

## [NEW] Article *Squater* – E-Lending

Library lending ensures that all members of society have access to all types of (physical) published content, irrespective of where they live or their financial situation. In European countries where the Rental and Lending Right Directive<sup>1</sup> has been implemented, public libraries have the right to lend any physical book they own to a member of the public, subject to remuneration being paid to rightholders.

However, the situation for e-books has been less clear, given both the status of e-books as services rather than goods, and uncertainty as to whether lending digital materials can fall under the same rules as the lending of physical ones. A recent European court case (C-174/15 VIB vs. Stichting Leenrecht) has clarified this, ruling that libraries buying and downloading e-books available for purchase by anyone, and then lending them to patrons on a one-copy-one-user basis can fall under the current Directive. This puts eBooks and library lending on the same basis as before, allowing libraries to act as they have always done - buying any book they chose and then lending them to their members.

However, the interplay with terms and conditions that come with eBooks and how to lend if technological protection measures that prevent their lending are in place, still remain important and legitimate public interest concerns. Moreover, it does nothing to facilitate the development of other models of lending, such as one-copy-multiple-users, despite these being better suited to library needs, user expectations and smart exploitation of digital opportunities.

### Our Ask

- Ensure the exception to copyright allowing for library lending (at least on the one-copy-one-user model) is both mandatory, and covers books in any form, including digital so that any e-book made publicly available in the market can be lent to library patrons.
- Ensure that contract terms or technological measures applied to e-books cannot be used to prevent libraries from lending.
- Taking this as a starting point, promote dialogue between rightholders and libraries to develop acquisition and lending models better suited to library needs.

### How to support library objectives

In **CULT**: support amendment 422 (Adinolfi) and 428 (Charanzova, Toom, Stihler)

In **IMCO**: support amendments 13 and 47 by the rapporteur, and amendments 153 and 388 (Reda).  
Reject Amendments 201, 203, 204 and 432, which will see authors forced to give up some of their earnings to publishers

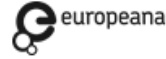
In **ITRE**: support amendments which reflect the rapporteur's proposals in IMCO

In **JURI**: support amendments which reflect the rapporteur's proposals in IMCO

**What does the Commission's Proposal Say?:** In the communique accompanying the proposals, the

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<sup>1</sup> DIRECTIVE 2006/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property



Commission declared that it planned to wait for the CJEU judgement before deciding whether to act. Further to the judgment, no action has been taken by the Commission, and as such, there is no provision on e-lending currently in the Commission's proposals.

**What's Missing?:** It follows that libraries still need guarantees that they can benefit from the public lending right for e-books by making the ECJ ruling into law, and ensuring that lending cannot be subject to override by contract terms or technological protection measures.

## **Alternative Fact-Check**

### ***Libraries are getting e-books for free***

**Why this isn't true:** As with normal books, libraries pay for their electronic content, which the ECJ ruling also requires. The ruling however allows for libraries to buy any eBook available on the market, irrespective of whether the book is aimed at a library or an individual consumer - just as is the case with paper books. However, they often have to pay much more than market prices for e-books, which usually also come with additional restrictions on how they can be used.

In many cases, libraries often then have to renew their licence to use the e-book after a certain period of time or number of loans. Where there is no such limit on time, then libraries often pay an additional sum to rightholders per loan.

For many libraries, the current regime for e-books is financially unsustainable, with costs rising much faster than demand. Moreover, many publishers refuse to sell e-books to libraries, or at least not before a certain period of time has passed. For people wanting to keep up with the latest publications, this is frustrating and can lead to groups that rely on the library being excluded.

### ***Libraries will be able to lend e-books without restrictions***

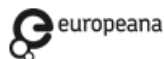
**Why this isn't true:** In most cases – in particular that cited by the CJEU as falling under the public lending exception – there are restrictions on e-lending. Libraries are able to lend each 'copy' of an e-book they have purchased only to one person at a time. After the end of the loan period, the book disappears from the user's e-reader, and another person can borrow it, thanks to technological protection measures.

### ***E-lending will lead to a rise in piracy***

**Why this isn't true:** There is no reason for this to happen – library e-books are protected by the same technological protection measures which prevent copying or sharing of e-books bought in shops. There is no reason why borrowed e-books should be pirated more than those which have been bought.

### ***Hasn't e-lending harmed the e-book market in Denmark?***

**Why this isn't true:** It is true that in Denmark, libraries rapidly took a major share of a still immature e-book market, paying high per-loan fees for use. While some publishers have therefore cancelled



cooperation with libraries, the second biggest continues to work fruitfully with them, while others are in talks to join the platform. E-lending has worked well for those publishers who are involved in the programme. Nonetheless, Denmark is a unique case, thanks to its significant cultural budgets.

### ***One library will be able to supply all of Europe, meaning that even libraries will not buy e-books***

**Why this isn't true:** Libraries continue to work using library cards, which are available only to people resident in their area. We would, however, argue that citizens should be able to borrow e-books from their library, even when travelling. This sort of access is already planned by the New York Public Library for its e-lending platform.

### ***E-lending doesn't benefit authors***

**Why this isn't true:** We know little about how much authors are making when a publisher sells an e-book to a library, and in particular when a licence is renewed. This is a question of contract law, with the Commission's proposals on greater transparency (articles 14-16 of the draft Directive) potentially shedding light on what is going on.

Moreover, as a result of the ECJ case until it is confirmed by each Member States that e-lending falls under the same EU rules as 'normal' lending, it is not clear that e-lending can lead to the payment of public lending rights.

### ***If I can get e-books from the library, why should I buy any more?***

**Why this isn't true:** There is no conclusive evidence either way that e-lending reduces demand for commercial e-books. In Finland and the Netherlands, both e-lending and e-book sales have risen. Where there has been experimentation, as in the UK, the results were inconclusive. Moreover, despite it being as easy to walk into a library as to walk into a bookshop, both have long co-existed, contributing together to a stronger reading culture and love of books. There is no obvious reason why this should be different for e-books.

There has been much comment elsewhere that the state of the e-book market is due in part to a plateauing of demand, but also to a failure to innovate and produce content and readers that attract people. Library lending could yet prove a means of reigniting growth in demand by increasing the audience for e-reading, to the benefit of citizens and publishers alike.