



DACS
valuing visual arts

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

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Introduction: about DACS

The Design and Artists Copyright Society (DACCS) is the UK's copyright and collecting society for artists and visual creators.

Established in 1984 as a not-for-profit organisation to promote and protect the copyright and related rights of artists and visual creators, DACCS is constituted as a company limited by guarantee under UK law and is currently governed by a board of non-executive directors comprising representatives from a range of artistic disciplines alongside others drawn from business and the legal profession. DACCS achieves its objectives of promoting and protecting visual creators' intellectual property rights by offering the following services:

Copyright licensing: We act as an agent for our UK and international membership of over 50,000 artists. Our authority for copyright licensing for individuals comes from mandates from creators or their beneficiaries in the UK and via reciprocal agreements with similar visual arts copyright societies (Associated Societies) in 28 countries around the world.

Collective rights management for the entire UK visual repertoire through participation in a range of collective licensing schemes, supported by mandates from fourteen professional associations and trade unions representing 15,000 visual creators and several thousand individual visual creators participating in our annual collective licensing distributions. In 2008, DACCS paid over £3m for nearly 13,000 claims for a share of collective licensing royalties.

Artist's Resale Right: Our service of collection and distribution of resale royalties which we launched in February 2006 pursuant to UK implementation of Directive 2001/84/EC. Since the introduction of the right DACCS has paid over £7 million to more than 1,500 artists.

For further information about DACCS, please visit our website: www.dacs.org.uk.

DACS does not manage public lending right in the UK for illustrators of books, as the existing PLR scheme remunerates these creators directly. Nevertheless, we welcome the opportunity to respond to the Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-print Formats, and do so by way of highlighting some key principles.

2. Public lending right: a valuable right for creators

Public lending right (PLR) in the UK is a great success story: the right acknowledges the value we place on providing access to published books through public lending libraries and at the same time rewards authors and other contributors, at a level commensurate with such non-commercial uses. As noted in the submission from the Authors' Licensing and Collecting Society (ALCS), this right functions as a supplement, and not a substitute, for the commercial sales market which provides the framework within which authors are primarily rewarded for their creative work.

3. Extension of the PLR scheme to physical copies of audiobooks

As noted in the Consultation Document, current PLR legislation embraces print formats only. Therefore rightsholders in works and performances incorporated in the popular audiobook format have sought to use the exclusive lending rights granted under copyright legislation as an alternative means to achieve remuneration for lending of works in non-print formats.

But as also noted in paragraph 16 of the Consultation Document, such licensing arrangements appear unsatisfactory to all concerned, a point amplified in ALCS' submission, where we read that ten years after the formation of a collective licensing scheme to handle lending rights for authors and performers of audiobooks not covered by existing PLR legislation, there has been no remuneration for authors and performers, despite the fact that there is significant lending of such works in this popular format (for which libraries generally make a charge). Thus a lending market based on contractual licensing in this instance appears not to have developed in such a way as to return remuneration to rightsholders.

In practice, we see little distinction between a hardcopy book and an audiobook in terms of how these products are acquired by libraries by way of a sale of a physical item (which may trigger a contractual royalty for author or performer) and the way such products are lent to the public (there is a maximum number of possible simultaneous lending events of a product which is determined by the number of copies a library has acquired).

DACS therefore supports the extension of UK PLR legislation to cover physical copies of audiobooks. We also support the extension of PLR to provide remuneration to performers of works in audiobook format, to recognise their creative contribution to such productions.

4. Extension of the PLR scheme to digital formats

It would seem reasonable to assume that demand for provision of works in digital formats through libraries will increase. But matters become more complicated with digitally accessed material because the concept of lending one copy to one individual at a time (or a limited, defined number of copies to a corresponding number of individuals) giving rise to remuneration opportunities is potentially dissolved by technological capacity to reproduce digital copies without limit. This is equally true of digital audiobooks as e-books.

It is possible that a number of business models may emerge both for digital audiobooks and e-books. The question to consider is whether such new models mean that digital formats can be 'lent' in the same way as hardcopy artefacts, or whether this constitutes a different type of distribution method altogether within the meanings of the various legislative instruments which define the public lending right, which emphasise the non-commercial nature of such lending in exchange for which remuneration is given.

It is possible that the role of the library itself will change, to include serving as a point of public access to publishers' digital content for multiple users, in which case an examination of the contractual possibilities between publisher and contributor may become significant as regards an appropriate form of contributor remuneration.

On the other hand, such arrangements (which may have a more commercial flavour) may not necessarily include some works for which a library experiences public demand for non-commercial lending in digital formats. A mechanism enabling contributors to be remunerated appropriately is still necessary.

We would therefore suggest that discussion of the potential application of the public lending right to such models is preferable within the second phase of this consultation. We would be happy to participate in this discussion.

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