

BRITISH COPYRIGHT COUNCIL

Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-Print Formats

- 1 The British Copyright Council is an association of bodies representing those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and other material in which rights of copyright or related rights subsist under the United Kingdom's copyright law (Copyright, Designs and Patents Act 1988 as amended) and those who perform such works.
- 2 The British Copyright Council is an NGO Observer Member of the World Intellectual Property Organisation (WIPO). Our members include professional associations, industry bodies, trade unions and collecting societies which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many sole traders and SMEs as well as larger corporations. We include in our membership some organisations representing authors who already benefit from the Public Lending Right (PLR) as well as organisations representing those who, should the PLR scheme be extended, would benefit from the application of Public Lending Rights in the future.
- 3 We welcome this opportunity to respond to the Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-print Formats.
- 4 While PLR is not directly a copyright matter, the British Copyright Council recognises that revenue paid by PLR to UK authors makes an important contribution to their overall income and we have in the past contributed to debates on PLR related issues. We have, however, left it to individual member organisations to respond on individual questions raised by the consultation and our reply focuses on a few key points of principle.

5 Value of PLR

Since its introduction, PLR has provided an important service by facilitating access to books, without charge, through public libraries. This has been of real value to society. However, such access must be in balance with the interests of the author and publisher.

With physical books, a one time read over a strictly limited period of time, as provided by public libraries under their rules of access, by its nature limits the dangers of any seriously detrimental damage to commercial sales either to the author or to the publisher, and is compensated under existing PLR schemes in some 27 countries under the EU Directive on lending and rental rights.

The dangers of damage to commercial sales are already limited by several significant exclusions of "publications" that might otherwise be regarded as "eligible books" for the purposes of PLR.

6 Extension of the Scheme to Audio Books

It is our view that lending of physical copies of audio books can be treated in the same way as physical books. They are both hard copies, for which limits can be set on access.

We also note the evidence which shows that in the absence of PLR for audio books, such lending has become established in public libraries and continues to increase with audiobooks accounting for 10% of loans in 2003, rising to 13.5% by 2006.

We therefore support the extension of PLR to cover remuneration for the lending of physical copies of audio books.

7 Hard Copies (analogue and digital)

While audio books are currently usually published and distributed in hard copy form, and are therefore suitable for treating as “books” relevant to PLR it seems that in the relatively near future such “books” will be available through subscription services on-line, either streamed or downloaded. On-line formats of books are already finding their way into public libraries, where extensive use of them is envisaged, particularly for those who may find access to library buildings prohibitive. Similar problems exist with E-books.

The definition of “lending” included in the Copyright, Designs and Patents Act 1988 (s 18) should remain the benchmark for any application of PLR. Lending is not the same as “communication to the public” in terms of copyright restricted acts. In addition a prerequisite of any extension to online and E-books would be that the library had acquired such a copy legitimately, that the copy was accessible to only one user at a time and that the library has in place secure delivery methods and processes by which to monitor usage. Multi-user licensing at a tariff suited to non-commercial access may be available directly from the publisher or distributor, which might however in some cases, be a more appropriate way to provide this type of access. This type of access, should not preclude further payments to the author who needs to be compensated for this use, just as the payment of royalties by publishers to authors on books purchased by public libraries does not preclude their inclusion in PLR.

There is a need for careful study and further consultation to ensure that there are clear limits on such usage, especially where it involves third parties, otherwise on-line access could have a detrimental effect on the developing market for e-books and other forms of e-access. Any extension to, or development of PLR should in no way conflict with the normal exploitation of the work and the author’s legitimate rights and interests.

If it is intended to develop PLR in this way then we would submit that further consultation is required, such consultation to explore fully the necessary demarcation

between lending rights and other uses governed by separate rights and licensing arrangements.

8 Categories of rights holders benefiting from PLR in relation to non-print books

Those currently benefiting from PLR are those “treated as an author of a book for the purpose of this scheme”. To date that has been only writers, editors and illustrators. It is, therefore, our view that the scheme could reasonably be extended to include narrators whose performance is an integral part of such books.

However, we note the very limited funding available for PLR and that in 2008 it was, in fact, reduced. We therefore submit that any extension in the categories of rights holders to benefit from PLR should be matched by a proportionate increase in the funding of PLR.

We also support the extension of PLR to cover remuneration for the lending of physical copies of audio books to performers which will itself entail a further increase in funding.

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