



**POSITION ON REMOTE ACCESS OF BOOKS IN PUBLIC LIBRARIES
(FEP ANSWER TO THE PUBLIC CONSULTATION ON COPYRIGHT RULES
2014)**

I. E-lending

Publishers believe that libraries have an important mission in giving access to books to the wider public in the digital world. In this context, licensing solutions are being developed in all Member States to support e-lending. Each licensing model has its own terms and is negotiated between rightholders and libraries.

A certain degree of competition between library lending and sales of e-books is inevitable. Remote borrowing services and the fact that digital files do not deteriorate with multiple “loans”, mean that this degree of competition is higher than is the case with physical books. It is also important to realise that library acquisitions make for only about 4-5 % of publishers’ turnover at the very best (5% in the UK, 4-5% in France, but less than 2% in Italy, less than 1% in Spain). This illustrates why it is necessary to find balanced ways to sustain the commercial market which represents 96%, for most cases 98-99%. In Sweden, where libraries are only purchasing 3-4% of all books sold, they are taking up to 90% of the e-book market and next to 10% in Denmark. Any exception in this area would jeopardise this balance and would put a stop to the development of regular e-book sales through bookshops and online retailers as well as new innovative services such as Izneo (French and Belgian rental service of comic e-books) Mobifo (Danish “Spotify” for e-books), Paper C and Skoobe (German “Spotify” for e-books), MLOL and Rete Indaco in Italy to name only a few.

FEP together the European Writers Council has started a series of seminars to present best practices in this field (we have looked at examples from Denmark, Finland, France, Italy, the Netherlands, Norway and the United Kingdom so far). We held a first seminar in May 2013 in Helsinki, and a second one in December in Paris. Authors, publishers, distributors, booksellers and librarians (represented by EBLIDA) attended these seminars. We also launched a questionnaire to be filled in by these stakeholders by March 2014 in order to obtain a better overview of licensing practices.

Any perceived problems can be solved by encouraging licensing and sharing best practices, but not by creating legislation which would prejudice commercial exploitation of books and inhibit the launch of new services and technical and business innovation.

Libraries remain essential institutions for readers and are a relevant part of the book world. We acknowledge their request to shift their traditional activities of on-premises and public lending towards online developments. However, we should be mindful that any move forward by libraries should not jeopardise a nascent e-book market. If all or a majority of library services were to be offered online, there would be no more reason to maintain local libraries, as a single central service would be sufficient. We are seeing already that due to budget cut in the UK, local

libraries are regrettably being closed down. The distinction between their mission of consultation and public lending right, which tends to blur when considered online, should be maintained in combination with “frictions” in order to preserve the commercial market.

Unlike what is commonly thought, the EU Special Eurobarometers report on “Cultural Access and participation”¹ shows that it is mostly white collars, educated people, managers and students who are most likely to visit a public library (page 15). Lack of interest (47%) is the main reason for not visiting a public library followed by lack of time (27%) whereas lack of choice (7%) is a minor reason (page 21-22) and education is an important indicator of engagement with visiting public libraries (page 33).

Publishers are increasingly developing innovative and accessible licences to allow a high level of granularity in giving users the appropriate licences for their individual needs. There are strong economic arguments in favour of maintaining some form of limitation to electronic “lending” in the online environment which make the library patron’s experience comparable to borrowing a physical book. The example of Denmark, where a very permissive lending system called eReolen was launched, showed that whereas e-lending rose exponentially, the nascent market of e-books came to a complete standstill at during the lending period. Moreover, most of the pirated books to be found online came from eReolen, which as a consequence shifted to a streaming system. The digital market is in its earliest stages, and no one can predict its development at this stage. We need therefore to be prudent and make sure not to freeze specific business models in time by way of legislation.

Moreover, a distinction should be made between academic and public libraries. Sales to consumers represent the majority of the trade book market. When it comes to public library, we can imagine that by making work available online, libraries compete with online commercial exploitation of works by offering a substitute of access to a work. The balance with the commercial offer is all the more difficult to find, this is why we need “frictions”. The fine line with e-lending is also blurred. In the off-line world, the friction is either the fact that you need to go to the premises to access a work in any event, be for on premises consultation or be to borrow and bring a book home with you.

II. Mass digitisation

The term “mass digitisation” is normally used to refer to efforts by institutions such as libraries and archives to digitise (e.g. scan) the entire content or part of their collections with an objective to preserve these collections and, normally, to make them available to the public. Examples are efforts by libraries to digitise novels from the early part of the 20th century or whole collections of pictures of historical value. This matter has been partly addressed at the EU level by the 2011 Memorandum of Understanding (MoU) on key principles on the digitisation and making available of out of commerce works (i.e. works which are no longer found in the normal channels of commerce), which is aiming to facilitate mass digitisation efforts (for books and learned journals) on the basis of licence agreements between libraries and similar cultural institutions on the one hand and the collecting societies representing authors and publishers on the other². Provided the required funding is ensured (digitisation projects are extremely expensive), the

1 http://ec.europa.eu/public_opinion/archives/ebs/ebs_399_en.pdf

² You will find more information about this MoU on the following website:
http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm

result of this MoU should be that books that are currently to be found only in the archives of, for instance, libraries will be digitised and made available online to everyone. The MoU is based on voluntary licences (granted by Collective Management Organisations on the basis of the mandates they receive from authors and publishers). Some Member States may need to enact legislation to ensure the largest possible effect of such licences (e.g. by establishing in legislation a presumption of representation of a collecting society or the recognition of an “extended effect” to the licences granted)³.

In France and Germany, authors, publishers and libraries have negotiated solutions for out of commerce works (*oeuvres indisponibles* in French) before those being codified in the law. The important element is that they have been negotiations which allow to tailor the solution to the needs of the libraries, to provide a fair remuneration for the rights holders and a possibility to remove their works to either bring them back into the market or to respect the moral rights of the authors.

Successful projects have been conducted in dialogues with the authors and publishers’ associations and their collective management organisations and demonstrate that when there is a political willingness and good will from all sides, solutions can be brought to the fore.

In those countries, the implementation of the MoU on out of commerce works signed by FEP, EWC, STM, IFRRO and library representatives, has thus required the adoption of legislation to ensure the largest possible effect of the voluntarily negotiated licences. However, if Member States implement the MOU across the EU following all of its conditions, we do not believe that any further legislation is needed at European level.

Unlike the Google Book Settlement, the MoU on out of commerce works foresees some safeguards when rightholders are not represented. It is up to Member States to decide according to their legal tradition whether further national legislation is needed. Signatories have created OMIT (Out-of-Commerce MoU Implementation Task Force) and meet very regularly to take stock of libraries projects across the EU and monitor implementation of the MoU. What was found by the group is that by large it is not copyright which prevents digitisation projects but a lack of public funding. In France and Germany where the MoU was successfully implemented, financial mechanism and public money was available to make those project come to life.

³ France and Germany have already adopted legislation to back the effects of the MoU. The French act (LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du xxe siècle) foresees collective management, unless the author or publisher in question opposes such management. The German act (Gesetz zur Nutzung verwaister und vergriffener Werke vom 1. Oktober 2013) contains a legal presumption of representation by a collecting society in relation to works whose rightholders are not members of the collecting society.