortions of competition, damaging to economic operators in the other 25 Member States, since digital books can easily be purchased in a country other than that in which the consumer resides. It further noted that the dominant players in this market had reorganised their distribution channels to benefit from these reduced rates, which, in turn had heavily impacted the sale of books (both digital and traditional) in the other Member States. After failing to provide sufficient information to the Commission or bring their VAT rates in line with the Directive, both countries were *referred to* the European Court of Justice in February 2013.

France and Luxembourg argued that, as point 6 of Annex III lists books, this covers the supply of e-books, and thus a reduced VAT rate can be applied to e-books. Indeed, Article 96 of the Directive provides that the VAT rate 'shall be the same for the supply of goods and for the supply of services.' Article 98(1) of the Directive allows Member States to apply a reduced rate, and Annex III lists, in point 6, books as goods which can be taxed at a lower rate. The Court however was not convinced by the French and Luxembourgish arguments. It reasoned that, while it is clear that point 6 of Annex III allows the supply of books on a physical medium to be taxable at a lower rate, it does not include the supply of e-books in its scope.

Following the ruling, Luxembourg restored the standard VAT rate for e-books from 1 May 2015. For its part, France has decided to keep the reduced rate at least until the end of 2016. Italy, which also levies a reduced rate for e-books, was not addressed in the infringement proceedings, and so far has not announced any plans to alter its VAT rate.

Views from stakeholders and institutions

The different VAT treatment suggests a competitive advantage for print books, since the higher VAT rates on e-books ultimately mean higher sales prices for end consumers. Quoting research figures, the **European trade association representing online platforms** indicates that among several factors impacting the growth of e-books, affordability for consumers – directly influenced by the difference in VAT – is highly significant, since a price increase or decrease of 15% could lead to an impact of as much as €1 billion in consumer welfare and €0.8 billion in economic value to publishers and authors over the 2013-2017 period.

The **International Publishers Association** argues that the disadvantaged situation of e-books with respect to VAT runs contrary to various initiatives to promote digital literacy and is holding back the development of the e-book market in general, and especially in non-English and smaller-language markets. More importantly, the Association claims that the different VAT treatments disproportionately affect visually impaired people, for whom e-books offer specific font-increasing functionalities.

The **European Parliament** (EP) considers that the VAT rate applicable to e-books is a short-coming of current legislation. The EP suggested allowing Member States to apply a reduced VAT rate, on a temporary basis, to electronically supplied services with cultural content. In a May 2015 plenary debate, Andrus Ansip, **Commissioner for the Digital Agenda** stated that 'the Commission [had] already started working on the VAT regime, including looking at the application of reduced VAT rates', and would announce conclusions in 2016. **Commissioner for the Economy and the Digital Society**, Günther Oettinger, stressed that the lack of harmonisation of tax rates for online trade is 'unacceptable', a position echoed by **Commission President**, Jean-Claude Juncker speaking to the Association of German Newspaper Publishers.

Copyright and e-books: basic features and issues

Basic copyright laws apply to e-books. Just as with printed works, only the copyright-holder of a book is authorised to reproduce or distribute it. The purchasing or the downloading of an e-book does not grant any copyright rights to the individual(s) who physically possess the e-book.

Case law developments

A basic exception to the copyright-holder's distribution right is created by the 'exhaustion' or 'first sale' doctrine. This is the name given in EU and US copyright law for the idea that owners of copies of copyrighted works have the right to re-sell, lend, give away, or even destroy their personal copies of works. The rationale of the doctrine is to prevent the copyright-holder from restraining the free transferability of goods. Without the doctrine, the owner of a copy of a copyrighted work would have to negotiate with the copyright-holder every time he wished to dispose of his copy. The copyright-holder's right to control the distribution of their work is 'exhausted' after the 'first sale' of the work. However, the doctrine does not apply to transfers of copies of digital works. Traditionally, the purchase of digital goods operates under a licence agreement, meaning that consumers do not own the works they purchase and therefore, do not have the right to resell that good.

In 2012, the European Court of Justice (ECJ) reasoned that exhaustion applies to software, opening the door for consumers to obtain software on the secondary market. The decision's application to other digital goods, however, is uncertain. Recently, a German court determined that exhaustion does not apply to e-books. At present, only the ECJ could decide to expand the rule of exhaustion to all digital goods in the EU in the absence of new legislation.

In 2013, a US district court concluded that creating a copy of a musical work on a cloud server was an unauthorised reproduction (the first sale doctrine applies only to lawfully made copies that are distributed, not reproduced) and that, because an additional copy was made, users did not distribute or sell the particular copy that they had originally purchased.

Experts suggest that for future cases involving digital goods, it is possible that a court may draw a distinction between digital goods and physical goods for purposes of the first sale doctrine. Physical copies degrade over time, whereas works in digital format can be reproduced flawlessly and resold in exactly the same condition as the original. Thus, applying the first-sale doctrine to digital copies may affect the market for the original to a greater degree than transfers of physical copies, with consumers wishing to purchase cheaper 'used' goods instead of identical 'new' ones. A court may also distinguish between digital and physical goods based on how the sale occurs. Physical goods are physically transferred or distributed. With digital goods, an exact copy is made of the work, which can be considered an unlawful reproduction rather than a sale. Any subsequent distribution would then be of the (unlawfully reproduced) copy of the particular copy the user wished to sell.

Experts argue that secondary markets for digital goods in general and e-books in particular will not be available for the foreseeable future, neither in the EU nor in the USA, until their judicial or legislative systems alter the state of the current law.

Challenges surrounding protecting e-books from piracy

Research conducted in the USA shows that while digital piracy is common, large-scale digital piracy is rare. A study commissioned by the British government indicates that that the literary world has the lowest level of illegal downloads in the entertainment industry – just 1% of British internet users aged 12 and over. However, a detailed assessment of economic impact of e-book piracy is difficult, due to the fact that markets in the USA and the UK have only existed for a few years and that they are only just emerging in most other EU countries. An additional challenge for the book industry resides in the fact that the debate on digital piracy is dominated by issues relevant for the movie and music industry, thereby side-lining specific concerns for e-books. Interestingly, practitioners suggest that the potential loss of sales suffered by the most popular authors can be offset by increased visibility and presumably future sales.

The use of copyright-protection technology such as digital rights management (DRM) systems is the norm for e-books. However, DRM is not universally accepted. Proponents of DRM argue that it is a necessary prevention measure for intellectual property, just as physical locks help prevent personal property from being stolen. Those opposing DRM contend there is no evidence that DRM helps prevent copyright infringement, arguing instead that it serves only to inconvenience legitimate customers, and helps big business stifle innovation and competition. DRM solutions include both copy protection and digital watermarking (social DRM). Copy protection prevents a downloaded book from being redistributed. Digital watermarking makes it possible to track a copy of a book to the person who originally downloaded it, without restricting the buyer's rights to personal use.

The courts are also part of the anti-piracy strategy. In 2012, the International Publishers Association and the Association of German Publishers and Booksellers, together with a group of leading publishing houses – including Cambridge University Press, Elsevier, HarperCollins, Macmillan Publishers, Oxford University Press, and Springer – launched a coordinated action leading to two piracy websites being closed down, which were offering free downloads of books for which they owned the rights.

Worryingly, software can be used on e-books to monitor how readers actually behave: how fast they read, which text they highlight and which pages they stop reading. This development poses the question of what influence this kind of software may have on the book trade, with practitioners fearing that publishers can use the information inappropriately to increase their sales.

The impact of copyright provisions on libraries and e-lending

E-lending is increasingly becoming a major focus of concern for libraries. Print works are conventionally sold or donated to libraries. Invoking the first sale/exhaustion doctrine, libraries could lend their legally purchased print copies. Digital works, in contrast, are typically licensed, not sold, to libraries and consumers by publishers. In general, the number of times an e-book can circulate and/or the amount of time it can remain within a collection before a library's licence expires is restricted. Many publishing houses do not issue licences for lending e-books for security reasons and interlibrary loans are generally not admitted for e-books, therefore paradoxically resulting in e-books being locked up behind digital bars.

In 2010, the UK passed legislation allowing library users to download digital editions to e-book readers without infringing copyright. However, practitioners argue that e-books need a wider range of channels to maximise market value – following the example of cinematic releases.

In 2015, the EP, in an assessment of current EU copyright legislation, invited the Commission to assess introducing an exception, allowing public and research libraries to legally lend works in digital formats for personal use, while fairly compensating authors for e-lending.

Google's digitisation project

Putting its mission to 'organize the world's information and make it universally accessible and useful' into practice, in 2002 Google launched its 'Book Search' programme, aiming to digitise printed book content so that it may be searched and retrieved via Google's search engine. The project has two components – one that involves publishers, which has been generally well received, and another focusing on libraries, which has been more controversial.

Participating publishers can either provide a hard copy of a book that Google scans for free, or they can supply books in a digital format. Authors can also participate, as long as they are the copyright holders. Google then indexes the content and allows the full text to be searched online. Library partners can loan books to Google for scanning, receiving a digital copy in return. Google advertises the project as 'a free worldwide sales and marketing system'. Estimates indicate that it is spending US$200 million on the library programme only. In return, Google earns revenue through 'contextually targeted' advertisements for books submitted as part of the publishers' programme. These earnings are shared with publishers. No advertisements are placed on books scanned from libraries.

As early as 2005, a controversy emerged between Google and associations of authors and publishers and individual publishers in the USA and overseas over the inclusion of 'snippets' of copyrighted works. Publishers notably feared that there was 'no control over how the library or others who gain access to this digital copy can use what Google has given them.'

After seven years of litigation and an initial settlement rejected in 2011 by a New York court, an agreement was reached between Google and the American Association of Publishers in 2012. The agreement offers US publishers the option to either withdraw titles under copyright and scanned by Google in libraries, or to keep them in Google's programme and receive a digital copy and permission to use the scanned copy commercially in return. Furthermore, users can view up to 20% of a title and, provided the publisher consents, purchase it through the Google Play shop. Related litigation between Google and several French publishers has been settled in out-of-court agreements.

Google's digitised library collection is maintained by the Hathi Trust, an international community of research libraries. Access to volumes in the Trust is dependent on the country from where a user is requesting access. All users are able to consult open access or Creative Commons-licenced works and US works published prior to 1923. After years of litigation, it remains unclear whether that digital archive will ever be fully accessible to readers.

Endnotes

[1] This difference can probably be explained by the fact that, in Slovenia, before 1992, English was the first foreign language taught in schools, as opposed to Russian in the other countries of the region.

[2] EU countries progressively lowered their corporate tax rates – from 35% to 23%, between 1995 and 2014 – to protect their tax bases and attract foreign direct investment.

[3] The provisions relating to the reduced rates of VAT were last amended in 2009.

[4] Colbjørnsen T., Global E-commerce and National and EU Policies: The Case of Value Added Tax on E-books in Europe, June 2013, University of Oslo, p. 7.

Annex: VAT rates in the EU (%), situation on 1 September 2015

Member State	Standard VAT	VAT – print books	VAT – books on other physical means of support	VAT – e-books
Austria	20	10	20	20
Belgium	21	6	21	21
Bulgaria	20	20	20	20
Croatia	25	5	5	25
Czech Republic	21	10	21	21
Cyprus	19	5	19	19
Denmark	25	25	25	25
Estonia	20	9	20	20
Finland	24	10	24	24
France	20	5.5	5.5	5.5
Germany	19	7	19	19
Greece	23	6	23	23
Hungary	27	5	5	27
Ireland	23	0	23	23
Italy	22	4	4	4
Latvia	21	12	21	21
Lithuania	21	9	21	21
Luxembourg	17	3	3	17
Malta	18	5	5	18
Netherlands	21	6	6	21
Poland	23	5	5	23
Portugal	23	6	6	23
Romania	24	9	9	24
Slovakia	20	10	10	20
Slovenia	22	9.5	9.5	22
Spain	21	4	4	21
Sweden	25	6	6	25
United Kingdom	20	0	0	20

Data source: European Commission, VAT rates applied in the Member States of the EU, 2015.

eprs@ep.europa.eu
http://www.eprs.ep.parl.union.eu (intranet)
http://www.europarl.europa.eu/thinktank (internet)
http://epthinktank.eu (blog)