



AUTHORS AND THE DIGITAL ECONOMY BILL

Committee Stage Amendment

The Digital Economy Bill reaches committee stage in the House of Lords commencing 31st January 2017, having had its second reading in the Lords on 13 December 2016.

AMENDMENT TO INCLUDE E-LENDING IN PLR

Among the amendments moved in the Bill's passage through the House of Commons was one that would have helped support authors and their contribution to cultural life and education. This amendment is broadly supported by all the interested bodies including libraries, authors, publishers, booksellers and the PLR office itself. It was not put to a vote in the House of Commons because the Minister of State responsible for digital and culture policy, Matt Hancock MP, stated that the Government would provide its own draft amendment to the Digital Economy Bill to effect this change.

This has not happened to date and Lord Clement-Jones and Lord Foster have kindly tabled a suitable amendment for which we hope we can count on your support:

HL Bill 80(g) 56/2 Amendments to be moved in Committee of the whole House:

After Clause 29

Insert the following new Clause —

“Remote e-lending

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

(2) In subsection (2)—

(a) in the definition of “book”—

(i) after “(an “audio book”)” insert “which has been licensed by the publisher on agreed terms for library lending”,

(ii) after “(an “e-book”)” insert “which has been licensed by the publisher on agreed terms for library lending”;

(b) in the definition of “lent out”, for subsection (b) substitute—

“(b) includes communicating by means of electronic transmission to a place other than library premises”.”

Libraries are now lending many e-books: 2.3 million e-book loans were made in 2015 alone and over 3 million in 2016 but authors are not being remunerated for those loans despite the Government having committed in principle as long ago as March 2013 (in the [Government Response to the Independent Review of E-Lending in Public Libraries in England](#)) to extend PLR payments to e-books when a suitable opportunity arose. This amendment is an opportunity to ensure that authors receive equitable remuneration for these loans and we hope you can help us.

WHAT IS PUBLIC LENDING RIGHT (PLR)?

Public Lending Right (PLR) allows authors to be fairly paid for each loan when their work is loaned through public libraries.

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. The scheme provides authors with a modest payment (around 7p) each time one of their

books (written or audio) is borrowed from a public library. Over 22,000 writers, illustrators, photographers, translators and editors receive PLR payments each year under the Public Lending Right Act 1979 and subsequent amendments. There is a minimum payment threshold of £1 and a maximum of £6,600. Although this does not replace the royalties authors would receive if the books had been purchased by each borrower, PLR provides a significant and much-valued part of many authors' incomes, particularly to authors whose books are sold mainly to libraries and to those whose books are no longer in print but are still being read.

While the Digital Economy Act 2010's extension of PLR to audio-books was a useful and overdue reform, the extension to on-site e-book loans was irrelevant as no such loans are made. By contrast, remote e-book lending has increased significantly and is increasing much faster than physical lending, particularly since reduced opening hours and the regrettable extensive library closures that the Government has taken no action to prevent mean that it is more and more difficult for readers to physically visit a local library.

Remuneration for public lending is a requirement of European law under the Rental and Lending Directive. The current situation where millions of e-book loans receive zero remuneration is unlawful and creates significant prejudice to authors. The current situation also places libraries in the position where they may be infringing authors' rights.

Literature contributes greatly to the richness and diversity of our cultural environment. PLR is a legal right and a keystone of a civilised society in which authors receive acknowledgement for their considerable contribution. Action is now required to ensure that the new Digital Economy Bill addresses this issue and that authors are treated equitably while protecting the commercial market by specifying that e-books and audio books can only be lent out from libraries if they have been licensed by publishers on agreed terms for library lending.

The cost of this measure would be negligible (to pay for 2.3 million loans would cost under £200,000) but the principle is extremely important.

E-LENDING AND PLR IN THE EU

Under EU law there is a requirement for authors to receive compensation for loans of their books by public libraries. As of 10 November 2016 the Court of Justice of the European Union confirmed that this legal requirement may also extend to the lending of e-books (*Vereniging Openbare Bibliotheken v Stichting Leenrecht* (Case C-174/15)). When e-lending and PLR was last raised in Parliament, the Minister for Digital and Culture, Matthew Hancock MP, understandably made clear the need to see the CJEU ruling to clarify that PLR for e-book loans would comply with the EU law; it is now clear that this is the case.

The Court ruled

"Article 1(1), Article 2(1)(b) and Article 6(1) of 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 must be interpreted as meaning that the concept of 'lending', within the meaning of those provisions, covers the lending of a digital copy of a book, where that lending is carried out by placing that copy on the server of a public library and allowing a user to reproduce that copy by downloading it onto his own computer, bearing in mind that only one copy may be downloaded during the lending period and that, after that period has expired, the downloaded copy can no longer be used by that user."

This removes the Government's previously expressed concern that such a change may not be compatible with EU law.

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