

6 November 2012

William Sieghart
Chair of the e-Lending Review
Independent e-Lending Review
Department for Culture Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

Dear Mr. Sieghart

e-Lending Review: Call for Evidence - response from the British Copyright Council

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the CCIs. Our members also include collecting societies which represent right holders and which enable access to works of creativity. More information about the British Copyright Council (BCC) including its membership list can be found at www.britishcopyright.org.

The BCC welcomes this independent review commissioned by the Minister for Culture, Communications and the Creative Industries. However, the BCC finds it difficult to reconcile the possible extension of library services into e-Lending at a time when local authorities are closing some libraries “to quickly find cost savings”¹.

BCC comments are limited to issues relating to copyright legislation and we leave it to those of our member organisations which represent authors and publishers to provide more detailed responses.

Any proposal to extend library services to include the lending of e-books, must take account of the full cost of providing such a service, including remuneration of rights holders.

If the Government’s approach is to treat e-Lending on library premises in the same way as Lending of physical books, then Section 43 of the Digital Economy Act, which also makes provision for the e-Lending of audio books through the Public Lending Right scheme should be implemented. However, it is difficult to see how PLR could provide for additional remuneration for authors and performers to cover e-Lending at a time when the sum available for the Public Lending Right is frozen and the independence of the PLR scheme is itself under threat.

¹ Commons Culture, Media and Sport Select Committee report on the inquiry into library closures, published Tuesday 6th November 2012

With regard to audio books, we would ask the Review to note the importance of audio books to lending by libraries, evidenced by the volume of loans in this format, and the continued absence of remuneration for authors and performers.

e-Lending which takes place through the downloading of e-books by end users outside the library premises involves additional rights which are under the control of the rights holders including the right of reproduction and, most importantly, "communication to the public" through the "making available online" of the e-book. These are restricted acts for which permission is needed from the author and publisher.

An exception to copyright for e-Lending by libraries for downloading outside the library premises, which makes no provision for the author or publisher, is in conflict with the Berne "Three Step Test" and has the potential to damage sales of e-books, to compete with emerging licensing systems for commercial and non-commercial forms of e-Lending or rental and to limit the development of new business models and legitimate services by publishers.

Given the UK Government's keen interest in the Growth agenda and the role of the Creative Economy in that agenda, it is vital that any review takes full account of these points.

If you need any further information, please do not hesitate to contact me.

Kind regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Janet Ibbotson', with a stylized flourish at the end.

Janet Ibbotson
Chief Executive Officer