

# The Society of Authors

*"New media and new forms of buying and lending are all very interesting, for all kinds of reasons, but one principle remains unchanged: authors must be paid fairly for their work. Any arrangement that doesn't acknowledge that principle is a bad one, and needs to be changed. That is our whole argument."* Philip Pullman, President-elect of the Society of Authors.

*"Authors are keen to embrace the opportunities offered by digital publishing and want to support libraries by offering their eBooks for lending. However, we need to ensure that authors are paid sufficient money from digital to enable them to keep writing. The Society of Authors advises authors to continue to press for a fair share of eBook royalties and to check their royalty statements to make sure that publishing contracts are being interpreted correctly and that they are paid all amounts due."* Anne Sebba, Chair of the Society's Management Committee

## **Briefing note on PLR and Royalties from Library lending**

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## Introduction

The Society of Authors exists to protect the rights and further the interests of authors. The Society was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators). Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent, or have sold over 300 copies of a self-published book or 500 copies of an ebook.

## Findings

- 1 The Society of Authors welcomes the recommendations of William Sieghart's thoughtful Independent Review of E-Lending in Public Libraries in England which supports a sensible balance between the needs and interests of readers, libraries, publishers and authors allowing libraries to flourish and continue to service the public while giving fair remuneration to authors.
- 2 The Society will fully engage with all discussions and proposed pilot schemes in the hope of identifying sustainable models for lending.
- 3 The Society has become increasingly concerned that the rhetoric of publishers (and sometimes Government) about remuneration for authors from lending is not matched by practice. In particular the Society is concerned that current and proposed models may leave authors with a far smaller share of remuneration from the loan of an ebook than they currently obtain from the loan of a physical book:
  - a. Some publishers using aggregators (notably Bloomsbury and Random House) treat all receipts as sales when accounting to authors, and are therefore paying authors a lower share of net receipts than if the transaction were characterised as licensing. In our view this may be a mistaken interpretation of their contractual terms.
  - b. Authors are not being paid PLR on ebook loans and are sometimes not being paid by publishers for the exercise of their rental/making available rights.
  - c. Lending may be more expensive for libraries than physical lending. Libraries need sufficient funding to update, maintain and augment stock and ensure that an exciting and comprehensive range of books are available for reference and loan.

## Recommendations

We urge library authorities, Government and publishers to ensure that authors receive fair remuneration. In particular the Society recommends:

- 1 Publishers should accept that current models for ebook lending through aggregators are contractually sub-licences, not sales; and remunerate authors in line with their contractual obligations for both the "sale" and the "lending" aspect of the transaction.
- 2 The Society is writing to all trade publishers requesting that they account correctly to authors; and is advising authors and their agents to check publishing contracts and royalty statements and insist on reimbursement plus interest if they find that royalty rates have mistakenly been applied incorrectly.
- 3 Future publishing contracts should state clearly what rights are being granted and what rate is to be applied to licences for ebook lending.

- 4 Any models for lending should remunerate authors per loan as well as for the "sale" of the ebook.
- 5 An author's receipts from ebook lending should equate to the total earnings the author would have received on a physical copy over the lifetime of the book from the combination of royalties on sale and PLR on every loan.
- 6 The provisions in the Digital Economy Act 2010 that extend PLR to audio books and loans of on-site ebooks should be enacted without further delay .The overall PLR pot should be increased to recognise the higher number of loans. The failure to enact these provisions to date is patently unjust and a breach of the UK's obligations under the Rental and Lending Directive (2006/115/EC).
- 7 PLR should be extended to volunteer libraries.
- 8 If it does not prove possible to remunerate authors fully via licensing models, further legislative changes should be made to extend PLR to remote e-loans.

Members of the Society are concerned about libraries, as suppliers of books and library content and as heavy users of libraries both for reading for pleasure and for research. They are strong supporters of libraries and believe that a comprehensive and efficient library service for the 21<sup>st</sup> Century must allow free access to physical books in safe, comfortable, convenient and accessible space. Libraries must be knowledgeable managed and curated by trained professional staff. Continuing library cuts and closures will have a devastating, long-lasting and irreparable effect on local communities as well as on the wider community and the nation.

Libraries need sufficient funding to update, maintain and augment stock and ensure that an exciting and comprehensive range of books are available for reference and loan. Books, whether physical or digital, must be at the core of a library. Libraries see access to ebooks as an important part of their offering. This is to be encouraged- but a number of factors lead authors to be concerned that lending may lead to lower remuneration than equivalent lending of physical work. This is not a purely self-interested point. There is a risk that ebooks have the potential to undermine the perceived value of books generally to a point below which researching, writing and publishing certain works ceases to be commercially viable. The risk is even higher with lending.

## **1 Library Costs and range**

- 1.1. The cost to the library of offering ebooks is not only the cost of the book itself but the cost of buying appropriate hosting services and maintaining websites. If websites are to be relevant and provide a useful service to readers, particularly remote readers who will not have access to real librarians, they will have to be constantly updated. This is expensive. At present there are 151 separately managed library authorities in England alone. Each library authority hosts and curates its own website which leads to unnecessary duplication and staff costs. Already, only a very small proportion (around a tenth) of all the public money received by libraries is actually spent on books (including ebooks); and in many authorities this amount is being further cut to deliver savings. We are also concerned that libraries may spend vast amounts of money on systems which may be obsolete in a few years.
- 1.2. Most libraries do not "buy" ebooks directly from publishers but use aggregators who host the books and make them available. This leads to a further level of provider who needs to make a profit before the author sees any share of income.
- 1.3. A centralised lending service, may provide economies of scale but has drawbacks: in particular, a centralised service may mean that librarians are unable to take into account the needs and preferences of their own area, leading to an undesirable homogenisation of book stock, with particularly detrimental impact on books by local authors or of local interest-books which PLR records confirm are very popular with library users.

## **2. Public Lending Right ("PLR")**

- 2.1. The Rental and Lending Directive creates a "rental and lending right" under which authors have the exclusive right, subject to limitations, to authorise or prohibit the rental or lending of their works [Art. 2(1)]. The rental and lending right may be transferred. However, even once the rental and lending right is transferred, authors retain an inalienable and unwaivable right to equitable remuneration for the rental and lending of their works.
- 2.2. The PLR scheme provides authors with a modest payment each time one of their books is borrowed from a public library. PLR is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. PLR is

particularly important to authors whose books are sold mainly to libraries and to those whose books are no longer in print but are still being read.

- 2.3. Press coverage tends to focus on a few successful authors, yet most struggle to make ends meet. PLR provides a significant and much-valued part of many authors' incomes. It amounts to a total of around £6,000,000 per year. Although figures are difficult to come by, it is estimated that the total amount received by authors from sales of their books to libraries is around £3,000,000 per year so the total amount that authors receive each year from library lending of physical books may be around £9,000,000.
- 2.4. S 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time, but these provisions have never been implemented. The Government says in its response to the Sieghart Review: *"In the challenging economic climate it has not been possible to date to bring those provisions into force"*. This is patently unjust. Authors have a right to payments for such loans and the Government should not fail in its obligations on economic grounds. The Government also said *"The evidence received by William Sieghart and his Panel suggests that the number of these loans is increasing. The challenging economic climate continues, but Government will consider commencing the appropriate provisions of the DEA 2010 to extend PLR to audio, e-audio and e-books."* We urge that this provision be brought into force immediately and that extra funds be made available to cover PLR payments for such lending. We have been in long correspondence with DCMS on this subject and in relation to lending from volunteer libraries (which is likewise excluded from PLR), but the Government remains in breach of its obligations under the Directive. We are very pleased to note that the Sieghart review recommended that these provisions be effected without further delay and the overall PLR pot should be increased to recognise the increase in rights holders
- 2.5. The amendments in section 43 of the Digital Economy Act 2010 only extend PLR to audiobook and ebook files downloaded within the library premises. This is because DCMS takes the view that, as a matter of copyright law, downloading from outside library premises may constitute "communication to the public" rather than "lending". It is arguable that this view is incorrect:<sup>1</sup> However whether lending is technically "lending" or "communication"

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<sup>1</sup> 1. Recital 10 of the Directive says *"(10) It is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of this Directive should not include making available between establishments which are accessible to the public."* There is no exclusion there for remote lending.

2. Lending is defined as *"1(b) "lending" means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public"*

3. This wording is echoed in the Copyright, Designs and Patents Act 1988 18A 2b *"(b)"lending" means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public."*

but adds: *"(3) The expressions "rental" and "lending" do not include—*

*a) making available for the purpose of public performance, playing or showing in public or communication to the public"*.

4. S20 defines infringement by communication to the public.

*"(1) The communication to the public of the work is an act restricted by the copyright in—*

*(a) a literary, dramatic, musical or artistic work, .*

*(b) a sound recording or film, or .*

*(c) a broadcast. .*

*(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—*

*(a) the broadcasting of the work; .*

*(b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them."*

5 These provisions are distinctly unclear but

5.1. When considering *"when it is made through establishments which are accessible to the public"*, there is no obvious reason for reading *"through"* as suggesting that it only includes physical attendance at a library. Remote borrowing is also carried out *"through"* a library.

5.2. It strains 20 (2)(b) to read it as including downloading of ebooks although it may do. It derives from Art 3 of the Copyright Directive.

there is at present no statutory entitlement for authors to receive PLR from ebook lending, and authors are therefore losing around 2/3 of the income they would normally receive from physical library lending.

- 2.6. This of course has the corollary that there is no statutory entitlement for libraries to lend ebooks to the public unless licensed by the author or the author's licensee (usually the publisher). Authors will not be willing to permit such loans unless they are properly recompensed (either by the publisher or PLR) by a per-loan (lending/making available) element as well as a licence fee in line with the legal principle that lending or making available are separate rights from the right to sell the work and that authors are entitled to equitable remuneration in respect of them.

### **3. Copyright Exceptions**

Whatever frameworks might be developed for lending ebooks, libraries should only be entitled to loan out a work if authors receive equitable remuneration. We understand that there is a suggestion by libraries that lending of ebooks by libraries should be made a statutory exception to copyright with no provision for remunerating authors. Such a change would be unacceptable as it would not comply with the "Three Step Test" which holds that copyright exceptions can only be allowed:

- 1) in certain special cases
- 2) that do not conflict with a normal exploitation of the work and
- 3) do not unreasonably prejudice the legitimate interests of the author.

Library lending would clearly conflict with the normal exploitation of the work (by threatening book sales) and would prejudice the legitimate interests of the author, since the author would not be remunerated.

### **4. Publishers' Accounting Methods**

- 4.1. The Society is concerned that some publishers may inadvertently be remunerating authors incorrectly for ebook library loans. There are a number of models for supply of ebooks to libraries, and publishers are understandably reluctant to disclose their business models. However, a very common model is for a publisher to allow an aggregator such as OverDrive to host works on OverDrive's website which enters into agreements with libraries to make those works available to the public. Those agreements commonly contain what the Sieghart Review called "frictions" saying "*The interests of publishers and booksellers must be protected by building in frictions that set 21st-century versions of the limits to supply which are inherent in the physical loans market (and where possible, opportunities for purchase should be encouraged). These frictions include the lending of each digital copy to one reader at a time, that digital books could be securely removed after lending and that digital books would deteriorate after a number of loans. The exact nature of these frictions should evolve over time to accommodate changes in technology and the market.*"

- 4.2. The Society recently wrote to all trade publishers asking the following  
*"We note from OverDrive's submission to the Sieghart review that in the ten months to November 2012 it made 576,125 loans of ebooks through British libraries: The feedback we are receiving from our members (in all genres) is that they are finding it difficult to identify any income from that source in their royalty statements. We would expect to see any such licensing clearly identified and paid for. In particular, we would expect to see any such income accounted separately from ebook sales as, if granted at all, such licences would usually be subsidiary rights and would typically attract a higher*

*share of royalties than ebook sales. I am therefore writing to the chief executives of trade publishers in order to seek reassurance for authors that all such income is being properly accounted and paid.*

*I would be very grateful if you would let us know the following:*

- 1 *Do you license ebook rights to OverDrive or any other aggregator for library use?*
- 2 *Do you seek specific permission from authors for such licences?*
- 3 *How do you account to authors for the proceeds from such licences and how do you divide the proceeds between different authors?*
- 4 *Are authors remunerated on a rate per loan basis or an overall licence fee?*
- 5 *Please send us a typical royalty statement showing how such payments are identified."*

**4.3.** The responses are not yet complete but early indications suggest that some publishers using aggregators treat all receipts as sales when accounting to authors, thus inadvertently paying authors a lower share of net receipts than if the transaction were characterised as licensing. This is a surprising interpretation given the statements of various stakeholders in their evidence to the Sieghart review all of which suggest that the model is a licence rather than a sale:

**4.3.1.** Publishers Association *"It should be noted that one of the key benefits of the commercial models already in existence is that publisher and author remunerations come through clearly articulated and guaranteed licence agreements."*

**4.3.2.** OverDrive *"For each library system to which OverDrive supplies eBooks and its lending services, the library is required to purchase the rights to each eBook unit or copy it offers for lending. OverDrive acquires the permission to enable remote eBook library and school lending as a result of distribution agreements it has entered into with more than 260 UK publishers and over 1,000 publishers from the US, Canada, Australia and the rest of the world. OverDrive's remote eBook lending catalogue for libraries includes titles in every genre of publishing including popular adult fiction, non-fiction, reference, children's, young adult, career, educational, and professional materials. For each eBook title in every UK public library's catalog, **OverDrive has paid the publishers, agents and authors, all amounts due under the terms of OverDrive's library lending and distribution agreements.**"*

**4.3.3.** Society of Chief Librarians Position on ebook lending in libraries April 2012

*"1) Licensing models It is essential that public libraries respect the licensing models that e-book suppliers (by this term we mean the aggregators who act as intermediaries between publishers and library authorities) sign up to with publishers and it is important that the way these work are transparently clear to all"*

**4.3.4.** CILIP " Appendix B Models

*Aggregators*

*Aggregators such as, EBSCOhost, Credo, Bloomsbury, EBL (EBook Library), ebrary, NetLibrary and OverDrive supply content from a range of different publishers. Unlike vendors who sell content on behalf of publishers, aggregators license content from them and sell directly to libraries, hosting the ebooks on their own platform rather than the publisher's website.*

*Business models*

*Several different business models have been developed: some key elements and options are summarised below:*

*Purchasing individual titles or packages*

*Individual titles can be acquired either directly or through library suppliers.*

*Many ebooks are also available in packages ("bundled") whereby they are grouped by subject (e.g. Palgrave Connect) or publication date (Springer Science+Business Media eBooks). In most cases the selection is made by the supplier (e.g. PsycBooks from the American Psychological Association) whilst in other cases the supplier offers the library a degree of choice (e.g. Credo Reference)*

*Outright purchase or subscription*

***If an ebook is purchased outright the library can theoretically retain indefinite access to the ebook.*** [Our emphasis] *The price charged usually bears some relation to the price of the print version. There may also be an annual platform fee to cover ongoing hosting on the supplier's website. Alternatively a subscription can be taken out whereby access is granted for a specific period. Prices are set according to subject area and the number of titles offered, and may also relate to the number of potential users (e.g. in HE to the size of the institution and the number of FTE students requiring access to the collection). Discounts are often given for multi-year deals.*

*A credit system*

*Ebooks are purchased with a number of credits and each use (download or online) deducts a set amount of these credits (e.g. Dawsonera). Once the credits run down to zero the library has to purchase another copy.*

*Rental*

*Some companies offer the option for short-term rental of individual ebooks (e.g. EBL Rental). If the user sees a title that is not owned by the library, they can request rental. The library pays a fee and the user is granted temporary access. This model is broadly equivalent to interlibrary loan"*

- 4.4. Author contracts vary but those we have analysed suggest that the assertion that receipts from aggregators for library ebook lending should be categorised as sales is difficult to sustain on close interpretation of the contractual wording and is likely to be mistaken.
  - 4.5. While all ebook "sales" are in fact licences in law, recent judicial comment in cases like "Meltwater" and "Usedsoft" suggests that time limited and conditional sales such as these are likely to be treated as analogous to licences, while a model where a consumer is given a perpetual (though personal) licence is more likely to be seen as a sale (with the attendant risk that a court may seek to apply the principle of exhaustion of rights).
  - 4.6. Further, in addition to any licence/sale, the publisher is also granting the aggregator a licence of the author's right of rental/making available:
    - 4.6.1. In many contracts the publisher does not have these rights at all;
    - 4.6.2. In some contracts the publisher has the rights but can only exercise them with the author's consent;
    - 4.6.3. In some contracts the publisher is entitled to sub-license these rights but at a higher share of net receipts for the author
- Despite this, publishers do not always ask the author's permission, and often mistakenly license these rights as if they were sales.
- 4.7. It should be noted that when physical books are lent by libraries authors receive their PLR payments with no share going to publishers, but publishers are now routinely claiming 75 per cent of the proceeds of ebook lending. This is unfair and does not lead to equitable remuneration for the author.
  - 4.8. The Society is writing to all trade publishers requesting that they account correctly to authors; and is advising authors and their agents to check royalty statements and insist on reimbursement plus interest if they find that royalty rates have been inadvertently applied incorrectly.
  - 4.9. Future publishing contracts should clearly state what rate is to be applied to licences for ebook lending, and that rate should equate to the earnings an author would have received on a physical copy from the combination of PLR and sale royalty. Authors will be reluctant to license these rights if publishers continue to offer artificially low royalties for them.



## CONCLUSION

Authors' incomes continue to be squeezed: advances have fallen while more unpaid work is expected of authors in marketing and publicising their work, including appearances and use of social media. In a survey in 2006, ALCS concluded that writing is a very risky profession with median earnings of around £12,000 for "professional" authors and around £4,000 for all authors, less than one quarter of the typical wage of a UK employee. Benchmarking the results against the Society's survey, reported in 2000, indicates that the earnings of a typical author are deteriorating in real terms. This trend is continuing. Authors need to earn reasonable amounts from the considerable effort put into writing in order to continue producing inspiring and informative books (in whatever format) in all genres.

Authors would be happy with any method of remuneration for ebook lending which ensures they receive payment which fairly remunerates them for the initial "purchase" of the ebook and for individual loans. Publishers should be free to negotiate with libraries to agree favourable and appropriate terms. Different models may work in different circumstances. However, any model proposed should be carefully tested by authors, publishers and bookshops, and its impact evaluated before introduction to ensure that the rightsholders' interests and bookshop sales are not adversely affected.<sup>2</sup>

(c) Society of Authors May 2013

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<sup>2</sup> Definitions

For the purposes of this paper we have used the following definitions:

"Ebook": a digital copy of a printed book that embodies the verbatim text or text plus illustrations (if there is no printed volume form book, a work in digital form), for reading and including text-to-speech functionality but without other audio or visual components or enhancements.

"Electronic version": any digital version of a work other than as an ebook (including "apps" but excluding audiobooks, films, videos, television programmes or computer games).

"Library": a public library which a local authority considers to be part of its statutory library service as set out in the Public Libraries and Museums Act 1964 (this would exclude school libraries and some volunteer libraries);

"Lending" or "elending": making an ebook available to be read on an ereading device for a short and defined term by a library (technically this might amount to "lending", "rental" or "communication to the public" in copyright law).

## **Background documents.**

### **1. Applicable law.**

- 1.1. Extracts From Directive 2006/115/EC Rental and Lending Right
- 1.2. Copyright, Designs and Patents Act 1988 s18
- 1.3. Copyright, Designs and Patents Act 1988 s20
- 1.4. Section 5(2) of the Public Lending Right Act 1979
- 1.5. S 43 of the Digital Economy Act 2010
- 1.6. Harbottle and Lewis. Comment on Redigi and Usedsoft. April 2013

### **2. Correspondence between Society of Authors and DCMS.**

- 2.1. Letter Society of Authors to DCMS. 1 May 2012
- 2.2. Letter DCMS to Society of Authors. 24 May 2012
- 2.3. Letter Society of Authors to DCMS 20 June 2012
- 2.4. Letter DCMS to Society of Authors. 16 July 2012
- 2.5. Letter Society of Authors. To DCMS 23 July 2012
- 2.6. Letter DCMS to Society of Authors. 7 August 2012
- 2.7. Letter Society of Authors to DCMS to. 21 August 2012
- 2.8. Letter DCMS to Society of Authors. 10 September 2012
- 2.9. Ed Vaizey Parliamentary answer.24 May 2013

### **3. Sieghart Report.**

- 3.1. SCL Position on ebook lending in libraries April 2012
- 3.2. Society of Authors' Reply to e-Lending Review: Call for Evidence November 2012
- 3.3. Independent Review Of E-Lending In Public Libraries Submission From The Publishers Association. November 2012
- 3.4. OverDrive Reply <http://OverDriveblogs.com/library/files/2012/12/E-Lending-Evidence-and-Experience-from-UK-Public-Libraries-6-Nov-2012.pdf>
- 3.5. CILIP Reply December 2013
- 3.6. Independent Review of E-Lending in Public Libraries in England Written by William Sieghart ("the Sieghart Report") March 2013
- 3.7. DCMS response of 27 March 2013
- 3.8. Society of Authors' response to the Sieghart Report. April 2013

### **4. Correspondence between Society of Authors and Publishers.**

- 4.1. List of Publishers of ebooks offered in Barnet libraries May 2013
- 4.2. Example letter from Society of Authors to Trade Publishers 16 May 2013

1. **Applicable law.**

1.1. Extracts From Directive 2006/115/EC Rental and Lending Right

April 2013 Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)

(8) The legal framework of the Community on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection.

(9) It is necessary to define the concepts of rental and lending for the purposes of this Directive.

(10) It is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of this Directive should not include making available between establishments which are accessible to the public.

(11) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive.

(12) It is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must remain able to entrust the administration of this right to collecting societies representing them.

(14) It is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements. However, any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty.

(16) Member States should be able to provide for more far-reaching protection for owners of rights related to copyright than that required by the provisions laid down in this Directive in respect of broadcasting and communication to the public.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

RENTAL AND LENDING RIGHT

Article 1

Object of harmonisation

1. In accordance with the provisions of this Chapter, Member States shall provide, subject to Article 6, a right to authorise or prohibit the rental and lending of originals and copies of copyright works, and other subject matter as set out in Article 3(1).

2. The rights referred to in paragraph 1 shall not be exhausted by any sale or other act of distribution of originals and copies of copyright works and other subject matter as set out in Article 3(1).

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) "rental" means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;

(b) "lending" means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public

#### Article 3

Rightholders and subject matter of rental and lending right

1. The exclusive right to authorise or prohibit rental and lending shall belong to the following:

(a) the author in respect of the original and copies of his work;

#### Article 6

Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

#### Article 9

Distribution right

1. Member States shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in points (a) to (d), including copies thereof, hereinafter "the distribution right":

(a) for performers, in respect of fixations of their performances;

The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent.

3. The distribution right shall be without prejudice to the specific provisions of Chapter I, in particular Article 1(2).

4. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

#### Article 12

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

1.2. Copyright, Designs and Patents Act 1988 s18

Infringement by rental or lending of work to the public..

(1)The rental or lending of copies of the work to the public is an act restricted by the copyright in— .

(a) a literary, dramatic or musical work,

(2)In this Part, subject to the following provisions of this section— .

(a)“rental” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and .

(b) “lending” means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public. .

(3)The expressions “rental” and “lending” do not include— .

(a) making available for the purpose of public performance, playing or showing in public [F2or communication to the public];

(b) making available for the purpose of exhibition in public; or.

(c) making available for on-the-spot reference use. .

(4)The expression “lending” does not include making available between establishments which are accessible to the public. .

(5)Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section. .

(6)References in this Part to the rental or lending of copies of a work include the rental or lending of the original.]

1.3. Copyright, Designs and Patents Act 1988 s20

S20 Infringement by communication to the public.

(1)The communication to the public of the work is an act restricted by the copyright in—.

(a) a literary, dramatic, musical or artistic work,

(b) a sound recording or film, or.

(c) a broadcast. .

1.4. Section 5(2) of the Public Lending Right Act 1979  
Sections 1 and 5(2) of the Public Lending Right Act 1979

1.1 Establishment of public lending right. 1) In accordance with a scheme to be prepared and brought into force by the Secretary of State, there shall be conferred on authors a right, known as "public lending right", to receive from time to time out of a Central Fund payments in respect of such of their books as are lent out to the public by local library authorities in the United Kingdom.

5 (2) In this Act any reference to "the scheme" is to the scheme prepared and brought into force by the Secretary of State in accordance with sections 1 and 3 of this Act (including the scheme as varied from time to time under section 3(7); and —

"local library authority" means —

(a) a library authority under the M1 Public Libraries and Museums Act 1964,

(b) a statutory library authority within the M2 Public Libraries (Scotland) Act 1955, and

(c) an Education and Library Board within the M3 Education and Libraries (Northern Ireland) Order 1972;

"prescribed" means prescribed by the scheme;

"the register" means the register required by section 1(4) to be established and maintained by the Registrar; and

"the Registrar" means the Registrar of Public Lending Right.

1.5. S 43 of the Digital Economy Act 2010

S43 Digital Economy Act 2010 (not in force)

Public lending right

(1) Section 5(2) of the Public Lending Right Act 1979 (interpretation) is amended as follows.

(2) Before the definition of "local library authority" insert—

""author", in relation to a work recorded as a sound recording, includes a producer or narrator;

"book" includes—

(a) a work recorded as a sound recording and consisting mainly of spoken words (an "audio-book"), and

(b) a work, other than an audio-book, recorded in electronic form and consisting mainly of (or of any combination of) written or spoken words or still pictures (an "e-book");

"lent out" —

(a) means made available to a member of the public for use away from library premises for a limited time, but

(b) does not include being communicated by means of electronic transmission to a place other than library premises,

and "loan" and "borrowed" are to be read accordingly;

"library premises" has the meaning given in section 8(7) of the Public Libraries and Museums Act 1964;"

(3) After the definition of "prescribed" insert—

""producer" has the meaning given in section 178 of the Copyright, Designs and Patents Act 1988;"

(4) At the end of the definition of "the register" omit "and".

(5) After the definition of "the Registrar" insert—

""sound recording" has the meaning given in section 5A(1) of the Copyright, Designs and Patents Act 1988."

(6) The Copyright, Designs and Patents Act 1988 is amended as follows.

(7) In section 40A (permitted acts in relation to copyright works: lending of copies by libraries or archives), for subsection (1) substitute—

"(1) Copyright in a work of any description is not infringed by the following acts by a public library in relation to a book within the public lending right scheme—

(a) lending the book;

(b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.



(1A)In subsection (1)—

(a) “book”, “audio-book” and “e-book” have the meanings given in section 5 of the Public Lending Right Act 1979,

(b) “the public lending right scheme” means the scheme in force under section 1 of that Act,

(c) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible, and

(d) “lending” is to be read in accordance with the definition of “lent out” in section 5 of that Act (and section 18A of this Act does not apply).”

(8)In Schedule 2, in paragraph 6B (permitted acts in relation to performances: lending of copies by libraries or archives)—

(a) at the beginning insert—

“(A1)The rights conferred by this Chapter are not infringed by the following acts by a public library in relation to a book within the public lending right scheme—

(a) lending the book;

(b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(A2)Expressions used in sub-paragraph (A1) have the same meaning as in section 40A (1).”

(b) in sub-paragraph (2), for “this paragraph” substitute “sub-paragraph (1)”.

1.6. Harbottle and Lewis. Comment on Redigi and Usedsoft .

## Second-hand ebooks: On the market in 2013?

Posted on [April 9, 2013](#)

Already this year the publishing industry has seen patents published by Amazon and Apple describing systems that will enable them to facilitate the sale of second-hand digital content, including ebooks, on their platforms. In March, Boosh, a service which enables users to read a book before passing it on to their friends via social media, was launched at the Independent Publisher's Guild Conference. However, in the past week a New York court has found that the second-hand digital content service Redigi infringed copyright by allowing its users to re-sell digital music files they had bought on iTunes.

Users of the Redigi service upload their music files to the Redigi cloud. According to Redigi, the Redigi software they must download in turn guarantees that the tracks are deleted from the user's iTunes account and can then be transferred without a second copy having been created. However, the New York court decided that by uploading the file to the cloud in the first place, the users were producing an unauthorised copy of the copyright work and that in itself was an act of infringement before the question of proper transfer of ownership even arose.

Redigi has said it will appeal the decision and that its new service "Redigi 2.0" has patent-pending technology that will enable a transfer of music files between users without infringing copyright.

The Redigi services is not (yet) available in Europe. However, comments made by members of the European Court of Justice (CJEU) in some recent copyright cases indicate that the question of whether a second-hand ebook market could operate in Europe is still open for debate.

It is a long-standing feature of EU law that, where intellectual property (IP) rights are exploited through the sale of goods, the right to prevent onward sales of those goods is usually exhausted when the sold were placed on the market in a Member State with the consent of the owner of the rights. In other words, IP rights cannot then be invoked to prevent the resale of the goods in question within the internal market. It is an almost equally long-standing feature of EU law that the same is not true in relation to the provision of services. The Copyright Directive, for example, quite clearly recites that the question of exhaustion does not arise in the case of services, and online services in particular.

When customers "buy" ebooks they are, in most cases, buying a licence to use the book on what is termed a download-to-own basis. The licences are usually without limit in time, and they

usually prohibit the onward sale of the downloaded content. In effect, what is being provided to the customer is a download service, as opposed to a tangible object like an actual book.

Comments made by the CJEU in two cases last year (*FAPL v QC Leisure* and *Oracle v UsedSoft*) indicate that the Court may be prepared to recognise that some services should, in fact, be treated as goods for these purposes. Though neither case concerned the second-sale of books nor music, in both decisions the Court specifically listed ebooks as an example of a type of service which is merely the functional equivalent of the supply of the physical medium.

If that is right, it follows that where ebooks, music, films and other content are distributed online on a download-to-own basis, the copyright owner's IP rights in relation to a downloaded copy will be exhausted and could not be used to prevent onward sales of the content by its customers.

Will these European decisions be applied to content such as ebooks and MP3s? Given the pace of development in the second-hand digital markets we may not be waiting much longer to find out.

Read more on our [Digital Media Law Blog](#) and on our [website](#).

**9 April 2013**

## 2. Correspondence between Society of Authors and DCMS.

### 2.1. Letter Society of Authors to DCMS. 1 May 2012

1 May 2012

Dear Ed,

#### E-BOOKS AND PUBLIC LIBRARIES

We spoke briefly last year and, as discussed, I am writing to request a meeting so that we can put forward the views of authors in relation to e-book lending as I know that you are still considering the views of publishers and librarians on this subject.

The Society of Authors exists to protect the rights and further the interests of authors. The Society was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators). Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent or have sold over 300 copies of a self-published book. The members of our council are listed at <http://www.societyofauthors.org/about-us/council> and the members of our Management Committee are Lindsey Davis (Chair), Patrick Barwise, Nicholas Clee, Gregor Dallas, Juliet Gardiner, Philip Gross, Anthony Horowitz, Graham Joyce, David Kynaston, James Runcie, Anne Sebba and Sarah Waters.

Members are concerned about libraries both as suppliers of books and library content but also as heavy users of libraries both for reading for pleasure and for research. They are strong supporters of libraries and believe that a comprehensive and efficient library service for the 21<sup>st</sup> Century must allow free access to physical books in safe, comfortable, convenient and accessible space. It must be knowledgeably managed and curated by trained professional staff. We believe that the planned library closures are a breach of the requirements of the Libraries & Museums Act 1964 and the Charteris Report and that library closures will have a devastating, long-lasting and irreparable effect on local communities as well as on the wider community and the nation.

Libraries need sufficient funding to update, maintain and augment stock and ensure that an exciting and comprehensive range of books are available for reference and loan. Books, whether physical or digital, must be at the core of a library. Access to ebooks within the library and the ability to borrow them from the library will be increasingly important. However we remain strongly of the view that remote lending of ebooks is not an essential or primary role of an efficient library service and that plans to allow remote e-lending must be carefully thought through and managed. Briefly, our concerns are mainly in the following areas:

1. Undervaluing retail pricing: library ebook lending must be sensitively managed and controlled to ensure that it does not compete with ebook purchasing as there may be little for a consumer to choose between the two. It is important that consumer perception is managed so that consumers understand that the real cost of creating a book is not its physical form but the creative work of the author in writing the book and the work of the publisher in editing, design, production and marketing. Further we must ensure that such lending does not unbalance an already strained book selling market damaging independent bookshops, which are very important in introducing people to books, supporting culture and literacy and as a showcase.
2. Piracy: We understand that there is a real danger of ebooks lent by libraries being copied illegally, as it seems experienced pirates are able to get round the DRM protection currently employed.
3. Pricing and Lending Limits: Sales of library ebooks by publishers to libraries must be on a basis which fairly remunerates an author for the added usage- and loans must be controlled and limited.

4. PLR: Any ebook lending should result in a PLR payment to the author. The Public Lending Right scheme provides authors with a modest payment each time one of their books is borrowed from a public library. PLR is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. PLR is particularly important to authors whose books are sold mainly to libraries and to those whose books are no longer in print but are still being read. Press coverage tends to focus on a few successful authors, yet most struggle to make ends meet. PLR provides a significant and much-valued part of authors' incomes. Although PLR is a legal right rather than a grant or subsidy, its funding has already been subject to significant cuts and we would hope that consideration will be given to funding being reinstated. We also wish to remind you that s 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. This is patently unjust and we urge that this provision be brought into force and that extra funds be made available to cover PLR payments for such lending. We note also that there is an argument that PLR should not be paid where libraries are being run by volunteers. This would be patently unfair and we should be grateful if you would confirm that PLR will continue to be paid whoever runs the library.

We are delighted that libraries and publishers are discussing the issues around ebook lending so thoughtfully and are confident that suitable mechanisms can be devised which will allow libraries to offer ebook lending while meeting the legitimate concerns of publishers and authors.

I look forward to hearing from you with some dates when you can meet me and some of our Management Committee members to discuss this and other areas of mutual interest.

With best wishes,  
Yours sincerely

Nicola Solomon  
General Secretary

## 2.2. Letter DCMS to Society of Authors. 24 May 2012

Ed Vaizey MP Minister for Culture, Communications and Creative Industries [www.culture.gov.uk](http://www.culture.gov.uk)

24 May 2012

Dear Nicola,

Thank you for your letter of 1 May about e-books and public libraries, and for bringing my attention to the views of the Society of Authors.

The Government supports the use of e-lending by public libraries. It is important for libraries to offer updated services matching technological developments. Although e-lending in public libraries is sometimes seen as the 'icing on the cake', it is inevitable that library users will increasingly come to see e-books as forming part of the basic service. It is also worth bearing in mind that over 1.3 million e-readers were estimated to have been received as a Christmas present in the UK in December 2011.

Libraries can, and commonly do, play an important role in tackling digital exclusion. This enriches the lives of the people they serve, in particular people who are housebound or who may have mobility or reading issues. For these reasons, the government does not wish to seek to exclude libraries from remote e-lending. Neither does the government wish to be prescriptive as to how libraries should set up their e-lending services. This must be tailored to local needs, and may in some cases need to be designed around existing local authority IT systems.

I would be interested to receive any further evidence or data you might have, to set out the nature and scale of the issues you raise, but must apologise that a very busy diary prevents me from meeting you at this time. On the Public Lending Right (PLR), I recognise the importance of PLR payments as a source of income for many authors. As you say, the Digital Economy Act 2010 opened the way for PLR to be extended to library loans of audio books and certain categories of e-books. However, in the context of a challenging Spending Review, we announced in October 2010 that we would postpone any amendment to PLR legislation to extend PLR to audio and e-books.

Under the existing PLR legislation, PLR applies to loans of books from public libraries. Therefore, if community managed libraries still form part of a library authority's statutory provision, then PLR still applies and authors are still entitled to payment. Only when a community run library falls entirely outside of an authority's statutory provision does PLR not apply.

Ed Vaizey MP

Minister for Culture, Communications and Creative Industries

### 2.3. Letter Society of Authors to DCMS 20 June 2012

**From:** Nicola Solomon [<mailto:NSolomon@societyofauthors.org>]

**Sent:** 20 June 2012 16:10

**To:** VAIZEY, Ed; JARVIS, Dan

**Cc:** Ursula Mackenzie; MARPLES DEMPSTER; Desmond Clarke ([desmondclarke2@btinternet.com](mailto:desmondclarke2@btinternet.com)); Anna Ganley

**Subject:** FW: They Work For You | Hansard | Registrar of the Public Lending Right - Oral Questions Culture, Media and Sport

Dear Mr Vaizey,

Thank you for your response of 24 May in response to my letter of 1 May about ebook lending. I was interested to see the exchange between you and Dan Jarvis ( below) in relation to the payment of PLR on ebooks.

With respect, the concerns of publishers (which are shared by the Society of Authors) in relation to ebook lending by libraries are not a reason to refuse to extend PLR in relation to any ebook lending which is undertaken.

S 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. This is unjust.

It may also render such lending by libraries unlawful: Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property creates a "rental and lending right" under which authors have the exclusive right, subject to limitations, to authorise or prohibit the rental or lending of their works [Art. 2(1)]. The rental and lending right may be transferred. However, even once the rental and lending right is transferred, the author or performer retains an inalienable and unwaivable right to equitable compensation for the rental and lending of their works. Member States may allow a derogation for public lending (i.e. public libraries) provided that authors obtain royalties. If PLR is not being paid on ebook lending then unless that has been authorised by the author (or a publisher duly authorised by the author) and the author is receiving equitable compensation, authors would be entitled to sue such libraries for copyright infringement. Obviously it would be preferable to ensure that there is a statutory solution- which can easily be effected by simply extending PLR to ebooks.

Nicola Solomon

They Work For You : 14th June

**Registrar of the Public Lending Right**

**Oral Answers to Questions — Culture, Media and Sport**

<http://www.theyworkforyou.com/debates/?id=2012-06-14a.454.3&s=speaker%3A25067#g454.10>

*Below, one of the Questions :*

**[Dan Jarvis](#)** (Barnsley Central, Labour)

It is now increasingly accepted that part of the long-term future of book lending lies in e-books being available in all libraries. In

order for our libraries to move into the 21st century, the tensions between the public lending rights scheme and e-books must be addressed. Will the [Minister](#) therefore tell the House why he has not moved to implement the extension of the public lending right to e-books, as mandated in section 43 of the [Digital Economy Act](#) 2010?

**[Edward Vaizey](#)** (Parliamentary Under Secretary of State (Culture, Communications and Creative Industries), Business, Innovation and Skills; Wantage, Conservative)

Part of the problem with e-books is that most publishers do not want e-books lent in libraries. I have had discussions with publishers on that on at least two occasions, and would happily discuss it jointly with publishers and the hon. Gentleman so he can hear their views first hand.

2.4. Letter DCMS to Society of Authors. 16 July 2102

Ed Vaizey MP Minister for Culture, Communications and Creative Industries [www.culture.gov.uk](http://www.culture.gov.uk)

16 July 2012

Dear Nicola,

Thank you for your email of 20 June about PLR and e-lending.

As you indicate in your comments, it is the responsibility of libraries to reach appropriate agreements with authors or with publishers on behalf of authors in order to ensure that their e-book lending is on a proper footing. Whilst I agree that a simple, across the board solution for allowing all libraries to lend e-books is attractive, it is worth noting the amendments in section 43 of in the Digital Economy Act 2010 only extend PLR to audiobook and e-book files downloaded within the library premises, as downloading from outside library premises may constitute 'communication to the public' rather than 'lending'. Libraries that offered remote lending of e-books would therefore need to continue to reach their own arrangements.

As you may know, I met recently with representatives of the publishing industry to discuss some of the complex issues relating to e-lending for public libraries and I am committed to continuing these discussions, with publishers and the public library sector, to find solutions.



## 2.5 Letter Society of Authors to DCMS 23 July 2102

Ed Vaizey MP Minister for Culture, Communications and Creative Industries

23 July 2012

Dear Ed,

### PLR AND VOLUNTEER LIBRARIES

Thank you for your letter of 23 July. We are delighted that the Government is to undertake an industry wide review of ebook lending and look forward to being involved in that process.

However you have failed to answer the central points of my letter of 17 July in relation to PLR and volunteer libraries and I now raise these again. Please let us have a full response.

1 I accepted in my previous letter that taking volunteer run libraries out of the statutory scheme will not have an immediate effect on authors' incomes as the Government allocates a fixed amount to PLR (around £6.3 million for 2012/13) and the calculation of the rate per loan is essentially a mathematical exercise, dependent on the number of loans and the money available. The rate per loan in 2012 has been fixed at 6.05p and this rate has been falling steadily in response to Government cuts. We are concerned that taking volunteer libraries out of the scheme will lead to an apparent drop in book loans which will encourage Government to propose cutting the already meagre fund still further. We seek an assurance that the overall fund will not be cut due to volunteer run libraries being removed from the scheme. Please let me have that assurance by return.

2 PLR on loans from volunteer libraries. Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property creates a "rental and lending right" under which authors have the exclusive right, subject to limitations, to authorise or prohibit the rental or lending of their works [Art. 2(1)]. The rental and lending right may be transferred. However, even once the rental and lending right is transferred, the author or performer retains an inalienable and unwaivable right to equitable compensation for the rental and lending of their works. Member States may allow a derogation for public lending (i.e. public libraries) provided that authors obtain payment. DCMS have now confirmed that it is their understanding that some of the new community libraries are not covered by PLR, as they are outside the statutory library service. Under the Council Directive authors are entitled to equitable compensation for any such loans. However, it seems that the Government may have failed in its obligations to enact appropriate UK law for this purpose:

The copyright legislation (Section 40A(2) of the Copyright, Designs and Patents Act 1988; regulation 35 of the Copyright and Related Rights Regulations 1996; and paras 2-6 of Part A of Schedule 1 to the Copyright (Librarians and Archivists)(Copying of Copyright Material) Regulations 1989.) makes provision for a category of libraries called 'prescribed libraries' to lend out books without the need to seek copyright permissions. However detailed regulations have not yet been included in the copyright legislation setting out how libraries can qualify as 'prescribed libraries' and as a result the 1996 Regulations (section 35) say that 'until the making of regulations' a 'prescribed library' shall be 'construed as any library' prescribed by paragraphs 2-6 in the Schedule to the 1989 Copyright Regulations including the national libraries, educational libraries and others including 'any other library conducted for the purpose of facilitating or encouraging the study of bibliography, education, fine arts, history, languages, law, literature ...'. It is clearly unsatisfactory and in breach of Council Directive 92/100/EEC that all libraries other than statutory libraries should be exempt from remunerating authors for loans. In my previous letter we called on the Government immediately to rectify this by making

appropriate regulations under s40A(2) of the CDPA. Please confirm that the Government will make such Regulations or explain how authors will be remunerated for the rental and lending of their works from volunteer libraries.

3 PLR on Audiobooks and Ebook s 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. This is patently unjust and we have urged that this provision be brought into force and that extra funds be made available to cover PLR payments for such lending. We urge the Government to

- a. implement s43 without further delay and,
- b. if remote ebook lending from libraries is to be authorised, to ensure equitable remuneration to authors in relation to the resulting "communication to the public."

We look forward to receiving your full and reasoned response to these points.

## **2.6. Letter DCMS to Society of Authors. 7 August 2102**

Ed Vaizey MP Minister for Culture, Communications and Creative Industries

7 August 2012

Dear Nicola,

Thank you for your email of 23 July about PLR and community-managed libraries.

Under current legislation, community libraries which are not conducted for profit, and do not fall within the PLR scheme, do not breach copyright when they lend books and further they do not have to remunerate authors when they lend their books.

That is the legal effect of Article 6 of Rental and Lending Directive (92/100/EEC, Section 40A(2) of the Copyright, Designs and Patents Act 1988 and paragraphs 2 to 6 of Part A of Schedule 1 to the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989 (by virtue of regulation 35 of the Copyright and Related Rights Regulations 1996).

There is no breach of EU Copyright law here – the UK Government is acting within a clear derogation provided by Article 6 of the EU's "Rental and Lending Directive".

The use of volunteers by public libraries does not determine whether a particular library falls within the PLR scheme. The key determinant for inclusion of a library within the PLR regime is whether the local authority considers that particular library to be part of its statutory library service as set out in the Public Libraries and Museums Act 1964.

The PLR fund which is administered by the PLR registrar is not affected by the number of volunteer-run or volunteer-supported libraries. PLR payments per loan are based on a representative sample group of library authorities, not on the exact number of books loaned by every library authority in the UK.

Ed Vaizey MP

Minister for Culture, Communications and Creative Industries

## 2.7. Letter Society of Authors to DCMS. 21 August 2102

Ed Vaizey MP Minister for Culture, Communications and Creative Industries

21 August 2012

Dear Ed,

### PLR

Thank you for your letter of 7 August. I apologise for the slight delay in replying as I have been away on holiday. Unfortunately, your letter does not answer the concerns of the Society and we are surprised that, despite several requests, we have only received cursory and incomplete answers to our legitimate concerns that the UK is in breach of its obligations the Rental and Lending Directive (2006/115/EC which replaces the repealed 92/100/EEC) ("The Directive"). I have therefore set out six specific questions with the reasoning behind them and would appreciate receiving a full and reasoned answer to all six questions.

#### 1 PLR on loans from volunteer libraries

- a. You say that the key determinant for inclusion of any library within the PLR regime is whether the local authority considers that particular library to be part of its statutory library service as set out in the Public Libraries and Museums Act 1964. This seems to be a much narrower interpretation than the reference to "public lending" in the Directive. I would remind you that Clause 14 of the preamble to the Directive says that any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty".

Q1 Please explain with full reasoning:

- i. How exempting volunteer libraries from PLR is in accord with the definition of "public lending" in the Directive;
  - ii. If it is intended that such exemption is a permitted derogation under Article 6 of the Directive, how that derogation could be considered proportionate or otherwise comply with Treaty obligations;
  - iii. If volunteer libraries are exempted from being part of the statutory library service, how local authorities can comply with their obligation to provide a 'comprehensive and efficient' public library service under the 1964 Public Libraries and Museums Act.
- b. Article 6(3) of the Directive allows Member states to "exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2". Paragraph 1 refers to "public lending". S40A (2) of the Copyright, Designs and Patents Act says " Copyright in a work is not infringed by the lending of copies of the work by a prescribed library or archive (other than a public library) which is not conducted for profit." This goes far beyond the permitted derogation in Article 6 (3):
    - i. The derogation only allows Member States to exempt certain categories from payment- it does not allow them to declare that such lending is not an infringement;
    - ii. The derogation allows the exemption of " certain categories" but the effect of s40(A)(2) is to exempt ALL libraries (except public libraries) from making payments (or, indeed, infringing copyright). Although the exemption in s 40(A) (2) seems limited it is not because:

1. The reference to "which is not conducted for profit" is redundant as the definition of "lending" in the Directive is confined to "making available for use, for a limited period of time and not for direct or indirect or commercial advantage, when it is made through establishments which are accessible to the public". Lending conducted for profit would be "rental" under the Directive;
2. The reference to "prescribed library or archive" is illusory. As I pointed out in my letter of 17 July, detailed regulations have not yet been included in the copyright legislation setting out how libraries can qualify as 'prescribed libraries' and as a result the 1996 Regulations (section 35) say that 'until the making of regulations' a 'prescribed library' shall be 'construed as any library' prescribed by paragraphs 2-6 in the Schedule to the 1989 Copyright Regulations including the national libraries, educational libraries and others including 'any other library conducted for the purpose of facilitating or encouraging the study of bibliography, education, fine arts, history, languages, law, literature ...'. Thus, any library which lends to the public other than the narrowly defined public libraries are currently exempt from remunerating authors for loans.

Q2 If you disagree with the points above please explain, with full reasoning, why you believe that s40A is within the permitted derogation in the Directive.

Q3 In any event, it is clearly unsatisfactory and unfair that all libraries other than public libraries should be exempt from remunerating authors for loans. In my previous letter we called on the Government immediately to rectify this by making appropriate regulations under s40A (2) of the CDPA. Please confirm that the Government will make such Regulations or explain how authors will be remunerated for the rental and lending of their works from volunteer libraries.

## 2 PLR rates

We have always accepted that taking volunteer run libraries out of the statutory scheme will not have an immediate effect on authors' incomes as the Government allocates a fixed amount to PLR (around £6.3 million for 2012/13) and the calculation of the rate per loan is essentially a mathematical exercise, dependent on the number of loans and the money available. The rate per loan in 2012 has been fixed at 6.05p and this rate has been falling steadily in response to Government cuts. However, we are concerned that taking volunteer libraries out of the scheme will lead to an apparent drop in book loans which will encourage Government to propose cutting the already meagre fund still further. We have on several occasions sought an assurance that the overall fund will not be cut due to volunteer run libraries being removed from the scheme but that assurance has not been forthcoming.

Q4 Please let us have an assurance by return that if volunteer run libraries are removed from the PLR scheme the overall fund will not be cut due to the consequent fall in loans.

## 3 Public Lending Right on ebooks and audiobooks

- a. S 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. Alternatively, as you have pointed out, downloading off of library premises may be classed as

"rental" for the purposes of the Directive. Either way, authors are entitled to equitable remuneration. We have urged that s43 be brought into force and that extra funds be made available to cover PLR payments for such lending and that authors should be remunerated for rentals outside the s43 definition. The failure to implement these payments is a clear breach of the Directive.

Q5 When do you envisage implementing the legislation and complying with the obligations under the Directive?

b. We are delighted that the Government is to undertake an industry wide review of ebook lending and look forward to being involved in that process. We are surprised not to have heard from you any further in relation to this:

Q6 When do you envisage starting the review process? What form will it take?

We look forward to receiving your full and reasoned response to these points.

## 2.8. Letter DCMS to Society of Authors. 10 September 2012

Ed Vaizey MP Minister for Culture, Communications and Creative Industries

10 September 2012

Dear Nicola,

Thank you for your letter of 21 August about Public Lending Right (PLR) and community libraries.

In answer to the questions you raise, it may assist if I set out the framework pertaining to the PLR scheme and volunteer libraries.

The Rental and Lending Directive (92/100/EEC, codified by 2006/115/EC) creates a right for authors to allow or prohibit rental or lending of their work. Under the Directive rental and lending are distinct. Both involve making the work available for a limited period, but rental is for profit or commercial advantage and lending is not for profit or commercial advantage.

Article 6 of the Directive allows Member States to derogate from this right in respect of public lending, provided the author receives remuneration (Article 6(1)). In addition, Member States may exempt certain institutions from having to pay remuneration (Article 6(3)).

In the UK, the Copyright, Designs and Patents Act 1988 (as amended) gives effect to the rights created in the Directive - specifically, under section 16(1)(ba) of the 1988 Act, the acts restricted by copyright include renting or lending a work to the public, and section 18A provides that these activities are infringements of copyright.

The UK's derogation under Article 6 of the Directive in respect of public lending is primarily based in section 40A of the 1988 Act, which provides that copyright (and therefore the lending right) is not infringed by the lending of a book:

- a. by a public library if the book is within the PLR scheme, or
- b. by a prescribed library which is not conducted for profit. This allows prescribed libraries to lend works to the public without having to reach separate agreements with authors or to pay remuneration.

It is the PLR scheme under the Public Lending Right Act 1979 that provides the mechanism for remunerating authors for the lending right. In respect of limb (b), the prescribed libraries that are exempt from paying remuneration are those set out in paragraphs 2-6 of Part A of Schedule 1 to the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989 (SI 1989/1212) [see regulation 35 of the Copyright and Related Rights Regulations 1996 (SI 1996/2967)]. I note the statement in your letter that "any library which lends to the public other than the narrowly defined public libraries are currently exempt from remunerating authors for loans" (my italics) and would like to take this opportunity to emphasise that the vast majority of libraries in the UK – that is, all public libraries delivered by local library authorities – fall within the PLR scheme. I will set this out in further detail below.

Under section 1(1) of the Public Lending Right Act 1979, authors have a right to receive payments from time to time from the Central Fund for the lending of their books to the public by local library authorities in the UK. In England and Wales this means a library authority under the Public Libraries and Museums Act 1964. Therefore PLR payments apply only to the libraries (in England and Wales) within "the statutory public library service" delivered by library authorities under the 1964 Act.

## Society of Authors' Briefing note on PLR and Royalties from Library lending May 2013

It does not follow that all volunteer/community supported libraries fall outside the "statutory public library service" delivered under the 1964 Act. It is entirely possible for a volunteer supported library to be included within the library authority's statutory public library service.

The key determinant here is whether the library authority considers that library to be part of its "comprehensive and efficient" public library service under the 1964 Act.

Even if it is considered that a particular volunteer-supported library is not part of the statutory public library service for the library authority concerned it would likely fall within one of the definitions of prescribed libraries for the purposes of section 40A(2) of the 1988

Act. This means that such community or volunteer libraries may lend books to the public without breaching copyright.

Therefore loans of books from volunteer/community supported libraries forming part of the statutory public library service delivered by library authorities under the 1964 Act will be within the PLR Scheme. If a particular community/volunteer supported library falls outside the statutory library service then it is still allowed to lend books even though the loans are outside the PLR Scheme, under a permitted derogation in the EU directive.

If you consider that the analysis set out above is flawed in any way you are of course at liberty to take independent legal advice.

As you know, the Grant in Aid budget for PLR decreases by 15% in real terms during this spending period which, given the scale of budget reductions elsewhere, shows the Government's commitment to the importance and value of the scheme. In the current circumstances this represents a fair settlement for PLR, a point the Society of Authors noted at the time of the Spending Review. You will appreciate that I am not in a position to offer assurances about future Spending Review settlements for any of our bodies, however, I would say that it does not follow that there would automatically be a significant reduction in overall book loans within the PLR scheme in any period of time as a result of a number of libraries transferring out of authority control.

In our previous correspondence I have referred to the Government's decision to postpone any amendment to PLR legislation to extend PLR to audiobooks and certain categories of e-books, as enabled by the Digital Economy Act 2010. The Department does not accept that this postponement constitutes a breach of the Directive.

Finally, I note the Society of Authors' interest in my proposals for an independent review of e-lending in public libraries. We expect that the review will begin in the autumn, and we will announce details shortly.

Ed Vaizey MP

Minister for Culture, Communications and Creative Industries



2.9 Ed Vaizey Parliamentary answer.24 May 2013



**Dan Jarvis** (Barnsley Central, Labour)

To ask the [Secretary of State](#) for [Culture, Media and Sport](#) what steps she is taking to ensure that local authorities properly reward writers and creators for the use of their works in lending e-books and audio books via public libraries in accordance with the Copyright, Designs and [Patents Act](#) 1988.

- [Hansard source](#) (Citation: HC Deb, 21 May 2013, c697W)



**Edward Vaizey** (Parliamentary Under Secretary of State (Culture, Communications and Creative Industries), Business, Innovation and Skills; Wantage, Conservative)

It is the responsibility of library authorities to reach appropriate agreements with non-print rights holders or with other parties on behalf of those rights holders in order to license the lending of their non-print works.

3. Sieghart Report.

3.1. SCL Position on ebook lending in libraries April 2012

The Society of Chief Librarians is committed to working together with the wider book trade to responsibly grow the e-book market in a way that protects the legitimate commercial interests of publishers.

The Society of Chief Librarians is committed to working together with the wider book trade to responsibly grow the e-book market in a way that protects the legitimate commercial interests of publishers. We believe that:

Public libraries have a key role in widening access to e-books, reaching out to all sections of local communities including those that cannot access printed material easily or can only access services remotely.

Our role in promoting IT literacy, providing access to the internet for those with and without IT experience/ hardware and providing a wide range of e-resources is important to society as a whole.

Public libraries encourage wider, risk free reading and valuably support reader development whether it be signposting good reads, supporting reading groups or encouraging interaction between readers, authors and publishers.

Our aim now is to seek common agreement on what library e-book lending models will be and how we will operate, thereby encouraging more publishers to make UK content available for libraries to purchase or licence. Since there have been concerns about the library role in providing e-books for remote downloading, we are putting forward the following proposals and ways of operating to deal with the issues raised:

1) Licensing models

It is essential that public libraries respect the licensing models that e-book suppliers (by this term we mean the aggregators who act as intermediaries between publishers and library authorities) sign up to with publishers and it is important that the way these work are transparently clear to all. A clear statement of what libraries responsibilities are should be set out by all e-book suppliers and all libraries that contract with them will agree to abide by those responsibilities. In turn we would not wish to do business with e-book suppliers if they cannot demonstrate that they are respecting the rights of content owners and are making e-books available to purchase as authorised.

2) Library Membership and Access to E-Books

It is essential that libraries respect the geographical boundaries to access to e-books that are stipulated by library suppliers and publishers. As with any other service, library membership is open to all those who live, work or study within the confines of the authority concerned and SCL believe that this will meet the standards expected of us. Particular care will be taken when dealing with online applications for membership.

3) Digital Rights Management

Libraries expect that e-book suppliers will be able to demonstrate the robustness of their digital rights management systems to ensure that illegal file sharing does not take place and for publishers' legitimate commercial interests to be respected. Public libraries would not wish to be associated with a service that is not delivered responsibly or to contribute to any development that would distort the e-book marketplace or harm the rights of publishers and content owners. Libraries would expect e-book suppliers to be able to demonstrate

periodic monitoring of file sharing in order to monitor potential abuse. Should there be any concerns about DRM, meetings between suppliers and publishers will be set up so that negotiation of appropriate solutions can take place.

#### 4) Purchase or Licensing Model

SCL wants to ensure that purchasing or licensing models operate in a way that facilitates access. Some publishers may be concerned about allowing their e-books to be sold to libraries for use in perpetuity, although others may not. Libraries are open to different solutions that publishers may wish to explore in order to make their content available. The options range from selling backlist titles at a normal paperback price to charging a 'hardback price plus' for latest releases to releasing titles to libraries after a 'holdback period' to licensing e-books to libraries either for a specified time period e.g. 2-3 years or for a specified number of issues. If the latter course is pursued, libraries would hope that the limits would be set in a way that reflects the use that a hard copy version of the same title would enable e.g. the average loans for a popular hardback novel are approximately 100 and for a paperback one 50. Of course, not all solutions are as easily implemented as others by e-book suppliers so a dialogue should be established to explore the most suitable options.

#### 5) Level of Customer Access

SCL would like to encourage the widest possible range of access models to digital material that respect publishers and content owners' rights. It should be noted that the single copy single user model while perfectly acceptable for use in a library e-book model does however have some inbuilt disadvantages in inhibiting wider access. Where publishers are willing to explore multi user access for certain titles and maybe for a specified period for a suitable price, then libraries and e-book suppliers would be pleased to explore how a wider model might work. In principle, libraries are inherently wedded to facilitating the widest possible access that is compatible with respecting publishers commercial imperatives. We would also wish to seek support for the aim to enable access for all including those with visual and other disabilities.

#### 6) Fee or Free

Some publishers will feel inherently concerned about libraries who make e-books available free of charge. However, many library services will feel equally concerned if they had to make a charge for reading a book in an e-format that is free of charge if loaned in hard copy. The principle of free access to books in all formats is one that SCL would like to see upheld in all library services. We also recognise that decisions about the delivery of library services is a local matter to be determined by locally elected representatives. Where charges are introduced under local decisions our approach would be recommend that a concessionary approach is taken to ensure that charges do not become a barrier to those customers most in need. Digital inclusion is a priority for library services. Increased access to the digital world whether for information or reading for pleasure is at the heart of what libraries do which is why we are major partners in Race Online 2012 and are working closely with The Reading Agency and publishers on a strategy to share digital marketing approaches to widening audiences for reading. Where the book is only available in e format we would recommend a no charging approach.

However, all e-book suppliers will be expected to develop a customer charging system that could be implemented as needed. In addition all libraries would wish to work with suppliers and publishers to develop commercial add-ons to their basic services e.g. links to commercial sale sites on library websites. These could publicise complementary services – purchase an e-book if a library copy were on loan. It should be remembered that many borrowers are book buyers too. Libraries expect suppliers to develop service options

that can be readily implemented and would wish to facilitate dialogue between library suppliers, providers of e-books and publishers.

#### 7) Models of Access and Remote Downloading

The downloading model is only one potential model that can be considered for the future. Already with Public Library Online, we have a different access model – annual licensing of multi use read online titles. Libraries would wish to maintain a dialogue with suppliers and publishers about the technical implications of how customers are/might wish to access e-books since this is a rapidly changing market. Hardware, software, mobile technology, web solutions may well change the nature of the debate. Libraries are open to discussion with both suppliers and publishers about alternative models of delivery that respect all the rights mentioned above.

#### 8 The Public Library Offer in the E-Book Marketplace

Our customer offer of wider, risk free reading, of access to books by new writers, of signposting good reads, of facilitating feedback and discussion about reading, of providing guidance, support and books to reading groups, of providing continuing access to publishers back lists and of widening the range of potential customers for e-books beyond those that can afford the purchase of new IT kit – all this comprises common interest with the book industry as a whole. As such, it identifies a number of areas ripe for joint working – building on the work of bodies such as the Reading Agency and those involved in the Reading Partners initiatives. SCL believes that the role of libraries in encouraging new entrants into the digital world will widen the marketplace for mutual benefit.

SCL hopes that the above proposals and ways of working, which we will seek to refine in discussion with publishers, suppliers and other interested parties, will identify a common way forward, acknowledging the library role in providing access to a wide range of e-books whether by remote downloading or via other service models. It is vital that libraries maintain a position and play a positive role in the developing e-book marketplace for the good of all.

# The Society of Authors

## Response to e-Lending Review: Call for Evidence

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**To the e-Lending Review Panel:**

**William Sieghart**, Chair of the e-Lending Review, founder of Forward Publishing and the Forward Prize for Poetry;

**Janene Cox**, President, Society of Chief Librarians and Commissioner for Tourism & Culture, Staffordshire County Council;

**Roly Keating**, Chief Executive of the British Library and formerly Director of Archive and Content for the BBC;

**Caroline Michel**, CEO Peters Fraser & Dunlop;

**Stephen Page**, Chief Executive of Faber & Faber;

**Joanna Trollope OBE**, author;

**Jane Streeter**, Bookseller, past President at the Booksellers Association and soon to be Chair of Writing East Midlands

e-mail: [E-Lending@culture.gsi.gov.uk](mailto:E-Lending@culture.gsi.gov.uk)

**Introduction**

The Society of Authors exists to protect the rights and further the interests of authors. The Society was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators). Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent or have sold over 300 copies of a self-published book. The members of our council are listed at <http://www.societyofauthors.org/about-us/council>.

The Society is delighted that the panel, under the chairmanship of William Sieghart, has been commissioned by the Minister for Culture, Communications and the Creative Industries, Ed Vaizey MP, to conduct an independent review of e-lending, to help ensure that libraries and their users, authors and publishers can all benefit as this fledgling service grows. This is an initiative that the Society has recommended for some time. We have been pleased to note that the various interested parties are discussing the issues around ebook lending so thoughtfully, and are confident that suitable mechanisms can be devised which will allow libraries to offer ebook lending while meeting the legitimate concerns of authors, publishers and booksellers.

**Summary**

- 1 Terms around elending should be carefully defined.
- 2 Libraries are essential to a civilised society. A comprehensive and efficient library service for the 21st Century must allow free access to physical books in safe, comfortable, convenient and accessible space. It must be knowledgeably managed and curated by trained professional staff.
- 3 Remote lending of ebooks is not an essential or primary role of an efficient library service and that any plans to allow remote e-lending must be carefully thought through and managed. Remote elending could be at the expense of other essential library functions with a disproportionate impact on the poor, the young, the elderly and the disadvantaged.

- 4 Any model for library ebook lending must be sensitively managed and controlled to ensure that it does not compete with ebook purchasing as there may be little for a consumer to choose between the two.
- 5 ebook lending must not unbalance an already strained book selling market or damage independent bookshops.
- 6 Licences of ebooks by publishers to libraries must be on a basis which fairly remunerates an author. Authors should be remunerated for all loans of ebooks and PLR should be introduced on ebook and audiobook loans.
- 7 The copyright position in relation to ebook lending should be clarified.
- 8 All ebook lending from libraries should have robust and effective protection to prevent piracy and unauthorised copying.

## Definitions

Without wishing to be pedantic, we believe it is important to start by defining some terms that we use in this submission. We note that the Terms of Reference refer to e-lending. That is a wide and undefined term that could refer to anything from downloads of whole books, to extracts of books, electronic versions, apps, bundled content, magazines etc. Terms such as "ebooks" which are commonly used have no industry-wide definition and are understood differently by different people.

For the purposes of this submission we use the following definitions:

"Ebook": a digital copy of a printed book that embodies the verbatim text or text plus illustrations (if there is no printed volume form book, a work in digital form), for reading and including text-to-speech functionality but without other audio or visual components or enhancements.

"Electronic version": any digital version of a work other than as an ebook (including "apps" but excluding audiobooks, films, videos, television programmes or computer games).

"Library": a public library which a local authority considers to be part of its statutory library service as set out in the Public Libraries and Museums Act 1964 (this would exclude school libraries and some volunteer libraries);

"Lending" or "elending": making an ebook available to be read on an ereading device for a short and defined term by a library (technically this might amount to "lending", "rental" or "communication to the public" in copyright law).

### 1 The Benefits of Library e-lending.

Members of the Society are concerned about libraries both as suppliers of books and library content and as heavy users of libraries both for reading for pleasure and for research. They are strong supporters of libraries and believe that a comprehensive and efficient library

service for the 21<sup>st</sup> Century must allow free access to physical books in safe, comfortable, convenient and accessible space. It must be knowledgeably managed and curated by trained professional staff. We believe that the continuing library cuts and closures will have a devastating, long-lasting and irreparable effect on local communities as well as on the wider community and the nation.

Libraries need sufficient funding to update, maintain and augment stock and ensure that an exciting and comprehensive range of books are available for reference and loan. Books, whether physical or digital, must be at the core of a library. Access to ebooks within the library and the ability to borrow them from the library will be increasingly important. However we remain strongly of the view that remote lending of ebooks is not an essential or primary role of an efficient library service and that any plans to allow remote e-lending must be carefully thought through and managed. We are concerned that in an era of increasingly limited funds remote e-lending could be at the expense of other essential library functions and that this would have a disproportionate impact on the poor, the young, the elderly and the disadvantaged as well as on some minority ethnic groups:

- **Physical Space** Many villages, small towns and residential areas have already lost their post office and possibly, the local pub. The library is a safe haven, a source of valuable information, a centre for education and entertainment, the provider of internet access and other valued services such as mother and toddler groups, homework clubs, internet access and home delivery to the housebound. As comedian and author Tony Hawks has commented, in many communities it is the only place where a person can go during the day to keep warm in a free and safe environment.
- **Curation and advice** One of the great services that physical libraries provide is curating content and introducing readers to new books. This is particularly important for young readers and for researchers. Whilst a good library website may direct a user to other sources based on previous searches, there is nothing like a real librarian to introduce readers to the excitement of new and different books, not just those dictated by algorithms. This cannot be done remotely. This is particularly important for those less familiar with computer technology.  
*Google can bring back a hundred thousand answers. A librarian can bring you back the right one – Diana Tixier Herald.*
- **Equality** At a time of cuts, we believe that library resources should be focused on those least able to obtain books from other sources, rather than those who can afford ebook readers. Although e-reader prices are reducing, their cost is still outside the budget of many readers. Libraries are especially used by young children, the elderly and the disadvantaged, most of whom do not have access to e-readers.
- **Cost** The cost to the library of offering ebooks is not only the cost of the book itself but the cost of buying appropriate hosting services and maintaining websites. If websites are to be relevant and provide a useful service to readers, particularly remote readers who will not have access to real librarians, they will have to be constantly updated. This is expensive. At present there are 151 separately managed library authorities in England alone. Each library authority hosts and curates its own website which leads to unnecessary duplication and staff costs. Already, only a very small proportion (around a tenth) of all the public money received by libraries is actually spent on books (including ebooks) and other materials, and in many authorities this



amount is being further cut to deliver savings. We are also concerned that libraries may spend vast amounts of money on systems which may be obsolete in a few years.

- Range A centralised lending service, as recommended by some, may provide economies of scale but does have pitfalls: in particular, a centralised service may mean that librarians are unable to take into account the needs and preferences of their own area leading to an undesirable homogenisation of book stock, with particularly detrimental impact on books by local authors or local history- areas which are very popular for library lending at present.

**2. The current level and nature of demand for e-lending in English libraries, along with a projection of future demand. For example, will e-lending be in addition to traditional borrowing of print books, or is it likely to transform the way in which library users access services? What is the demand for downloading e-books remotely, that is, away from library premises? To what extent do owners of e-readers value public e-lending above what is freely or commercially available elsewhere?**

The Society does not have independent evidence on these very pertinent questions and does not wish to duplicate the documents which will be submitted by libraries, publishers and other interested parties. The Society believes that there is a need to obtain independent evidence on these issues but also cautions that the value of today's evidence may be limited; all evidence in this area is essentially guesswork. Widespread use of ebooks is still relatively new. Sales of ebooks have grown rapidly while print sales are falling. Sales are continuing to grow though the rate of growth seems to be slowing. It is impossible accurately to predict demand or growth rates over the next few years. The growth in demand for e-lending through public libraries will inevitably be impacted by the decision of Amazon to launch its ebook lending service in the UK (which includes payments per loan to rightsholders), using the very popular range of Kindle readers. Amazon has the market power to bring about huge changes to the way books are lent and sold, with consequences for libraries, publishers, authors and readers which are largely out of their control. One of the reasons that publishers are so cautious is that this is simply unknown territory.

**3. Current supply models, barriers to the supply of e-books to libraries, and likely future trends.**

There are a number of models for supply of ebooks to libraries and these are better described by publishers, libraries and suppliers than by the Society. However we would highlight the following current barriers to the supply of ebooks to libraries.

- Damage to the book market The potential is for remote ebook lending to be much quicker and easier than buying or borrowing a printed book. If you can obtain an ebook from a library for free at the click of a mouse, why would you then go into a bookshop to buy, particularly the types of book which are traditionally borrowed from libraries? Until publishers and bookshops are reassured that lending by libraries will not damage the already fragile book market, they will be cautious about developing lending models.
- Copyright Lending and rental of ebooks are, technically, separate rights from copyright. Briefly, in copyright terms, lending from libraries of ebooks constitutes either "lending" if downloaded within the library premises, or 'communication to the

public' if downloaded from outside library premises. Both are copyright acts which require permission from the copyright owner. As a general rule authors have the copyright of their works and license publishers to exploit their copyright under contract. Not all publishing contracts grant these rights to the publishers and publishers need to ensure that they have all relevant rights before granting any rights to libraries. Such contracts should grant a fair share of royalties from ebook exploitation to authors. Authors will be reluctant to license their rights if publishers continue to offer artificially low royalties for such rights.

- **Authors' Earnings-** Authors' incomes continue to be squeezed: advances have fallen while more unpaid work is expected of authors in marketing and publicising their work, including appearances and use of social media. In a survey in 2006, ALCS concluded that writing is a very risky profession with median earnings of around £12000 for "professional" authors and around £4000 for all authors, less than one quarter of the typical wage of a UK employee. Benchmarking the results against the Society's survey, reported in 2000, indicated that the earnings of a typical author were deteriorating in real terms. This trend is continuing. Authors need to earn reasonable amounts from the considerable effort put into writing in order to continue producing inspiring and informative books (in whatever format) in all genres.
- **"Lending Rights"** Maintaining an author's copyright is of critical importance. Whatever frameworks might be developed for lending ebooks, libraries should only be able to loan out a work if they have the rightsholder's permission. We understand that there is a suggestion by libraries that lending of ebooks by libraries should be made a statutory exception to copyright with no provision for remunerating authors. Such a change would be unacceptable as it would not comply with the "Three Step Test" which holds that copyright exceptions can only be allowed:
  - 1) in certain special cases
  - 2) that do not conflict with a normal exploitation of the work and
  - 3) do not unreasonably prejudice the legitimate interests of the author.Library lending would clearly conflict with the normal exploitation of the work (by threatening book sales) and would prejudice the legitimate interests of the author since the author would not be remunerated.
- **Piracy:** We understand that there is a real danger of ebooks lent by libraries being copied illegally, as some books do not have DRM protection and it seems experienced pirates are able to get round the DRM protection currently employed. Obviously, authors would wish to be reassured on this issue before consenting to lending of their work.

#### 4. **Systems for remunerating authors / publishers for e-lending.**

- Authors would be happy with any method of remuneration for ebook lending which ensures they receive payment which fairly remunerates them for the initial "purchase" of the ebook and for individual loans. Publishers should be free to negotiate with libraries to agree favourable and appropriate terms. Different models may work in different circumstances. However, any model proposed should be carefully tested by authors, publishers and bookshops and its impact evaluated before

introduction to ensure that the rightsholders' interests and bookshop sales are not adversely affected.

- We are not against libraries charging for ebook loans – either by way of a straight charge per loan, or by means of some scale. Libraries currently charge to loan out CDs, DVD, and audiobooks. Charging for borrowing ebooks would not create an exception and would produce some much needed revenue for the library but any such revenue should be ring-fenced for book and ebook purchases.
- PLR Any ebook lending which is not otherwise remunerated should result in a Public Lending Right ("PLR") payment to the author. The Rental and Lending Directive (2006/115/EC which replaces the repealed 92/100/EEC) creates a "rental and lending right" under which authors have the exclusive right, subject to limitations, to authorise or prohibit the rental or lending of their works [Art. 2(1)]. The rental and lending right may be transferred. However, even once the rental and lending right is transferred, the author or performer retains an inalienable and unwaivable right to equitable compensation for the rental and lending of their works.

The PLR scheme provides authors with a modest payment each time one of their books is borrowed from a public library. PLR is designed to balance the social need for free public access to books against an author's right to be remunerated for the use of their work. PLR is particularly important to authors whose books are sold mainly to libraries and to those whose books are no longer in print but are still being read. Press coverage tends to focus on a few successful authors, yet most struggle to make ends meet. PLR provides a significant and much-valued part of authors' incomes.

S 43 of the Digital Economy Act 2010 extends PLR to audiobooks and ebooks "lent out" from library premises for a limited time but these payments have never been implemented. This is patently unjust and we urge that this provision be brought into force and that extra funds be made available to cover PLR payments for such lending. We have been in long correspondence with DCMS on this subject and in relation to lending from volunteer libraries (which are likewise excluded from PLR) and our latest letter is attached as an appendix.

The amendments in section 43 of in the Digital Economy Act 2010 only extend PLR to audiobook and e-book files downloaded within the library premises, as downloading from outside library premises may constitute 'communication to the public' rather than 'lending'. It is unsatisfactory that such issues should be considered piecemeal. We urge you to recommend the Government to implement s43 without further delay and, if remote ebook lending from libraries is to be authorised, to ensure equitable remuneration to authors in relation to the resulting "communication to the public." The failure to implement these payments is a clear breach of the Rental and Lending Directive.

5. **The impact of e-lending on publishers and their business models.**

Although restrictions on funding may mean that the volume of library loans are low, we are concerned that library lending may have the unintended effect of undervaluing retail pricing; library ebook lending must be sensitively managed and controlled to ensure that it does not compete with ebook purchasing as there may be little for a consumer to choose between the two. It is important that consumer perception is managed so that consumers understand that the real cost of creating a book is not its physical form but the creative work of the author in writing the book and the work of the publisher in editing, design, production and marketing.

6. **Any unforeseen consequences of e-lending. For example, the impact on those who cannot keep up with technology, the likely long-term impact on the model of highly localised physical library premises, skills requirements for librarians, etc.**

Much of this has been covered above. However one very important issue is to ensure that such lending does not unbalance an already strained bookselling market or damage independent bookshops, which are very important in introducing people to books, supporting culture and literacy and as a showcase. In particular, libraries should not be allowed to sell books. The Booksellers Association has developed a *Find Your Local Bookshop* button which libraries can place free of charge on their consumer facing websites which links the browser through to the BA's searchable database of booksellers

We are also concerned that library lending may not prove to be viable in the long term. As we have mentioned above, the cost of curating the website and keeping the ebook offering up to date is high. The 151 library authorities in England will face competition in the evolving lending space from commercial services such as Amazon which will exploit their considerable technical and marketing expertise and lock in borrowers through their popular ereaders such as the Kindle range. Inadequate funding, weak customer service and a failure to keep up with technical innovation may undermine the viability of an lending service provided by library authorities.

We hope that these points are helpful. We would be happy to provide any further information which may be useful, and to provide oral evidence to the review.

(c) Society of Authors November 2012

To [E-Lending@culture.gov.uk](mailto:E-Lending@culture.gov.uk)

### 3.3. Independent Review Of E-Lending In Public Libraries Submission From The Publishers Association. November 2012

#### **INDEPENDENT REVIEW OF E-LENDING IN PUBLIC LIBRARIES SUBMISSION FROM THE PUBLISHERS ASSOCIATION**

##### ***Introduction***

1. The Publishers Association („the PA“) is the representative body for book, journal, audio and electronic publishers in the UK. Our membership of 120 companies spans the academic, education and trade sectors, comprising small and medium enterprises through to global companies. The PA's members annually account for around £4.6bn of revenue, with £3.1bn derived from the sales of books and £1.5bn from the sales of learned journals.
2. The PA welcomes the Sieghart Review of e-lending, which will bring renewed impetus and focus to discussions between publishers and librarians which have been on-going for over two years. Ever since the issue of e-lending came to the fore, The PA and its member companies have been fully engaged in discussions with the library community. Publishers are alive to the fact that the issue of the e-book lending needs to be addressed and are keen to find a solution - or more likely range of solutions – to support e-lending. But any such solutions must be sustainable; for authors, publishers and booksellers, as well as for libraries and their patrons.
3. The advent of e-reading has seen our industry continue to thrive, adapting to advances in technology to develop new offerings to consumers. Consumer-friendly innovations in both hardware and content are reflected in the continued growth of the UK consumer e-book market, which rose by 366% in 2011. Digital fiction sales increased by 188% between January and June 2012 (relative to the same period in 2011) and overall digital sales currently represent approximately 13% of the combined print and e-book market – but in some genres and titles, digital's share of the market is closer to 50%. Against this backdrop it is understandable that libraries will want to ensure they keep pace with their anticipated patrons' demands. However, the nub of the problem is simply stated: how do we ensure a sustainable future for authors, publishers and booksellers in a world in which it is precisely as easy to borrow an e-book for nothing as it is to buy one.
4. At the outset, and not wishing to pre-judge the Review, it would seem unlikely that the answer to how to provide for e-lending in public libraries lies in a single, neatly codified solution. Instead, publishers are likely to continue experimenting with a range of different models, especially mindful of that fact that competition law governs what publishers can collectively say or do in terms of common systems.
5. We would also like to make clear that we do not see any solution to the issue of e-lending in public libraries as being related to the copyright framework. Whilst it may be the case that certain elements of the law will need to be clarified (such as around public lending right), we believe it is the case that the current IP framework can accommodate whatever solution(s) are proposed by the review.

##### ***Publishers and Libraries***

6. Publishers have a long-standing positive relationship with libraries and across our membership libraries are seen as an absolutely vital element of our country's reading culture. We recognise the immense value professional librarians deliver to their readers in helping with discovery, recommendation and developing reading audiences. This role is of particular importance to publishers at a time when bookshops are under such strong commercial pressure. Unlike in some other economies – such as the US – sales to the public libraries sector are relatively small, and so British publishers' interest in a thriving library community is not so much a directly commercial question as one of long-term reader development and audience building. Publishers are also attuned to and supportive of the public interest mission of libraries, particularly regarding literacy, and the provision of books for those less able to afford or access them.
7. A number of our members are founding partners of *Reading Partners and Children's Reading Partners*, The Reading Agency's (TRA) initiatives to increase the collaboration between publishers and libraries, through which publishers are active in promoting author events at libraries. Several publishing initiatives geared at boosting reading and literacy, such as World Book Day, World Book Night and Quick Reads, see publishers engaging directly with the library sector and encouraging readers into their local libraries.
8. Furthermore, with TRA The PA is currently delivering an Arts Council "Commercial Partnerships" programme under the "Libraries Development Initiative" to support the strategic aims of library services through giving libraries access to publishers' digital marketing skills and assets. This has involved the creation of six practical projects to act as case studies of excellent practice in digital reading initiatives, with evaluation of how well new

digital reader services help build audiences for reading. The findings and outcomes will be accessible to all libraries in England.

9. Publishers are also working on the TRA National Reading Offer, which is aimed at helping libraries combat the effect of cuts by working together as a network to share costs through shared programmes, and supporting the TRA Reading Groups for Everyone campaign to increase the number of reading groups to 2000 by 2013.

***E-lending: level and nature of demand***

10. Publishers support the continuing and important role of libraries in promoting literacy and in the provision of reading materials for those less able to access and/or purchase them. Publishers also understand the desire of libraries to keep pace with their patrons' reading habits, and to provide e-lending facilities in line with current market trends. Whilst there clearly is a level of demand for e-lending – and which is being met by existing services – there appears to be no clear evidence as to the size of the potential "market", nor to what extent patrons' demand is currently frustrated or untapped.

11. The UK would greatly benefit from detailed research of the kind provided by the Pew Research Centre to the US market ([www.pewinternet.org](http://www.pewinternet.org)). For example, in its recent report of October 23 ("*Younger American's Reading and Library Habits*") it found that although the biggest borrowers are 16-17 year olds (37% of whom borrow e-books), this group does not have a greater propensity to buy e-books (its 26% being in line with other demographic segments). Furthermore, the Pew Research paper of June 2012 ("*Libraries, Patrons and e-books*") reported that "*some of the most avid library users report they are going to library branches less and using the library website more for book and audio downloads*". These, and other insights, are invaluable to an understanding of the library environment and the debate in the UK would be the richer for having a similar source of expert quantitative and qualitative data to explore.

12. Notwithstanding the question over the extent of demand for e-book borrowing from libraries (and as distinct from the wider demand from commercial providers) there is a strong probability that the widespread introduction of e-lending at this juncture could seriously impact upon sales in what is still a nascent e-book market. Put bluntly, in an environment where it is as easy for a remote user to buy an e-book as to borrow it at no cost, many more people will opt for the free option. The lack of any clear statistical evidence to the contrary, means it is impossible for publishers to discount the potential harm posed by remote e-lending; harm which would extend beyond their own businesses to the livelihoods of authors and booksellers. Ultimately, the reading public would suffer dis-benefits too, through the knock-on negative impacts of restricted choice, quality and quantity of new titles.

13. Windowing has been suggested as a possible solution (i.e. avoiding direct competition between borrowing and buying by allowing libraries to lend e-books only after a certain period during which they would be available for purchase only). This might point towards a solution with regards to front list titles – those currently prominent in the marketplace – but would not be helpful for backlist, i.e. those titles over 18 months or so old for which demand is lower. Generally it is easier to borrow these backlist titles (given the lower demand, availability tends to be high) and so there is no pressure on the patron to resort to a purchase. The biggest impact of e-lending would thus be likely to be felt more by less well-known, less commercially successful authors.

14. Charging a nominal fee for e-lending has been suggested by others as a possible avenue. However this could also prove problematic, as it will set (in the consumer/user's mind at least) a base price for e-books, which could significantly reduce the price of e-books in the commercial market to the detriment of publishers' revenues and long-term viability. In addition, it would reduce the perception in the consumer mind about the value of books and e-books in particular. We look forward to the Review's detailed consideration of these options.

***Current supply models, barriers to the supply of e-books to libraries, and likely future trends***

15. There are a number of commercial e-lending models in existence in the UK which, to varying extents, integrate with the public library service. These include, to name a few, Bloomsbury Public Library Online, OverDrive, and the recently launched Amazon Lending. Others, are set to follow. These models also attest to is the willingness of publishers to provide e-lending services to match consumer demand, and to trial a range of models to alight on the most sustainable model suited to individual business needs.

16. Publishers' willingness to experiment in the library sector is most apparent in the US market (which is generally thought to be around 18 months ahead of the UK e-book market). Examples include:  
□ the 3M Cloud Library and Saint Paul Public Library, which provides 3M e-readers for loan, 3M Discovery Terminals within the library, and the ability to borrow e-books that are compatible with a range of devices.

- HarperCollins' library lending trial involves the lending of an e-book for a two-week period 26 times before it has to be repurchased by the library;
- Penguin is experimenting with windowing, making a book available for e-lending but only after a period of time has passed since the book was released on general sale.
- Service providers such as OverDrive are able to deal with different business models from different publishers and are also able to offer both publishers and libraries a suite of ways of doing business together.

17. It is clear that publishers are taking steps to experiment with different supply models. The key is for publishers to retain control of how their works are lent and for them to have the freedom to trial the models that are best suited to their own individual businesses. One size will not fit all.

18. The existence of these commercial e-lending propositions also raises further, more profound, questions about the role of e-lending in public libraries. If purely commercial e-lending models were to gain traction in the market – i.e. rental or subscription services which had no connection with the public library service – public libraries would find themselves in competition with these. Given the greater resources, brand recognition and sophistication which commercial players can often bring to bear, this could turn into a competition which public libraries had no hope of winning. Conversely, commercial operators could come to perceive public library services as unfair competition; a case of state funding being used to skew a market.

19. There is a strong political, even moral, justification for state funding to be deployed to fill a gap in provision or address a market failure: such was the case when public libraries were brought under statutory control by the 1964 Act and by which local authorities have the duty to spend public money on their provision. The need for this continued provision with regards to print books would appear to be unarguable. But, if given the rapidly evolving conditions in the e-book market, it transpired that the provision of e-lending was being – or started to be – addressed by commercial players, the justification for state funding for this provision would begin to erode. The argument from market failure would weaken considerably. Furthermore, the converse case of the prospect of a nascent commercial market in e-lending being “crowded out” by the presence of public funding would gain strength, as would-be smaller entrants to the market may feel unable to compete with both the presence of state funding and the entrenched might of the existing commercial players and the presence of state funding.

20. At the crux of this argument lies the thought that it might be incorrect for policy in this area to follow a *mutatis mutandis* argument that what was right for print books must axiomatically be right for e-books as well. The underlying copyright work might be the same, but the delivery of them certainly is not, and nor are the economic factors surrounding the distribution and acquisition of them. The experience of very many creative sectors to date shows us that racing to replicate the physical market in the digital world is at the very least fraught with danger, and at worst, totally the wrong thing to do.

21. We therefore urge the Review to consider carefully this question of public and private provision of e-lending services now and in the foreseeable future, and to analyse what the implications are and will be for local authorities.

22. A further important consideration is the sheer complexity of supply chain technology. The Review might wish to consider the difficulties for a library service in supporting and maintaining the technical aspects of any e-lending ecosystem or, as may be necessary, supporting a number. For example, currently a Kobo owner would need to navigate multiple third party systems and be required to: create their account with the aggregator; register their computer with Adobe digital editions; authorise their device with Adobe Digital Editions; and, most importantly, register with their library. After all this, they would still need to borrow the e-book from their library site using a desktop computer to which they physically attach their Kobo reader to transfer the file. Meanwhile, compare this complexity to the simplicity of the Amazon KOLL programme which allows a patron to download an e-loan straight to their Kindle.

23. Some of this complexity may be resolved over time and as technology improves but it is not in the publishers' gift or competence to resolve this imbalance; but nor is it clear who is well-placed to resolve it.

#### **Systems for remunerating authors / publishers for e-lending.**

24. The Public Lending Right (PLR) delivers a modest payment to authors on each book lent out by libraries. Currently this applies only to physical books. Whilst the provision for PLR to be extended to e-books and audiobooks was introduced under Section 43 of the Digital Economy Act 2010, the Government has said it does not intend to implement this extension, due to financial constraints (the PLR being directly funded by the DCMS). The PA supports the call of the Society of Authors and others for Section 43 to be fully implemented and for extra funds to be made available to cover PLR payments for such lending. If libraries were to begin lending e-books without a PLR extension authors will not receive any royalty payment for e-book loans. And if

e-book borrowing were to significantly substitute for physical borrowing (as would be highly likely) then this would clearly impact upon authors' income.

25. Given the terms of the EU Rental and Lending Directive (2006/115/EC) we also note the lack of clarity on the legality of any schemes predicated on remote e-lending - i.e. where downloading takes place outside of library premises. This activity would appear to be classified as "rentals" by the Directive and Government must ensure that authors are remunerated for this.

26. Further, it is unclear whether volunteer libraries, or those which fall outside of the statutory library service, are legally covered by the Rental and Lending Directive. In other words, it is currently unclear whether libraries not classed as part of the statutory library service need to remunerate authors via PLR (we note this question is the subject of an on-going exchange between the Society of Authors and the DCMS).

27. Concerns regarding PLR can also be seen in the context of recent proposals to move the administration of the scheme away from the Registrar of Public Lending Right, which has led to concerns about the future funding of the scheme (amongst other issues). Whilst the Government has said that the amount allocated to PLR will remain the same (around £6.3million for 2012/13), this funding will need to increase if e-book loans are introduced.

28. It should be noted that one of the key benefits of the commercial models already in existence is that publisher and author remunerations come through clearly articulated and guaranteed licence agreements.

#### **The impact of e-lending on publishers and their business models**

29. In addition to publishers' commercial concerns there is the added threat that untested or badly constructed e-lending models could lead to greater exposure to online copyright infringement. All of the current methods of protecting e-books from online copyright infringement (digital rights management or "DRM") have been successfully hacked. To the initiated – and it takes a mere Google search and 90 second instruction video to become so – any e-book, on whatever platform, with any DRM, can be obtained. Although this serious problem goes well beyond the question of e-lending it is important to recognise it as a backdrop to the decisions publishers and authors are making as to the availability of their works online.

30. It is unclear when and how library infrastructure will be updated to facilitate e-lending in a secure manner. Without strict and effective security controls, e-book lending could exacerbate the growing problem of online copyright infringement, in particular if e-book lending is allowed to take place remotely.

#### **Any unforeseen consequences of e-lending. For example, the impact on those who cannot keep up with technology, the likely long-term impact on the model of highly localised physical library premises, skills requirements for librarians, etc.**

31. Like any new innovation of technology e-lending has the potential to deliver huge benefits, but could also disrupt, destroy or dislocate existing economic, social and cultural practices. It is impossible to predict these with accuracy, but points to note might be:

□ *The diminished role of the physical library if remote e-lending became the norm for all users.* This would further reduce footfall within the library, in turn raising further questions about the physical space of a library within the community and the cost of (and need for) maintaining it. This problem may be particularly acute with regards to the mooted national e-lending solution. Depending upon how this is conceived, it is possible that such a system would sever the link between the patron and their local library service. If readers were capable of selecting e-books to borrow from a national catalogue, it is not clear what need they would have of their local library, other than perhaps for authentication (which in any event could be automated). This problem is avoided if the Chief Librarian selects from the national catalogue those e-books to make available to their local patrons, but then this would still require expensive investment by each library service, losing one of the chief advantages of a national solution.

□ *The cost of implementation given huge strains on local authority budgets.* These costs will include the necessary upgrade of library infrastructure to deliver e-books to patrons, including infrastructure robust enough to guard against copyright infringement. Perhaps more significant will be the costs involved in the up-skilling of staff who will need the requisite digital skills to provide a comprehensive service to patrons. As The PA's experience in the Arts Council England LDI project (as noted above) has shown, this is an area where a great deal more development is required. Libraries will also need to consider if and how they purchase and maintain e-readers for patrons to read e-books on. Investment in these technical and human resources may prove impossible in these financially constrained times.



□ *The impact on those patrons – for the foreseeable future likely to be the majority - who wish to continue using their library service to borrow print books.* If funds are diverted from the purchase of print to the purchase of e-books, to cater for a smaller (unknown) constituency, it is unclear how this aligns with libraries' public interest mission and how the majority (who use their library to borrow print books) will continue to be catered for. Libraries are especially used by young children, the elderly and the disadvantaged, most of whom do not have access to e-readers.

□ *The Impact on booksellers and the high street.* At a time when booksellers, particularly smaller independent booksellers, are already facing stiff competition from online retailers to remain competitive (or in some cases even in business), an additional challenge to their businesses in the form of e-book loans could be catastrophic, perhaps especially if libraries were to charge for e-book lending, thus creating a perception in the consumer's mind of price competition between lending and buying.

### **Concluding Remarks**

32. The PA greatly welcomes the opportunity to make this submission to the Review and we would be delighted to provide any further information which may be useful, and to provide oral evidence.

*Richard Mollet  
Chief Executive  
The Publishers Association  
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4 November 2012*

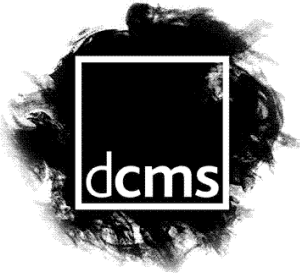
#### 3.4. OverDrive Reply

<http://OverDriveblogs.com/library/files/2012/12/E-Lending-Evidence-and-Experience-from-UK-Public-Libraries-6-Nov-2012.pdf>

3.5. Cilip Reply December 2013

<http://www.cilip.org.uk/get-involved/policy/responses/Documents/Elending%20review%20-%20CILIP%20response.pdf>

3.6. Independent Review of E-Lending in Public Libraries in England Written by William Sieghart ("the Sieghart Report") March 2013



department for  
**culture, media  
and sport**

# An Independent Review of E-Lending in Public Libraries in England

Written by William Sieghart

March 2013

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.



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# Introduction

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## HEAR IT AGAIN

'For out of olde felde, as men seyth,  
Cometh al this newe corne yer by yere,  
And out of olde bokes, in good feyth,  
Cometh al this newe science that men lere.'  
Chaucer: *The Parlement of Foules*

Fourteen centuries have learned,  
From charred remains, that what took place  
When Alexandria's library burned  
Brain-damaged the human race.

*Whatever escaped  
Was hidden by bookish monks in their  
damp cells  
Hunted by Alfred dug for by Charlemagne  
Got through the Dark Ages little enough but  
enough  
For Dante and Chaucer sitting up all night  
looking for light.*

A Serbian Prof's insanity,  
Commanding guns, to split the heart,  
His and his people's, tore apart  
The Sarajevo library.

*Tyrants know where to aim  
As Hitler poured his petrol and tossed  
matches  
Stalin collected the bards...  
In other words the mobile and only  
libraries...  
of all those enslaved peoples from the  
Black to  
the Bering Sea  
And made a bonfire  
Of the mainsprings of national identities to  
melt  
the folk into one puddle  
And the three seconds of the present  
moment  
By massacring those wordy fellows whose  
memories were  
bigger than armies.*

Where any nation starts awake  
Books are the memory. And it's plain  
Decay of libraries is like  
Alzheimer's in the nation's brain.

*And in my own day in my own land  
I have heard the fiery whisper: 'We are  
here  
To destroy the Book  
To destroy the rooted stock of the Book  
and  
The Book's perennial vintage, destroy it  
Not with a hammer or a sickle  
And not exactly according to Mao who also  
Drained the skull of adult and adolescent  
To build a shining new society  
With the empties...'*

For this one's dreams and that one's acts,  
For all who've failed or aged beyond  
The reach of teachers, here are found  
The inspiration and the facts.

*As we all know and have heard all our lives  
Just as we've heard that here.*

Even the most misfitting child  
Who's chanced upon the library's worth,  
Sits with the genius of the Earth  
And turns the key to the whole world.

*Hear it again.*

Ted Hughes, July 1997



**An Independent Review of E-Lending in Public Libraries in England**

The UK publishing industry is undergoing a digital revolution and the conclusion of this process is still a long way off. The full impact of this revolution will transform the structure of publishing, bookselling and book borrowing, whether we like it or not. What this means for each participant, whether they are a writer, agent, publisher, wholesaler, retailer, librarian or reader, is as yet unclear.

What is certain is that the industry is changing very quickly and each one of these stakeholders has a right to feel anxious. My advisory panel- Janene Cox, Roly Keating, Caroline Michel, Stephen Page, Jane Streeter, Joanna Trollope and I- have received evidence, both written and verbal, from all of these constituencies. Their evidence is to be found in the appendix of this review. The overriding sense gathered from hearing these facts and case histories, was of the challenges posed by digital developments, rather than of the opportunities offered, combined with these concerns are the current economic uncertainties that challenge the funding of the library system, and the financial viability of the writers on whom the industry depends, of booksellers and of the publishing industry.

Given the transformative impact of digitisation on the music and film industries, it's not entirely surprising that many publishers, booksellers and writers fear for their financial future. But this review's role is not to try to predict the future for the industry as a whole. It is more narrowly focussed on the issue of the lending of digital versions of books by public libraries: how should this work and what would its impact be?

# What is the problem?

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The arrival of the digital book has already profoundly changed the world of publishing. In some genres and some markets, digital books can outsell their printed versions. The increasingly popular method of reading a book on a small handheld device looks likely to become the norm for future generations' reading habits. Not surprisingly there is a rapidly growing demand from the book-borrowing public to borrow digital books from the local public library. We have also heard of the less obvious benefits to E-Lending: that it is revolutionising the reading experience of the partially sighted reader who can increase font size or change lighting levels appropriately, and that innovative library services are loading up e-readers for the elderly or housebound, who as a demographic are some of the most regular library users but who can increasingly face challenges in accessing traditional lending models.

Publishers, however, have been collectively nervous of applying the same model for selling digital books as for their printed counterparts, when it comes to selling to libraries. This is because of their concerns about remote downloading, where a library member downloads a book on to a digital device via the internet, avoiding the need for a visit to the library at all. This lack of "friction" - a word often used in evidence to us - where there is no need to visit the library, means that the publishers and booksellers fear that it would be too easy to borrow a book for free. So easy in fact, that the borrower might never need to buy another book.

Early experiments of digital lending had led to further mistrust when ground rules had not been effectively established and publishers feared for the security of their digital assets. Concerns about file-sharing, and libraries' ability to delete books after a borrowing period was over, added to these difficulties. Publishers want libraries to be successful in digital lending but not so successful that they significantly inhibit the purchase of the publishers' titles.

As a result, the atmosphere between the publishing and library communities has become strained and, combined with the other, bigger uncertainties that the digital revolution poses, makes it hard for both parties to establish agreed norms for digital lending.

# What needs to happen?

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This review therefore attempts to establish some ground rules on which publishers and libraries can agree to move forward in expanding digital lending offers. Some can be agreed today but many of these rules will have to evolve as the market and the technology develop. While publishers are sensitive to the plight of libraries, some fear their own future and will need to experiment further before making their lists freely available for libraries to acquire for digital lending.

What is not contentious is the universal support for libraries from all sectors of the publishing industry. However, much of the evidence we received was predicated on the question of the future role of libraries. What services would they offer? Similarly there was a concern that digital lending could lead to the future closure of many libraries with fewer and fewer real visits to a physical building, making libraries a target for financial cuts.

Whatever analysis you make about the impact of remote digital borrowing on the physical footfall in libraries, it is plain that an inability to offer digital lending will make libraries increasingly irrelevant in a relatively short time. Library services therefore do not have the luxury of waiting any longer to expand, or in many cases start, their provision of digital lending and to link it to a broader digital strategy that meets the increasingly advanced technological expectations of many library members.

# How should the industry move forward?

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Given all these uncertainties and with many technological and market issues still to be resolved, my recommendations are as follows:

As far as is possible, the digital loan of a book should emulate its printed counterpart. So the first conclusion of this review is that the lending of digital books by libraries to their members should be a service that is provided free of charge and that the lending of digital books to their members at no cost should be an essential offering of the library service.

The second recommendation is that library members should be able to borrow digital books from their libraries remotely. In other words, members of libraries should be able to download digital books from the library's website without having to visit the library in question. Although some constituencies from the writing and publishing communities in their written evidence to the advisory panel expressed concerns about remote downloading; worrying that the technology would lack the necessary "friction" that a library visit provides when borrowing a printed book, it would be counter-intuitive not to recognise the technological ease of remote downloading and the likely consumer demand for it.

The third recommendation of this review is that each copy of a digital book should only be loaned to one reader at a time, just as with a physical book. This would eradicate concerns that many publishers have about the impact on their revenues from successful digital lending. If a digital copy of a book can only be loaned to one reader at a time and for a limited period only, then there are a limited number of loans that that copy can have in a particular period of time.

For similar reasons the fourth recommendation of this review is that digital copies of books should be deemed to deteriorate, ensuring their repurchase after a certain number of loans. Their printed counterparts naturally deteriorate, forcing popular books to be repurchased. This principal therefore should be applied to digital books; otherwise publishers would be unfairly discriminated against.

The fifth conclusion addresses the needs of the writers by recommending the extension of the Public Lending Right (PLR) to cover digital, audio and e-audio books. PLR is the right of authors and other rights holders to receive compensatory payment for the loans of their printed books from public libraries in the UK. The borrowing of their books digitally should be similarly rewarded. In addition the anomaly where rights holders are still not recompensed for the loans of the audio and e-audio books should be addressed. There should be an upward rebasing of the PLR total to take this into account so that writers and other rights

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holders are equably compensated. The provisions in the Digital Economy Act 2010 that extend PLR to on-site e-loans of e-books should then be enacted. To extend PLR to the remote downloading of digital books will require primary legislation, but is critical to allow libraries to progress with their digital strategies. This review therefore recommends that the government find the necessary legislative space in its programme at the earliest opportunity to allow these changes.

## Next steps

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What is apparent in all the evidence submitted to this review is that there is still very little research on digital lending/ borrowing in the UK on which to draw on. This lack of evidence is at the heart of many of the concerns expressed by various constituencies in the digital lending debate. So my final recommendation is that publishers, libraries and booksellers engage in a research exercise to work together on digital lending to allow the necessary data to be collected.

I am delighted to say that in the consultative process of this review the leading publishers and representatives of the smaller publishers have agreed to take part in such an experiment with the libraries. Using the publishing initiatives already agreed between publishers and libraries for 2013- such as World Book Night, the Books on Prescription and Mood Boosting Books Scheme, and the Crime Writers Fiction Promotion, the publishers will work with libraries with the help of the Society of Chief Librarians (SCL), Arts Council England, and The Reading Agency to trial a digital model or models with the aim of setting up a methodology to answer many of the unknown questions, so as to move forward in 2014 with an agreed national approach for digital lending.

This research should focus on resolving the outstanding concerns that publishers, libraries and booksellers have over digital lending. Where possible, opportunities for the digital purchase of books from a range of sources should be encouraged to assess the potential demand from the book- borrowing public. Publishers analyse their business models differently. So this piece of work will have to allow for publishers to "window" some titles, holding them back from the library market some time after publication. Similarly, there are at present a number of differing price and license models, which the experiment will have to take into account. We are pleased that The British Library Trust has agreed to fund this research. SCL will undertake this, supported by Arts Council England in the design brief. Together with publishing partners and The Reading Agency, terms will be agreed on how this can be most valuably conducted."

All over the world, other countries are investing in their own models for digital loans from libraries. While the UK system has its own particular characteristics, it can learn from these other models. The UK experiment will therefore need to pay careful attention to developments abroad. It is important that there is a process that comes out of the review that keeps the momentum going. A shared panel of SCL and Publishers Association members is therefore recommended.

We have looked at a range of models for research based around these initiatives, each bespoke and tailored by individual circumstances, funding arrangements

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and sponsorships. As well as using the existing publishing initiatives, this cross-sector panel should consider doing a trial of a wider catalogue along with buying options. There are many encouraging signs from studies that borrowers of digital books go on to buy copies of the book they have read or other titles by the author or published by the publisher. There is therefore a potential opportunity for digital loans to lead to a relationship between publishers and borrowers and between booksellers and borrowers. A “buy now” option after a digital loan could allow the purchase of titles from a variety of sources including local retailers.

# The Opportunity

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While the majority of the constituencies giving evidence to this review expressed deep concerns about the way ahead, some more forward-looking contributors could see advantages and opportunities coming from the digital revolution. For libraries, embracing a digital strategy could give them a better way of communication with their members, helping them to bring a larger footfall into their buildings for events and services. For publishers, digital lending could bring them closer to the book-borrowing and book-buying public. And for writers, the extension of PLR to the digital and audio world would allow for much more accurate financial recognition for the borrowing of their books. If a digital sales platform is developed, as part of a library catalogue, through which local booksellers can be promoted, this may support the development and the sustainability of these retail outlets as part of the local high street.



# A summary of the review's recommendations

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- The provisions in the Digital Economy Act 2010 that extend PLR to audio books and loans of on-site e-books should be enacted.
- Further legislative changes should be made to allow PLR to take account of remote e-loans.
- The overall PLR pot should be increased to recognise the increase in rights holders.
- A number of pilots in 2013 using established literary events should be set up to test business models and user behaviours, and provide a transparent evidence base: all major publishers and aggregators should participate in these pilots.
- Public libraries should offer both on-site and remote E-Lending service to their users, free at point of use.
- The interests of publishers and booksellers must be protected by building in frictions that set 21st-century versions of the limits to supply which are inherent in the physical loans market (and where possible, opportunities for purchase should be encouraged). These frictions include the lending of each digital copy to one reader at a time, that digital books could be securely removed after lending and that digital books would deteriorate after a number of loans. The exact nature of these frictions should evolve over time to accommodate changes in technology and the market.

# Annexes

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## a) Terms of Reference

### Independent Review of E-Lending in Public Libraries – Terms of Reference

Ed Vaizey has asked William Sieghart, founder of Forward Publishing and the Forward Prize for Poetry, to lead a review of E-Lending to help ensure that libraries and their users, authors and publishers can all benefit as this fledgling service grows.

The review will consider issues including:

- the benefits of E-Lending;
- the current nature and level of E-Lending and projection of future demand;
- the barriers to supply of e-books to libraries; and
- the possible consequences of E-Lending, including the long term impact on library premises, the effect on publishers and the impact on those who cannot keep up with changes in technology.

The principal objective of this review is to provide advice on how best to achieve an E-Lending model in public libraries in England which will provide a strong modern offer to the public, whilst providing fair remuneration to publishers and authors and appropriate protections against copyright infringement.

The following will be considered as part of this review

1. The benefits of E-Lending.
2. The current level and nature of demand for E-Lending in English libraries, along with a projection of future demand. For example, will E-Lending be in addition to traditional borrowing of print books, or is it likely to transform the way in which library users access services? What is the demand for downloading e-books remotely, that is, away from library premises? To what extent do owners of e-readers value public E-Lending above what is freely or commercially available elsewhere?
3. Current supply models, barriers to the supply of e-books to libraries, and likely future trends.
4. Systems for remunerating authors / publishers for E-Lending.
5. The impact of E-Lending on publishers and their business models.

**An Independent Review of E-Lending in Public Libraries in England**

6. Any unforeseen consequences of E-Lending. For example, the impact on those who cannot keep up with technology, the likely long-term impact on the model of highly localised physical library premises, skills requirements for librarians, etc.

The following assumptions and points underpin this review:

- The review is intended to cover E-Lending in public libraries in England. However, given that the Public Lending Right and Digital Economy Act 2010 are UK-wide, it may be necessary for the purposes of this review to consider the systems in place in the devolved administrations and how these inter-relate.
- The Digital Economy Act provisions (which have not yet been brought into force) extend PLR to e-books and audio books; e-books are the growing trend, but audio books should be included.
- These Digital Economy Act provisions allow the lending of e-books (and audio-books) to be included within the public lending right scheme, but only where the e-book is downloaded within library premises. Any changes to this system to allow readers to download e-books online (for example, from home) would therefore require a legislative amendment.
- DCMS ministers will consider the proposals resulting from the Review alongside any recommendations which may emerge from Arts Council England's 'Envisioning the Libraries of the Future' Project, and potential recommendations from the Culture, Media and Sport Parliamentary Committee Inquiry on Library Closures.

**Likely Indicative timescale**

- October – call for evidence
- November - December – consideration by the Chair and Panel and drafting of report
- January - publication of the Review

**Governance**

The Chair of the Review is William Sieghart. He is supported by Panel members

- Janene Cox (President of the Society of Chief Librarians (SCL) & Commissioner for Tourism & the Cultural County, Staffordshire County Council;
- Roly Keating, Chief Executive The British Library;
- Caroline Michel, Chief Executive Peters Fraser & Dunlop
- Stephen Page, Chief Executive Faber & Faber; and
- Joanna Trollope OBE, Author

Findings and recommendations of the Panel will be independent of Government.

**An Independent Review of E-Lending in Public Libraries in England**

**Remuneration**

The roles of Chair and Panel Members are unremunerated, but travel and subsistence expenses will be paid.

**Support**

DCMS will provide Secretariat support.

## **b) Biographies**

### **William Sieghart, Chair**

Philanthropist, entrepreneur, publisher and the founder of the Forward Prizes for Poetry.

In 1986 William co-founded Forward Publishing, publishing magazines, children's books and poetry books. He is the author of a best-selling book on golf, *The Swing Factory*. William also founded Big Arts Week and Street Smart, the initiative whereby diners give a percentage of their restaurant bill to the homeless. He was a member of Arts Council England 2000-2006, and was chair of its Lottery Panel. William is a Trustee of the Esmée Fairbairn Foundation, Free Word Centre and Reprieve.

### **Janene Cox**

President of the Society of Chief Librarians (SCL) & Commissioner for Tourism & the Cultural County, Staffordshire County Council.

Janene Cox began professional life as a librarian in the Central Library in Birmingham and has managed libraries in Northamptonshire and Staffordshire, where she became Head of Libraries in 2005. Janene is also a Trustee of the Reading Agency.

### **Roly Keating**

Chief Executive, The British Library.

Before joining the British Library, Roly worked at the BBC, most recently as the Director of Archive Content with editorial leadership for the BBC's online services, including BBC iPlayer. He is also responsible for the development and implementation of the BBC's strategy to increase digital access to its archives, including the new Arts Council England partnership *The Space*. Roly's former positions at the BBC include Controller of BBC Two and BBC Four. Roly Keating is a member of the Barbican Centre Board, and a Trustee of Turner Contemporary.

### **Caroline Michel**

Chief Executive Peters Fraser & Dunlop

**An Independent Review of E-Lending in Public Libraries in England**

Caroline Michel has been the CEO of PFD since 2007 and before that she headed up the William Morris Agency in London for three years. She has over 25 years of experience in the media industry and ran Vintage at Random House and Harper Press at Harper Collins. Until very recently she was a governor at the BFI and now sits on its development board.

**Stephen Page**

Chief Executive Faber & Faber

Stephen Page began his career in bookselling before moving into publishing. In 1994 he joined Fourth Estate, becoming Managing Director in 2000. In 2001 he joined Faber as CEO and in 2006 Faber was named Publisher of the Year. He has been President of the Publishers' Association. He frequently writes and speaks on industry issues, especially the effects of fast-moving technological developments on authors and publishing.

**Jane Streeter**

Bookseller

Jane Streeter opened The Bookcase in Lowdham, Nottingham, in 1996, now running annual book and film festivals, supporting around 40 local schools, running a publishing arm, (Bookcase Editions Ltd), and sponsoring the Brilliant Book Award for local schools. Jane is a trustee of the East Midlands Book Award, has completed a two year term as President of the Booksellers Association, and is Chair of Writing East Midlands.

**Joanna Trollope OBE**

Author

Novelist Joanna Trollope worked for the Foreign Office (1965-7) and held various teaching posts (1967-79), before becoming a full-time writer. She is the author of 30 bestselling contemporary novels, and was awarded the Romantic Novelists Lifetime Achievement Award in 2010.

### **c) Register of Meetings**

The following kindly gave their time to speak with the Chair and Panel through the course of the review:

- Vicky Barnsley, HarperCollins UK & International
- Antonia Byatt, Arts Council England
- Stephanie Duncan, Bloomsbury Publishing
- Lorraine Estelle, JISC Collections
- Anthony Forbes Watson, Pan Macmillan
- Stuart Hamilton, International Federation of Library Associations and Institutions
- Tim Hely-Hutchinson, Hachette UK
- Ian Hudson, Random House
- Dan Jarvis MP
- Simon Johnson, HarperCollins UK & International
- Richard Kitson, Hachette UK
- Helen Leech, Surrey County Council
- Ursula Mackenzie, Little, Brown Book Group
- Miranda McKearney, The Reading Agency
- Richard Mollet, Publishers Association
- Nicky Morgan, Arts Council England
- Dominic Myers, Anobii
- David Naggar, Amazon
- Steve Potash, OverDrive
- Cllr Flick Rea, Local Government Association
- Gail Rebuck, Random House
- David Roth-Ey, HarperCollins UK
- Nicola Solomon, Society of Authors
- Nick Stopforth, Metropolitan Borough of Doncaster
- Joanna Surman, HarperCollins UK
- Justin Tomlinson MP
- Tom Wheldon, Penguin Books
- Ben Wright, Random House

## d) Call for Evidence

“We, as a panel under the chairmanship of William Sieghart, have been commissioned by the Minister for Culture, Communications and the Creative Industries, Ed Vaizey MP, to conduct an independent review of E-Lending, to help ensure that libraries and their users, authors and publishers can all benefit as this fledgling service grows. As set out by the Terms of Reference (available to view here) we will be considering the following within our review:

1. The benefits of E-Lending
2. The current level and nature of demand for E-Lending in English libraries, along with a projection of future demand. For example, will E-Lending be in addition to traditional borrowing of print books, or is it likely to transform the way in which library users access services? What is the demand for downloading e-books remotely, that is, away from library premises? To what extent do owners of e-readers value public E-Lending above what is freely or commercially available elsewhere?
3. Current supply models, barriers to the supply of e-books to libraries, and likely future trends.
4. Systems for remunerating authors / publishers for E-Lending.
5. The impact of E-Lending on publishers and their business models.
6. Any unforeseen consequences of E-Lending. For example, the impact on those who cannot keep up with technology, the likely long-term impact on the model of highly localised physical library premises, skills requirements for librarians, etc.

With these points in mind, we would like to invite you to submit written evidence supporting any of these aspects of review. Evidence can be submitted to the Panel via [E-Lending@culture.gov.uk](mailto:E-Lending@culture.gov.uk) until close Tuesday 6th November 2012.

Thank you in advance for your consideration of this exciting area of literary lending.

Sent on behalf of the E-Lending Review Panel:

William Sieghart, Chair of the E-Lending Review, founder of Forward Publishing and the Forward Prize for Poetry;

Janene Cox, President, Society of Chief Librarians and Commissioner for Tourism & Culture, Staffordshire County Council;

Roly Keating, Chief Executive of the British Library and formerly Director of Archive and Content for the BBC;

Caroline Michel, CEO Peters Fraser & Dunlop;

Stephen Page, Chief Executive of Faber & Faber;

Joanna Trollope OBE, author;

Jane Streeter, Bookseller, past President at the Booksellers Association and soon to be Chair of Writing East Midlands”



## **e) Respondents to the Call for Evidence**

Arts Council England  
Askews and Holts Library Services  
Authors and Performers' Lending Agency  
Authors' Licensing & Collecting Society Ltd  
Bailey Hill Bookshop  
British Association of Picture Libraries and Agencies  
Bertram Books  
Booksellers Association of the UK & Ireland Ltd  
Brent Council  
British Copyright Council  
British Educational Suppliers Association  
British Equity Collecting Society Ltd  
Burnley Central Library  
Bury Library Service  
Camden Lock Books  
Central Buying Consortium  
CILIP  
Cornwall Council  
Coventry Libraries and Information Services  
Derbyshire County Council  
Devon Libraries  
Dudley Libraries  
East Riding of Yorkshire  
EPSRC  
Equity  
Gloucestershire County Council  
Golden Guides Press  
Gulliver's Bookshop  
Hampshire Libraries  
IES Ltd  
Ken Chad Consulting Ltd  
Kent County Council  
Libraries NI  
Little Brown

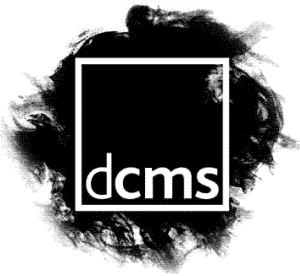
**An Independent Review of E-Lending in Public Libraries in England**

Mr & Mrs Doak's Bumper Bookshop for Boys and Girls  
National Acquisitions Group  
National Centre for Language and Literacy  
National Public Library e-books Group, Society of Chief Librarians  
Neath Port Talbot Libraries  
Norfolk County Council Library and Information Service  
Open Rights Group  
OverDrive Inc.  
Oxfordshire County Library Service  
Public Libraries News  
Registrar of PLR  
RNIB  
Shropshire Libraries  
Society of Authors  
South Ayrshire  
South Tyneside Libraries and Information  
Southend Christian Bookshop  
Stockton Borough Council  
Surrey County Council Library Services  
The Bookseller Online  
The Itinerant Poetry Library  
The Library Campaign  
The Mint House Book Shop  
The Publishers Association Ltd  
The Random House Group Ltd  
The Reading Agency  
Triborough Libraries Service  
Voices for the Library  
Welsh Government (via CyMAL: Museums Archives and Libraries Wales division)  
WFHowes  
Wikimedia UK

S Baxter  
D Clarke  
T Coates  
CD  
N Fairweather

**An Independent Review of E-Lending in Public Libraries in England**

- A Flood
- A Griffith
- S Hardman
- A Harris
- S Kerensky
- H McNabb
- KJ Moss
- G Osler
- P Pedley
- D Smith
- C Staincliffe
- B Tennison
- C Wade
- J Wood
- A Woodhall



department for  
**culture, media  
and sport**

3.7. DCMS response of 27 March 2013

# Government Response to the Independent Review of E-Lending in Public Libraries in England

March 2013

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.



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# Introduction

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Libraries services are evolving, and E-Lending represents one of many technological developments that can help them meet the increasingly high expectations of their membership. Many library authorities have been quick to embrace early E-Lending solutions, and others are investigating provision that meets local demand.

My thanks go to William Sieghart, and his advisory panel, for his timely and insightful review of E-Lending in English public libraries. I also thank all those who have engaged with the review, through the call for evidence, or for contributing their time, expertise and perspectives.

I welcome the reviews findings, and hope that all those engaged in the sector can play their part in moving forward the proposed developments.

**Ed Vaizey MP**

**Minister for Culture, Communications and the Creative Industries**



# Government Response

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In his review of E-Lending, William Sieghart has made several recommendations for E-Lending best practice, in core principles for this developing sector, in recommendations for future collaboration in the sector, and developments to Public Lending Right.

## Core Principles

- 1. Public libraries should be able to offer remote E-Lending service to their readers, free at point of use.**
- 2. The interests of publishers and booksellers must be protected by building in frictions that set 21st-century versions of the limits to supply which are inherent in the physical loans market (and where possible, opportunities for purchase should be encouraged). These frictions include the lending of each digital copy to one reader at a time, that digital books could be securely removed after lending and that digital books would deteriorate after a number of loans.**
- 3. The exact nature of these frictions should evolve over time to accommodate changes in technology and the market.**

We welcome the report's recommendations for guidelines for E-Lending in public libraries.

Publishers and booksellers are crucial to maintaining and supporting a creative literary environment- E-Lending should aspire to complement their industries, and offer new opportunity for engagement with libraries and their readers, rather than representing a challenge to their viability.

As a continually evolving area, with new entrants entering the market, we support the recommendation that flexibility should be maintained, to allow for growth, innovation and the widest offer for public library users in the future.

## Future Collaboration

**4. A number of pilots in 2013 using established literary events should be set up to test business models and user behaviours, and provide a transparent evidence base: all major publishers and aggregators should participate in these pilots.**

A transparent evidence base will inform both further development of E-Lending provision, and establish appropriate levels of support for this diversification of service. Whilst individual publishers, library services and aggregator services conduct their analysis of trends and demands, the motivation to conduct broader, collaborative research is a public policy interest that we acknowledge.

The British Library Trust was established in 2012 to, in part, advance and support the efficient management of other libraries, library facilities and information services conducive or complementary to the work of the British Library. We therefore welcome their funding of this significant research project for the sector, around a series of library-based publishing events in 2013, and look forward to the findings providing an informed appreciation of the E-Lending environment in English libraries. We thank those in the sector who have agreed to approach the development of this research with open minds, for the benefit of future e-lenders. We will consider how the relevant questions within our Taking Part survey could be improved to generate further intelligence about users' digital engagement with public libraries in England, including E-Lending. We will make improvements to the Taking Part questionnaire in time for the 2013-14 survey.

## Extension of the Public Lending Right

### **5. The provisions in the Digital Economy Act 2010 that extend PLR to on-site e-loans and e-books should be enacted.**

The Digital Economy Act 2010 (“DEA”) contained provisions to extend PLR to cover loans of audio-books or e-books. In the challenging economic climate it has not been possible to date to bring those provisions into force. The evidence received by William Sieghart and his Panel suggests that the number of these loans is increasing.

The challenging economic climate continues, but Government will consider commencing the appropriate provisions of the DEA 2010 to extend PLR to audio, e-audio and e-books.

### **6. Further legislative changes should be made to allow PLR to take account of remote e-loans; and the overall PLR pot should be increased to accommodate this.**

It is clear from evidence submitted to the review that those library authorities already offering E-Lending are embracing remote lending, both as a practical solution to catering to the many technological variants and to meet their membership expectations, often by contracting the services of third party aggregators who liaise with publishers on their behalf.

The reason that the e-book provisions in the DEA only allow downloading from library premises is because under the Copyright Directive authors are provided with the exclusive right to authorise or prohibit any communication to the public of their works. This includes making a work available to the public by electronic transmission in such a way that members of the public may access it from a place and time of their own choosing. This is provided for in section 182CA of the Copyright, Designs and Patents Act 1988.

If remote loans are becoming the primary method of E-Lending in from public libraries, then a fit for purpose PLR should reflect these habits and recompense authors as for other loans from public libraries. Extending the PLR to incorporate remote lending will require primary legislation, and is an amendment we will seek to pursue in future parliamentary sessions, subject to considering whether that would be compatible with the Copyright Directive. Any increase to PLR funding would need to be considered against evidence of increased loans within the increased remote scope.

## The Society of Authors' Briefing note on PLR and Royalties from Library lending

### 3.8. Society of Authors' response to the Sieghart Report. April 2013

The Society of Authors welcomes the recommendations of William Sieghart's thoughtful Independent Review of E-Lending in Public Libraries in England which supports a sensible balance between the needs and interests of readers, libraries, publishers and authors allowing libraries to flourish and continue to service the public while giving fair remuneration to authors.

We particularly welcome the recommendation to extend PLR to ebook and audio lending (both remote and on site) and to increase the PLR pot and urge the Government to enact those proposals without further delay. As the proposed transfer of PLR's functions to the British Library necessitates primary legislation, we strongly urge that this opportunity is taken to amend the PLR Act to extend PLR not only to audiobooks and on-site e-lending (with an accompanying increase in the money available) but also to volunteer libraries and remote e-lending.

We agree with the recognition that the loan of digital books should emulate the loan of print books, i.e. one book per loan and repurchasing after a certain number of loans. Library membership should be controlled to ensure that only signed up library members can access digital services and welcome moves to support local bookshops by encouraging readers to buy titles after borrowing them, through links to local shops.

We note that libraries and publishers are already meeting to discuss appropriate models and strongly recommend that authors' representatives are included in such meetings to ensure that any model includes appropriate remuneration for authors. It is clear that not all publishers' contracts with authors give them the rights to authorise on-site and remote lending.

The recommendations are:

- Public libraries should offer both on-site and remote E-Lending service to their users, free at point of use.
- The interests of publishers and booksellers must be protected by building in frictions that set 21st-century versions of the limits to supply which are inherent in the physical loans market (and where possible, opportunities for purchase should be encouraged). These frictions include the lending of each digital copy to one reader at a time, that digital books could be securely removed after lending and that digital books would deteriorate after a number of loans. The exact nature of these frictions should evolve over time to accommodate changes in technology and the market.
- A number of pilots in 2013 using established literary events should be set up to test business models and user behaviours, and provide a transparent evidence base: all major publishers and aggregators should participate in these pilots.
- The provisions in the Digital Economy Act 2010 that extend PLR to audio books and loans of on-site e-books should be enacted.
- Further legislative changes should be made to allow PLR to take account of remote e-loans.
- The overall PLR pot should be increased to recognise the increase in rights holders.

We note the Government response and are delighted that the Government will consider commencing the appropriate provisions of the DEA 2010 to extend PLR to audio, e-audio and e-books. This is now a matter of urgency. We have long been urging this and the failure to enact these provisions to date is patently unjust and a breach of the UK's obligations under the Rental and Lending Directive (2006/115/EC).

We are also delighted that the Government will seek to pursue primary legislation extending the PLR to incorporate remote lending in future parliamentary sessions. We believe that this would be compatible with the Copyright Directive in the same way that PLR itself is compatible and that it would be welcomed by authors. S 182CA of the Copyright, Designs and Patents Act 1988 gives authors the exclusive right to control making a work available to the public by electronic transmission in such a way that members of the public may access it from a place and time of their own choosing. Authors would welcome a scheme that recompensed such rights through PLR payments.

## The Society of Authors' Briefing note on PLR and Royalties from Library lending

### 4 Correspondence between Society of Authors and Publishers.

#### 4.1. List of Publishers of ebooks offered in Barnet libraries April 2013

They say they offer 3500 titles. It is not possible to see the whole catalogue but this is the list of publishers and numbers of titles for biography:

- [Penguin Books Ltd](#)(33)
- [HarperCollins Publishers](#)(25)
- [John Blake Publishing](#)(19)
- [Bloomsbury Publishing](#)(15)
- [Random House](#)(8)
- [Random House Publishing Group](#)(8)
- [Ebury Publishing](#)(6)
- [Canongate Books](#)(5)
- [Knopf Doubleday Publishing Group](#)(5)
- [Random House Children's Books](#)(4)
- [Crabtree Publishing](#)(3)
- [Crown Publishing Group](#)(3)
- [HarperCollins](#)(3)
- [Michael O' Mara Books](#)(3)
- [Profile Books Ltd](#)(3)
- [Atlantic Books Ltd](#)(2)
- [Constable & Robinson](#)(2)
- [Houghton Mifflin Harcourt](#)(2)
- [Hyperion](#)(2)
- [Transworld](#)(2)
- [ABDO Publishing](#)(1)
- [Accent Press](#)(1)
- [Algonquin Books](#)(1)
- [Allen & Unwin Pty Ltd](#)(1)
- [Allison & Busby](#)(1)
- [Andrews UK](#)(1)
- [Aurum Press](#)(1)
- [Basic Books](#)(1)
- [Biteback Publishing](#)(1)
- [Black & White Publishing](#)(1)
- [Chicago Review Press](#)(1)
- [Chronicle Books LLC](#)(1)
- [Cogito Media Group](#)(1)
- [F+W Media, Inc.](#)(1)
- [G2 Rights Ltd](#)(1)
- [Head of Zeus](#)(1)
- [Nick Hern Books](#)(1)
- [Penguin Group US](#)(1)
- [Rosenberg Publishing](#)(1)
- [Sourcebooks, Inc.](#)(1)
- [Taylor Trade Publishing](#)(1)
- [The History Press](#)(1)
- [Thomas Nelson](#)(1)
- [Transit Publishing Inc.](#)(1)
- [Tyndale House Publishers, Inc.](#)(1)
- [Y BOOKS](#)(1)

## The Society of Authors' Briefing note on PLR and Royalties from Library lending

### 4.2. Example letter from Society of Authors to Trade Publishers 16 May 2013

Dear,

We note from OverDrive's submission to the Seighart review that in the ten months to November 2012 it made 576,125 loans of ebooks through British libraries:  
<http://OverDriveblogs.com/library/files/2012/12/E-Lending-Evidence-and-Experience-from-UK-Public-Libraries-6-Nov-2012.pdf>

The feedback we are receiving from our members (in all genres) is that they are finding it difficult to identify any income from that source in their royalty statements. We would expect to see any such licensing clearly identified and paid for. In particular, we would expect to see any such income accounted separately from ebook sales as, if granted at all, such licences would usually be subsidiary rights and would typically attract a higher share of royalties than ebook sales. I am therefore writing to the chief executives of trade publishers in order to seek reassurance for authors that all such income is being properly accounted and paid.

I would be very grateful if you would let us know the following:

1. Do you license ebook rights to OverDrive or any other aggregator for library use?
2. Do you seek specific permission from authors for such licences?
3. How do you account to authors for the proceeds from such licences and how do you divide the proceeds between different authors?
4. Are authors remunerated on a rate per loan basis or an overall licence fee?
5. Please send us a typical royalty statement showing how such payments are identified.

Thank you for your assistance. If you would like any other information or would like to meet to discuss this further, please do not hesitate to contact me.

All best wishes  
Nicola Solomon  
Nicola Solomon  
Chief Executive  
The Society of Authors  
84 Drayton Gardens  
London SW10 9SB  
Tel 020 7373 6642  
[www.societyofauthors.org](http://www.societyofauthors.org)

## 5. EBLIDA principles

### 5.1. EBLIDA Position paper - May 2012

## EUROPEAN LIBRARIES AND THE CHALLENGES OF E-PUBLISHING

### AN E-BOOK POLICY FOR LIBRARIES IN EUROPE

Society is on the brink of major changes. The transformation of media and of the information market is one of the biggest challenges for our society. It is an opportunity as well as a threat for Europe.

It is the task of European politicians to guarantee free access to information, education, culture, leisure, and content for all European citizens via public services. A competitive market can only innovate by relying on well educated and informed citizens.

In this context libraries guarantee free access to content, information, and culture for all European citizens. But the current legal framework hinders libraries from fulfilling these essential services for our society in the digital era, especially regarding the development of the e-book market.

1. Because of the exhaustion of distribution right after the first sale, a library may buy published works, e.g. books, from a bookseller and use the copies for lending to the library's patrons. The library's actions do not interfere with the rights of the author (or other rights holder). In consequence, the library decides in accordance with its collection building policy what books to buy and use for public lending.

2. On the other hand, because eLending is a service, the concept of exhaustion does not apply, and the library can only acquire the digital object, the eBook or eJournal, by entering into a licence agreement with the author (or other rights holders). The rights holders are free to decide whether they want to give access to a specific work, and to decide on the terms for such access. The consequence of this is that the collection building policy may be decided by the publisher and not by the library.

3. It is a significant, and in our view unacceptable, change that the collection building policy of libraries may be decided by the publishers and that free access for the European citizens is decided by the publishers. And the challenge is to find solutions to this problem.

### THEREFORE EBLIDA SUGGESTS:

1. A memorandum of understanding with the Federation of European Publishers for "Fair Licensing Models";
2. An updating of the copyright regime for e-books, e-lending and e-content in order to enable libraries to continue to perform their services for all European citizens

## 5.2. EBLIDA Key Principles on the acquisition of and access to E-books by libraries

Expert Group on Information Law, 22 October 2012

Approved from EBLIDA Task force

*These Key Principles define minimum conditions for libraries when e-books are acquired and made available, whilst maintaining a balance between the interests of the public and those of the rightholders.*

*Whereas:*

*Noting that the introduction of electronic publishing represents an immense potential improvement in library services, while at the same time challenging the legal basis for the activities of libraries;*

*Observing that the introduction of e-books affects the core activities and responsibilities of libraries and raises serious issues of cultural policy and societal risks;*

*Acknowledging that libraries strive to achieve a balance between the human and democratic right to access to information on the one hand and the rights of authors and other rightholders on the other;*

*Searching for appropriate business models for e-books to be acquired and accessed by libraries in order for such models to meet and overcome the challenges libraries face;*

*Recognising the significant uncertainties as to how e-book content will evolve and how the evolution of the content will influence such models;*

*Assuming that libraries, authors, trade publishers, and other rightholders will develop agreements with standardised clauses that will enable libraries to make e-books available on reasonable and fair terms to their users;*

The undersigned participants to key principles agree to the following guiding principles:

### **DEFINITIONS**

For the purpose of this dialogue

- an electronic book (e-book) is a book composed in or converted to digital format for display on a computer screen or handheld device;
- a user is any person using library services;
- a registered user is a user who has registered with the library and whose identity is known to the library.

### **Principle No 1 – Acquisition**

1. All e-book titles available for sale to the public should be available to libraries for acquisition and access;
2. All e-books titles should be available to libraries at the time of publication.
3. Publishers should deliver e-books in interoperable formats.

### **Principle No.2- Access**

1. Libraries should be permitted to make available acquired or licensed e-books for a limited period of time to a user.
2. It should be possible to use the same e-book title simultaneously.
3. Registered users should be able to download an e-book either in the library or by way of remote access via authentication systems.
4. There should be an option for a licence allowing for interlibrary access.



## The Society of Authors' Briefing note on PLR and Royalties from Library lending

5. Publishers and libraries should cooperate towards finding solutions providing for the production and delivery of alternative formats for persons with disabilities.

### **Principle No 3 – Continuous access and long term preservation**

1. When purchasing an e-book, a library should have the option of permanent storage and use of the e-book.
2. Libraries authorised to store the e-book should have the right to transfer, in response to technological change, e-books to another delivery platform.
3. If a library opts for permanent storage and use it should be entitled to give unrestricted access to an e-book once the work is out-of-commerce in all its versions.
4. The contractual terms of a licence for an e-book should not override any statutory provisions regarding the entry of the work into the public domain.

### **Principle No 4 – Availability of metadata**

1. The delivery of e-books should include the supply of metadata.
2. Libraries should be permitted to include the metadata in their catalogue system;
3. It should be permitted to make metadata relating to e-books openly available in conjunction with other metadata.

### **Principle No.5 – Pricing**

1. The price of an e-book should not exceed the price of the print version of the same e-book title.
2. Payments for e-books should decrease with the age of the publication.

### **Principle No. 6 – Privacy**

1. Users' personal data should be processed only by the library and in accordance with the data protection regulations applicable to the library.
2. User data and other personal data should be deleted in accordance with the data protection regulations applicable to the library.
3. The publisher or service provider should not allow access by third parties to the user data without the consent of the library.

The Hague Netherlands, October <>