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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

Introduction

1. Publishing in the UK is the largest media sector, and the biggest creative industry. The Publishers Content Forum (PCF) is an informal alliance of some of the major publishers and publishing industry associations within both the UK and the EU. It was formed in March 2009 to give a collective and representative voice to the publishing industry on a broad range of regulatory and legislative issues affecting the future of print and digital content including issues such as intellectual property and digital standards.
2. PCF's members include the Publishers Association, the Periodical Publishers Association, the Data Publishers Association, the Association of Learned and Professional Society Publishers, the European Publishers Council, the Newspaper Society, the Publishers Licensing Society, the British Association of Picture Libraries and Agencies and the Music Publishers Association. PCF also includes representation from individual publishers.
3. PCF members work closely with libraries to facilitate the use of their work within and in the context of legitimate library services. However, when such use within library services affects the restricted acts that would otherwise vest in the published works, PCF members remain concerned that permitted use does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the owner of the published work.

Responses to questions

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.

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.



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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.

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.

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 would need to be carefully assessed.

In this context PCF believes 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.

Q3: We have made an assessment of the methods of ‘lending’ of non-print books which are currently used by 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.

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.

Q4: 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?

The categories of rights owners relevant to non-print books may vary according to the style of the format. If a non print format involves a sound recording the prouder of the sound recording may be relevant. If a non print format includes moving images, it may be that the producer of a film may be relevant.

The routes by which contributors to films and sound recordings receive equitable remuneration or contractual payments from the lending of films and sound recordings need to be addressed when looking at the extension of PLR to non print formats.



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Extension should address only areas where the market does not already enable equitable remuneration to be paid to contributors as envisaged by the EC Rental and Lending Directive.

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