



AUTHORS AND THE DIGITAL ECONOMY BILL

Consideration of Amendments

The Digital Economy Bill had its Third Reading in the House of Lords on the 5th of April 2017, and is now up for Consideration of Amendments in the House of Commons on the 26th of April 2017. We would urge you to support Lords Amendment 46 which extends Public Lending Right payments to ebooks.

AMENDMENT TO INCLUDE E-LENDING IN PLR

Among the amendments accepted in the Bill's passage through the House of Lords was one that will help support authors and their contribution to cultural life and education and ensures that libraries are not infringing copyright by lending ebooks. This amendment extends Public Lending Right (PLR) to include e-books. The SoA and ALCS have long campaigned for this to be included in legislation and this measure is supported by all the interested bodies including libraries, authors, publishers, booksellers and the PLR office itself. Lending of e-books by public libraries is included in Lords Amendment 46 which reads as follows.

46 Lending of e-books by public libraries

- (1) In section 5(2) of the Public Lending Right Act 1979 (interpretation) for the definition of "lent out" substitute—
 "“lent out” means made available to a member of the public for use away from library premises for a limited time (including by being communicated by means of electronic transmission to a place other than library premises) and “loan” and “borrowed” are to be read accordingly;”.
- (2) Section 40A of the Copyright, Designs and Patents Act 1988 (lending of copies by libraries or archives) is amended as follows.
- (3) After subsection (1) insert—
 “(1ZA) Subsection (1) applies to an e-book or an e-audio-book only if—
 (a) the book has been lawfully acquired by the library, and
 (b) the lending is in compliance with any purchase or licensing terms to which the book is subject.”
- (4) In subsection (1A)—
 (a) for “subsection (1)” substitute “subsections (1) and (1ZA)”;
 (b) after paragraph (a) insert—
 “(aa) “e-audio-book” means an audio-book (as defined in paragraph (a)) in a form enabling lending of the book by electronic transmission,”.

The Government committed in principle to extend PLR payments to e-books when a suitable opportunity arose as long ago as March 2013 (in the [Government Response to the Independent Review of E-Lending in Public Libraries in England](#)). This is an opportunity to ensure that authors receive equitable remuneration for these loans and we hope you will support the inclusion of this Lords Amendment to the Digital Economy Bill.

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. It also ensures that public libraries are not infringing copyright when lending ebooks to borrowers.

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 (over 2.3 million such loans were made in 2015) 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. The Lords amendment (46) addresses this issue. All interested parties have worked together to agree the current wording which ensures 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. We urge you to support the wording and the Lords amendment.

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 and accepted by the Government 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. The proposal has all party backing and we would urge that it is passed.

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