



Response to the Department for Culture, Media and Sport Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-print formats

Introductory Comments

Equity is a trade union representing 37,000 performers and creative personnel who work across the whole spectrum of entertainment in the UK. Equity members work in a range of media and the creative industries including visual broadcasts, sound recordings and film; principally in drama, comedy or entertainment roles.

Equity's Audio Committee represents the interests of performers involved in sound recording, including the narration of audio books. Equity has so far concluded just one agreement covering the production of audiobooks, but is in the process of negotiating and concluding further agreements in this sector.

Equity also works closely with British Equity Collecting Society (BECS), the only UK-based collective management organisation for audiovisual performers. BECS works to secure and distribute revenues to performers. These monies recognise the value of performances that are intrinsic to existing and emerging services, including new and developing digital media.

The intellectual property framework supports the creative industries and enables investment in the individual creators, both now and in the future. Creators need a supportive and robust framework to ensure that there is appropriate reward for their creativity and innovation. The lending rights conveyed under section 182C of the Copyright, Designs and Patents Act, and in particular the right to consent to lending are important to performers. These rights ensure that a reward can be secured from current and future lending of their work.

1. Do you agree that, on expansion of the PLR Scheme, the inclusion of non-print books is appropriate in terms of lending and creative production trends? Please give details of your position on this issue.

Equity agrees that "hard copy" audio books should be included within the PLR scheme. These "books" should meet the following criteria:

- They should be in a physical format
- They should be subject to lending conditions i.e. they must be physically returned and available for a maximum period of time

Audio books are a popular resource available for lending from public libraries. The public library market accounts for a significant proportion of the sales of audio books. However, under the current PLR scheme authors and narrators of audio books have no direct means of receiving reward for this service.

2. We have made an assessment of the current and potential formats for non-print publications which could be made eligible under the PLR Scheme (paragraph 17) – is the scope of this definition sufficiently broad? Do you have any concerns about any of the formats currently listed? If so, please provide details.

Equity believes that it is too early to assess the demand for other formats such as e-books and soft/electronic copy audio books. The case for including these formats within the scope of PLR should be revisited when the results of the current pilot projects operating have become clear.

In addition services such as e-books may not strictly fall within the definition of 'lending' intended by the CPDA and may instead fall under the category of 'making available a recording of a performance to the public'. A blurring of this distinction may erode the ability of performers to secure equitable or other remuneration from the exercise of rights relevant in instances where there has been a communication to the public of their work.

3. We have made an assessment of the methods of 'lending' of non-print books which are currently used by the public libraries, or may be adopted in the future (paragraph 19) – can you envisage any additional methods of 'lending' which should be included, or do you have any concerns about those currently listed? If so, please provide details.

For the reasons outlined above, it is important for any instance where electronic transmission is involved to be assessed not just against the criteria for 'lending' but also the properties of 'communication to the public'. It may be that if library users are accessing material from a remote location, that 'communication to the public' in copyright terms is taking place.

Equity would be opposed to any extension of PLR which would involve replacing exclusive rights held by performers to consent to the 'communication to the public' of their performance, as currently recognised by section 182CA(1) of the CPDA or if the extension compromises the ability of performers to access payments from this or other provisions of the Act.

4. Are the additional categories of rights holder (i.e. performers and producers) in relation to non-print books an accurate description of rights holders in non-print works?

Equity believes that the Government should consider the case for narrators of audio books which are lent by public libraries in physical formats to be eligible

to receive PLR payments as equitable remuneration for the lending of their performances. Equity further believes that the inclusion of performers could be facilitated by extending the definition of Authors under Article 4 of the PLR Scheme.

Given that the PLR scheme is intended to benefit authors, it does not appear to be appropriate to include producers under Article 4. PLR may not be the most suitable means of addressing the rights of producers of audio books.

5. Do such rights holders licence/assign their lending rights in practice? If so, do such rights holders enforce their unwaivable right to equitable remuneration in practice?

6. It is our understanding that lending rights are currently under-enforced and/or poorly protected in respect of audio books and e-books loans through UK public libraries – is this correct?

7. Where such contractual arrangements exist, how effective are these arrangements and do rights holders feel adequately protected/remunerated?

Our members working in audio book narration tell us that it is often difficult for performers to assert their lending rights. In practice payments are agreed between narrators and publishers prior to a recording being made available for sale to public libraries for lending purposes. It is therefore very difficult to estimate the demand for the recorded material. Equity members are also not aware of the prices that audio books fetch in the public library market, which has a bearing on contractual negotiations.

Equity members serving on the union's Audio Committee report that they do not, in general, receive any revenue from the lending of audio books. The royalties that narrators do very occasionally receive are very limited. In most cases the initial fee that is paid to narrators acts as an advance against future royalties.

The contracts entered into by narrators often fail to address the issue of consent for lending. In cases where consent has been secured, clauses covering payment are very general in their wording and do not entail specific reference to payments related to lending by public libraries. The result is that while rights may be recognised contractually, this recognition has been decoupled from remuneration.

For example, an agreement reached between Equity and one producer of audiobooks states that:

“The Readers specifically acknowledges that payments due to the Reader hereunder include full, equitable, proper and adequate remuneration in respect of any and all rental and lending rights to which the Reader may now be or may hereafter become entitled under the laws of any country in the world.”

8. Would the inclusion of such rights holders in the Scheme produce the certainty of payment and protection of rights described above (paragraphs 24 – 28)? Please give details.

Equity is not convinced that publishers of audio books should be covered by the PLR Scheme. The publishing industry will benefit from the knock on effects of including authors and narrators within the scope of the Scheme. Proper recognition of the rights position for these individuals will clarify and improve the relationship between publishers providing copies of audio books and libraries.

9. Do you agree that the expansion of the PLR Scheme, as opposed to maintaining the current contractual lending market, will benefit rights holders, libraries and the creative sector?

The expansion of the PLR Scheme to cover narrators and authors of audio books will provide greater security for these individuals and will improve their ability to negotiate fair contractual terms. This in turn will in turn enable these rights holders to continue to create the content that drives the creative sector.

Equity members are, however, concerned that any expansion in the PLR Scheme should be matched by an increase in funds to meet these rights so that the rights of existing beneficiaries are not compromised.

21st September 2009

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