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Tuesday 26 January 2010

Dear Sirs

[www.ppa.co.uk](http://www.ppa.co.uk)

**Re: Response from Periodical Publishers Association (PPA) to *Empower, Inform, Enrich - The Modernisation Review of Public Libraries: A Consultation***

**Co-operation and support**

PPA, the trade body for UK magazine, journal and business media publishers, welcomes the opportunity to respond to the Consultation, particularly as it relates to the challenge of digitisation and its implications for the library service.

Co-operation and support, rather than substitution and competition, must underpin the relationship between magazine, journal and business media publishers and libraries of all kinds.

As such, it is interesting how the five challenges seen as significant for the library service are also relevant for publishers.

1. Publishers wish to ensure they and their publications remain relevant and vital to citizens;
2. Publishers are concerned to address declines in sales and use due to proliferation of new media services;
3. Publishers are working to respond to a 24/7 culture and the changing expectations of people who want immediate access to information in varying formats;
4. Publishers are working to explore and develop the opportunities presented by digitisation; and
5. Publishers are reacting to economic pressures from changes to the advertising market and the competition from new online services.

We therefore comment on some of the questions raised in the Consultation with a view to promoting the future co-operation and support between publishers and libraries in ways that do not compete with, diminish the efforts of, or harm, publishers - but assist publishers to rise to the above challenges themselves.

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## Role for Libraries

In addressing the role for libraries it is important to distinguish services which genuinely guide and support access for visitors, from services which effectively operate in competition with, or in substitution for those provided by publishers in the online world.

In the world of printed editions the difference between lending (or giving limited access to) a print work, and the sale of that print work, is huge. In the digital world the difference between the impression for users of lending (giving access to) a digital edition and selling it can seem very little unless the terms and conditions of such use are clearly demarked and “unauthorised” copying as a result of such “lending” or “sale” prevented.

This factor cannot be ignored and means a change in the function of libraries if the investment of creators and publishers in new digital editions is to be protected. If libraries are to become the route to “finding” a digital edition it is vital that they are not able to provide access on a “free” basis or basis which unfairly competes with publishers, certainly in the case of remote access to the library.

One of the key areas where PPA member publishers work with libraries is with Legal Deposit. The Legal Deposit libraries are provided with copies of printed publications for legal deposit and preservation.

The way in which Legal Deposit supports the preservation and archiving of publications remains important. However the scope for use of legal deposit copies is potentially contentious when use threatens to operate in competition with, or in substitution for the same publications provided by publishers in the online world.

PPA welcomes the opportunity to, and will, respond to the Department for Culture Media and Sport (DCMS) consultation on proposals for the Collection and Preservation of UK Offline and Microform Publications and UK Online Publications<sup>1</sup>. Some of the more general issues touched upon in this response will also be relevant to the PPA response to that Collection and Preservation consultation.

In this response PPA will particularly address the issues raised under **Question 7** - Digital Services.

### How can we use the digital revolution to extend access to library resources?

It is important that library services are able to take advantage of the efficiencies and data cross-referencing which digital technology affords. However, such advantage should not ignore the copyright in works to which libraries afford access.

For magazines, journals and business media, the subscriptions which are taken out by libraries are an important part of recognition for the copyright in the publications to which such subscriptions relate.

However digital technologies are already affecting “sales” of publications to libraries in some areas.

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<sup>1</sup> [http://www.culture.gov.uk/reference\\_library/consultations/6506.aspx](http://www.culture.gov.uk/reference_library/consultations/6506.aspx)

For example Data Publishers Association ("DPA") members sell significant business reference sources and directories to public libraries and the DPA has noticed a concentration towards larger, metropolitan libraries or main county libraries with smaller libraries cancelling subscriptions.

In London some major reference collections, City Business Library and Westminster library, have cut back on subscriptions and refer users to the British Library which has: a) a more comprehensive collection (thanks, in part, to Legal Deposit); and b) relaxed admission procedures. The DPA and PPA are concerned that we may be seeing creep from works supplied for Legal Deposit or sold on subscription to libraries to wider access and re-use of such publications and data. This is potentially damaging to publishers.

In addition, the payments made to collecting societies by libraries to enable limited copying of articles and parts of purchased magazines, journals and business media for the purposes of research and private study, enable fair compensation to flow to publishers for limited secondary use of their works.

This limited secondary use does not impinge upon the primary licensing activities of publishers.

This distinction between primary and secondary use must be maintained when addressing any use by libraries of magazine and periodical publications in digital form in the future.

**Should virtual lending (i.e. lending downloads to the home via the internet) be the future of the public library service either generally or in some areas?  
What challenges would virtual lending present?**

As we stated in our opening paragraphs to this letter, the key to successful publishing in future will be co-operation between publishers and libraries rather than competition.

One of the current major challenges for PPA members concerns developing ways of attracting a critical mass of the right audiences around content published by them online.

It is absolutely vital that publishers are not prevented from achieving and maintaining critical mass with audiences and consumers as a result of the operation of library services. Such services must not hinder a fair exchange in the value which recognises the publications width of audience and that which advertisers want to attract. It must be remembered that publishers derive revenue from circulation revenue (sales and licensing of content) and from advertising, and the two are totally interlinked.

While the advertising market is changing and adapting to the development of new online forms of communication and the means of publishing works is changing in the digital environment, it is essential that the library service does not undermine the ability of publishers to earn a return on their investment in creating publications. It is all too easy or convenient to forget that quality publications are created at considerable cost linked to invested resource and often include investment in research, peer review and rigid analysis.

The advertising market is changing and indeed disrupting this traditional source of investment revenue. Much advertising revenue has (through dominance of search) become disconnected from the value of the content. But publishers are working to find

new ways to attract and build value to their critical mass audience (including through pay models). It is vital that libraries and other third parties do not disrupt this and prevent achievement and maintenance of critical mass and remain complimentary and not competitive to publishers' business models as they develop.

In addition, libraries have an educative role in promoting respect for copyright existing in works held by libraries. It is true that digital publications are easier than print publications to copy; it is also true that they should be widely available - but that does not mean they should be given circulation free by libraries.

Investment in "high value" publications and their brands will remain vital if quality publications, including information which is trusted and relied upon by readers and consumers of all kinds, is to continue to be written, compiled and published.

Copyright supports investment in such publications. Publishers must retain control over the way in which their works are lent or communicated to the public in the digital environment. This is vital to ensure that primary sources of revenue from online dissemination are not eroded by an extension of the limited secondary copying activities permitted under license arrangements between libraries and collecting societies such as the Copyright Licensing Agency.

#### Lending -v- Communication to the Public

Copyright law distinguishes rights of copyright owners to consent to "lending" of their work from rights to "electronically communicate a work to the public". The different economic effect of these activities must be respected when addressing the digital services that may be offered by libraries in the future.

The importance of the distinction was highlighted in the recent response from The Publishers Content Forum to DCMS Consultation on the extension of Public Lending Right to Rights holders of Books in non-print formats.

Within this response, a number of points were made which remain important in the context of addressing future library services which might be linked to or supported by the Public Lending Right. They are set out in the Annex to this Letter.

Copyright, particularly the right of communication to the public, will be central to licensing access to published works online. This will become an increasingly relevant as a "primary" means of exploiting copyright in new work.

Online (or virtual) lending by libraries must not detract from this and become competition rather than a complementary service.

Libraries should not be entitled to provide "online" access to publications in ways which reduce the use of publications online through services offered by the publishers themselves.

There is a potential commercial difference between readers researching a library catalogue online and accessing works to read within the premises of a library on the one hand and accessing a library service online when the readers are at home or elsewhere outside library premises,

Any virtual lending by libraries must recognise the potential commercial impact on the online services provided by publishers, when the same content can be accessed

through a commercial online service offered by a publisher or others and through a library "lending" works for access to researchers online.

**What digital content should libraries provide? For example should all libraries make subscription online services available to users? Should this be a free service?**

Traditional secondary use of copyright works within library premises has been permitted on the understanding that it does not adversely affect the commercial interests of third party copyright owners. This principle should apply for the development of library services in the future.

If libraries offer access to digital content online to third parties, the copyright of third parties must be respected when access is offered for copyright works not owned by or licensed to the library for agreed use(s).

In this context it is important to note that it is impossible to predict relative value for the inclusion of publications within different online services, or archives at the time of first inclusion within a service. It will be to the benefit of both rights owners and consumers if the option of different price levels for different types of online access can be preserved, reflecting other market forces such as levels of use and linked value added services. Use within library services may be relevant here.

Against this, libraries should be enabled to develop their own content for inclusion within online services. However, they should not be entitled to "free" online use of the works of others without appropriate consents from the owner(s) having been obtained.

**Web 2.0 enables people and communities to contribute web content? Do you think that there is a role for libraries in Web 2.0? If so, what?**

Magazine, journal and business media publishers have been part of the front line within the creative industries in promoting interactivity between publishers and their consumers. The concept of consumer contributions to publications, in the form of "user-created content", is not new to the industry. However the way that technology is opening up the number of ways in which such interactivity will add to, and shape, many new publications and on line services based around them in the future, is central to the strategic thinking of companies working in the sector.

If libraries are to encourage users of library services to contribute web content for such services, it will be important that libraries clearly advise users about the extent that copyright may exist in the work that they create. Contributors of "user created content" must then be given clear choices over the rights in their work which might be licensed to or granted to libraries linked to library services.

Web technologies are already being used to encourage readers to communicate ideas and views about the services offered by a library or the books and other works accessible within it. This is helpful for readers.

However, transparency over the rights that users of library services are required to grant to the library or its successors will be important, if users are to feel comfortable with engaging in any "interactive" or contributory" services offered by libraries.

Some have suggested that, within the digital world, new distinctions should be made about the application of copyright to "amateur works" on the one hand and "professional works on the other.

In responding to a number of Intellectual Property Office Consultations (since publication of the Goers Review of Intellectual Property in 2005) PPA has consistently warned against any such distinction being made.

Creating new barriers for a creator to establish “professional status” or “commercial intent” before being entitled to authorise use of rights in their work, based upon the principles of copyright, will not encourage creativity and innovation in the future.

Instead it will create a division within society that will ultimately make copyright more “exclusive” rather than copyright works being made more available through transparent licensing regimes.

### **Commercial Activities and Partnerships**

Publishers are used to working closely with libraries. The roll out of new online digital services by publishers may provide valuable opportunities for libraries to access these services and facilitate use of works made available through such services.

However use must be complimentary to the services offered by publishers and not detract from or compete with commercial aspect of the services.

The sale or licensing of publications by libraries may be an example of such services, particularly when copies can be made by publishers to order and supplied direct to customers following an enquiry made via a library.

Such activity may lead to growth in the number of “publisher/library” partnerships in the future.

### **PPA and its role**

PPA is the trade body for UK magazine, journal and business media publishers.

PPA’s membership consists of some 250 members and affiliates publish consumer, customer and business magazines, journals, data and directories in addition to conducting research, organising conferences and exhibitions.

PPA members offer both electronic and online services, including websites, online and electronic versions of print publications and publications and data only available online or through electronic transmission.

Online publications encompass consumer, customer and business to business journals, magazines and media and increasingly involve the use of new electronic rights management systems to help improve the provision of publications and services to subscribers.

PPA publisher members have a direct interest in debates concerning:

- (a) availability of content;
- (b) improvement of clearance mechanisms;
- (c) development of multi-territory licensing on-line; and
- (d) management of copyright on-line.

## Annex to Letter from PPA to DCMS Dated 26 January 2010

Extracts from the Publishers Content Forum response to DCMS Consultation on the extension of Public Lending Right to Rights holders of Books in non-print formats.

Within this response, a number of points were made which remain important in the context of addressing future library services which might be linked to or supported by the Public Lending Right. They are:

1. PLR benefits "authors" as currently defined by Article 4 of the Public Lending Right Scheme (Commencement) Order 1982 ("the Order").  
As such, the PCF members do not currently receive payments through PLR.

It is therefore the **exclusions** from the definition of "eligible book" under Article 6 of the Order that have been significant for PCF members.

There exclusions cover:

- (i) a book bearing, in lieu of the name of an author who is a natural person, the name of the body corporate or an unincorporated association;
- (ii) a book which is wholly or mainly a musical score;
- (iii) a book the copyright of which is vested in the Crown;
- (iv) a book which has not been offered for sale to the public;
- (v) a serial publication, including a newspaper, magazine, journal or periodical; and
- (vi) a book which does not have an International Standard Book Number.

2. The exclusions have provided a focus for application of s 40A Copyright, Designs and Patents Act 1988. This limits the extent to which the lending rights of PCF members are in effect "superseded" by operation of PLR.

It is therefore important that any expansion of the PLR Scheme concentrates upon classes of book that are similar to the "printed and bound publications" to which PLR already applies.

An example may be the hard copy audio books referred to in the Consultation which are already being lent by libraries in similar ways to printed eligible books.

3. It will be important for any extension of PLR to work within the definition of "lending" relevant to section 40A Copyright, Designs and Patents Act ("CDPA").

If e-books and digital audio files are to be "made available" by libraries in ways that involve the "communication to the public" of published work relevant to section 20 CDPA – rather than lending relevant to s 40A CPDA – the potential of creating a new exception to the rights of PCF Member affected by PLR must be carefully assessed.

4. The current definition of "lending" set out in s 18A CDPA should remain the benchmark.

This provides that "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".

The words within the definition that are particularly important when distinguishing "lending" from electronic transmission that amounts to a "communication to the public" are

- (a) that a copy should only be provided on terms that it will or may be returned; and
- (b) that any copy is provided through an establishment (not a service) which is

accessible to the public.

5. In assessing the concept of "loans" and "lending" in the digital context, it is important to remember that the derogation from the exclusive public lending right permitted by Article 5 EC Rental and Lending Directive applies only to "public lending".

Exceptions to the communication to the public right must comply with the limits of Article 5.3 of the EC Copyright Directive.