



department for
**culture, media
and sport**

Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-print Formats

July 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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About this consultation

This consultation paper seeks your views on policy proposals to:

1. extend eligibility for Public Lending Right (PLR) to non-print books, in particular audiobooks and e-books;
2. extend PLR to the lending rights holders in respect of these non-print works where they are not currently eligible under the PLR Scheme.

We are now seeking opinions from stakeholders across the UK about how such changes might affect stakeholders.

This proposal is motivated by the increasing demand for the loan of books through public libraries in formats other than printed and bound books. Where such demand for lending exists – primarily for audio and e-book – the law currently forces libraries to seek individual contractual arrangements in order to license their lending from rights holders, a complex and time consuming process for both rights holders and libraries. It is the view of Government that this could be having an impact on the appetite of libraries to initiate audio and e-book lending. It could also be affecting the protection of rights holders in respect of lending rights held by them.

Depending on how the policy develops, further consultation will follow on the introduction of the appropriate changes to the PLR Scheme, which sets out PLR's rules of operation. This will include how the Scheme will work in practice, as well as levels and volumes of current remuneration. These Scheme changes would be introduced at an appropriate moment to ensure securing additional public funding for the PLR's central fund.

An Impact Assessment is being prepared in parallel.

Responding to this consultation

We would encourage individual authors, translators, illustrators, librarians, producers and narrators to raise their concerns through a relevant representative group (e.g. The Society of Authors), rather than responding individually, though comments from individuals who are not members of trade or professional bodies are welcome.

A full list of consultees is attached at Annex A.

Responses to, and enquiries about, this consultation should be addressed to:

Libraries & Archives Team
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email: plr.consultation@culture.gsi.gov.uk

The consultation starts on 24 July and will close on 16 October 2009.

As this issue is largely of specialist interest, this will be a purely written exercise. Responses can be submitted in hard copy or by email.

DCMS will publish a summary of the responses and a statement outlining intended next steps within eight weeks of the closing date.

This consultation will be carried out in accordance with the Code of Practice on Consultation and the seven consultation criteria listed at Annex B.

Background

1. Public Lending Right (PLR) is the right of authors to receive compensatory payment for the loans of their printed books from public libraries in the UK. The PLR Act 1979 (the “1979 Act”) established this right, and the new system’s rules of operation were set out in secondary legislation, the PLR Scheme, in 1982 (under the Public Lending Right Scheme 1982 (Commencement) Order 1982). PLR is grant-in-aid funded by DCMS. The PLR Scheme is managed by the Registrar of PLR and his team from offices in Teesside. Authors resident in the UK and other European Economic Area (EEA) states are eligible to apply for registration in respect of eligible works. PLR entitlement for registered authors continues for 70 years after death.
2. Payments are made annually to eligible authors who register their books with PLR, on the basis of loans data collected from a sample of public libraries in the UK which is ‘grossed’ up by the PLR computer to provide a national estimate for the loans of each book. Over 23,000 writers, illustrators, photographers, translators and editors who have contributed to books lent out by public libraries receive PLR payments each year. Where two or more contributors to a book qualify for registration they must agree shares in the book based on their respective contributions. Translators and editors qualify for fixed shares (30% and 20% respectively). In 2009, £6.6 million was distributed, equating to a rate per loan of 5.98 pence. A maximum payment per author of £6,600 applies.

Getting to this stage

3. A quinquennial review of PLR undertaken in 2002 recommended that consideration be given to the extension of payment to authors of non-print books. Formal discussion regarding compensation for rights holders of audiobooks for the loan of their work from public libraries last took place in 2004 with the Authors Licensing and Collecting Society (ALCS) and British Equity Collecting Society (BECS). The collecting societies were advised to negotiate directly with library services over licensing arrangements.
4. In April 2009 the All Party Parliamentary Writers Group made a formal recommendation to DCMS Ministers, including to extend PLR to non-print publications. The extension of PLR to audiobooks has also been a regular item on the agenda of the PLR Advisory Committee (now the PLR

Management Board) where members represent authors, librarians and authors agents.

5. The Digital Britain final report, published in June 2009, stated that Government is sympathetic to the case for extending PLR, and made the commitment to look for an early legislative opportunity to make this modest but useful intervention 'digital ready'.

Introduction

6. The public library services provided by local authorities across the UK are a fundamental part of the nation's infrastructure for education and enjoyment, promoting wellbeing and community cohesion. Over 328 million visits are made to UK public libraries each year, the majority of which are to borrow, renew or return a book.
7. Following decades of campaigning, the introduction of PLR in 1979 gave authors the legal right to receive payment for the free loan of their books by public libraries. This primary legislation was the legal expression of a policy that recognised the essential role that authors play in both the cultural and economic life of the nation, supporting and sustaining the contribution made by authors to the UK's creative economy. It also provided for the Scheme to be funded directly by central government thereby relieving public library budgets of the potential costs of making PLR payments to authors.
8. Since its inception, the effectiveness of PLR has been notable, as has its popularity among its stakeholders. For many authors their annual PLR payment has become an important part of their income from writing and the feedback that PLR provides on the popularity of their books in libraries with readers can provide a real contribution to professional and creative confidence. PLR is now recognised by European Legislation (Directive 2006/115/EC on rental right and lending right (which repealed and replaced Council Directive 92/100/EEC on rental right and lending right)), a harmonising measure under which Member States were required to implement national legislation to reflect and protect the exclusive lending and rental rights of certain rights holders including an unwaivable right to equitable remuneration. The Directive permits a derogation from the need to obtain consent from rights holders in respect of public lending by libraries (i.e. through a PLR scheme) provided that, at least authors receive a remuneration for such lending (the value of which is to be fixed by the Member State). In the UK, the rights described by the Directive are conferred by the Copyright, Design and Patents Act 1988 (as amended) (the "1988 Act") and the derogation is expressed nationally by the pre-existing Public Lending Right Act 1979.
9. There are 29 countries with PLR schemes, a number of which have been established with advice and assistance from the UK PLR office which has played a leading role in the development of PLR internationally. As the PLR principle extends across the EU, a growing number of countries are showing themselves willing to make payments to British authors.

10. However the last 30 years – particularly the last 10 – have seen significant shifts in the way in which people access books, for purpose and for pleasure, and the evolving digital environment is changing the expectations of library users. Public libraries have responded to these changes in society – there were over 11 million loans of audiobooks in 2007/08 – and continue to do so as the growing public appetite for e-book starts to be embraced by this sector.
11. Lending rights are currently conferred upon authors, performers and producers by the 1988 Act, allowing these rights holders to authorise or prohibit the lending of their work. These rights can be assigned or licensed to others by contract which can, in practice, give rise to a payment for such consent and/or an ongoing arrangement to reflect the right to receive remuneration for lending. The 1988 Act provides that any eligible works currently lent under the PLR Scheme are lent without infringing copyright under the 1988 Act, and the Scheme financially compensates eligible and registered authors for such ‘implied consent’ by paying an average rate per loan. The Scheme is currently restricted to authors, with performers and producers remaining under the system described above conferred under the 1988 Act. Expanding the PLR Scheme to include new types of works and new types of rights holders would require a consequential expansion to the ‘infringement exemption’ under the 1988 Act and would thus remove the possibility of enforcement of lending rights by rights holders against lending libraries for newly eligible works; i.e. it would remove the need for libraries to obtain consent for lending of the newly eligible works. In exchange for this expanded ‘exemption’, the Scheme would be required to remunerate the rights holders of newly eligible works where such rights holders were eligible and registered with the Scheme.

Scope of Consultation

12. We are now proposing to encourage growth in the audiobook and e-book lending sector; to encourage the effective protection of rights holders by reflecting in legislation the changing formats of books loaned by public libraries since the PLR Act was passed; and to extend eligibility to additional rights holders who contribute creatively to their production. The scope of this consultation is therefore to consider the impact of extending PLR to non-print book formats, and to their non-author rights holders.
13. This consultation concentrates on the principle of expanding the Scheme which will necessitate a change to primary legislation (both under the 1979 Act and consequential amendments under the 1988 Act). This consultation does not address the practical detail of the changes that would need to be made to the PLR Scheme in order to implement these policy proposals. These changes – some of which are still to be determined pending the outcome of this consultation – would form part of subsequent consultation when those Scheme changes are proposed, though responses to this exercise will be taken into account at that time.

The current situation

14. PLR plays a small but important role in the creative economy by providing a dependable revenue stream not only for writers but for other agreed categories of author, including translators, editors and illustrators. Through provision of a reliable and valued revenue stream it supports the creation of new works and quality creative content and ensures that rights holders are protected through an organised and certain process.
15. Currently only printed books can be registered for PLR payment. In 2007/08 there were nearly 308 million loans of books from public libraries in the UK: PLR calculates the number of loans of registered books and a proportionate share of the PLR central fund is paid to the rights holder(s).
16. There were over 11 million loans of audiobooks in 2007/08 and increasing demand from library users for e-books. Lending rights in these non-print formats are conferred and protected by copyright law rather than PLR, and it is for rights holders and library services to make appropriate arrangements to license loans, but it is our understanding that regular formal licensing arrangements are not always achieved to the satisfaction of libraries or rights holders. It is government's view that the current system is not working as it is too complex, that rights holders are not being adequately protected and that growth of non-print book lending may be being inhibited.

The proposed changes to current policy

17. Under the proposals set out in this consultation, the categories of publications eligible for PLR would be extended to include non-print books – i.e. works which are primarily based on an authored text – whether experienced aurally or visually. This is undertaken with specific formats in mind:
- Hard copy audiobooks – primarily CDs;
 - Soft copy audiobooks – digital audio files (e.g. MP3) provided to library-user either as a download, for licensed short-term access or loaded on appropriate hardware (e.g. MP3 player); and
 - E-books – digital files as above, but to be read rather than heard. This may include image-based, as well as text-based books such as graphic novels.
18. This not an exclusive list, and with changing technology it may be that new ways people can receive loans of digital books through public libraries become current, such as through mobile phones. In delivering these proposals we will seek to make legislative amendments suitably robust and future proofed to allow the Scheme to incorporate such developments, where appropriate. This is also true of works solely published in non-print formats – this will become increasingly relevant in the future as sales of hard copy formats give further ground to soft copies.
19. Loans and lending in a digital context also require redefinition, as methods of publication and content delivery become more diverse: our proposals seek to incorporate:
- The loan of physical format audiobooks which are lent for a maximum period and physically returned;
 - The loan of digital book files loaded onto the appropriate hardware (e.g. e-book reader) and physically returned;
 - The grant to a library user of temporary access to books in digital formats (e.g. MP3) which are downloaded for a short time but, though not returned in a physical sense, are not retained;
 - The granting of temporary permission to a library user of access to a digital book, either remotely or through the library's own loaned or on-site hardware.

20. In extending PLR to these non-print formats it is also our intention to ensure that all holders of lending rights are remunerated for the loan of their works. The primary legislation to date has been restrictive, but technology is changing the nature of published works and we need to ensure that libraries are able to keep pace with market practice and demand in an efficient and fair way both for libraries and for rights holders. Performers (i.e. narrators of audiobooks) and producers of works are each conferred with their own exclusive lending rights under copyright law, in addition to those of authors. This reflects the view that they play an important role in making these formats a new and unique creation, not just a different format of the same printed volume. To ensure that such rights are protected and recognised as lending of such non-print works increases, we propose extending eligibility for PLR to these additional categories of rights holder, in addition to the author rights holders of audiobooks.
21. While the above arguments can be categorised as relating to 'equity', efficiency and sector growth, there is also a practical argument for this approach. As the 1988 Act confers exclusive rights upon producers and performers to consent to or prohibit the lending of such works, there is practical difficulty in extending the Scheme to include such new types of work, if we do not also include all the rights holders of such works as each such rights holder can prohibit lending independently.
22. Implementing these proposals would remove the ability of authors' to contract out the lending rights to libraries for works in these new formats from the date of commencement of the changes as the lending of such 'eligible' works by libraries would be immune from infringement liability under consequential amendments to the 1988 Act proposed. It is proposed that pre-existing contractual arrangements between libraries and rights holders would be preserved as a matter of law, but such libraries and rights holders would be free to negotiate the termination of such arrangements in favour of the newly expanded PLR Scheme. Other contractual arrangements made by rights holders in respect of their lending rights are a private matter, but it is proposed that only rights holders (or those acting on their behalf) who retain their lending rights (including any unwaivable right to equitable remuneration on transfer of lending right) will be eligible for compensation under PLR.
23. As under current PLR, eligibility would apply to all rights holders primarily resident within the European Economic Area (EEA): last year, 3.5% of the PLR's central fund was paid out to authors resident elsewhere in Europe. Reciprocal payments are made by partner organisations in other EU Member States. During 2007/08, £1.25 million was paid to UK authors for loans of their books in other EU countries. The lending rights of non-EEA rights holders conferred by the 1988 Act will be preserved, and these individuals will remain able to license or assign these rights to libraries (and other persons) independently. We renew our encouragement of these rights holders, their collecting agencies and the library sector to ensure that appropriate arrangements for consent from, and licensing payments to, such rights holders are in place.

Benefits & costs

24. The introduction of PLR for books in non-print formats will provide greater consistency and clarity in the arrangements governing remuneration of authors for the lending out of their works by libraries, and an appropriate means of ensuring that they and other rights holders receive appropriate remuneration for the free loans of their works. Such an extension may also encourage greater acquisition and lending of such works by libraries and could positively impact upon the growth of this creative sector.
25. In the particular case of audiobooks, it is our understanding that regular formal licensing arrangements are not always achieved to the satisfaction of libraries or rights holders: this policy will remove the burden of making contractual arrangements from EEA rights holders and from the public library sector, creating and encouraging a revenue stream where remuneration appears to be largely unrealised and eliminating the risk of rights going unprotected and unenforced through unlicensed loans.
26. From the date of commencement, rights holders' ability to licence or assign the lending rights for these works to libraries will be effectively removed, and in order to receive remuneration for free loans through public libraries, rights holders become obliged to do so through registration with PLR. It is proposed that this loss of contractual freedom will be compensated by the certainty and frequency of payments under PLR. Through later consultation on amendments to the Scheme, stakeholders will be invited to comment upon levels and volumes of remuneration currently received from libraries under the current contractual market model.
27. Under the proposed arrangements, authors, performers and producers will need to be certain of the extent of the lending rights which they retain in an eligible work (i.e. to what extent they have not previously assigned or licensed such rights) before registering for payments. Applications to register will require self-certification in respect of the applicant's 'exclusive rights' (legal and/or equitable) – as is already the case with PLR's registration procedures for print works – and falsification of such applications will continue to be an offence.
28. Additional public funding would be required to support the central fund in order to sustain the level of the rate per loan (currently 5.98 pence for loans of print books) and make the additional payments to new categories of rights holder: PLR's funding is agreed for the period to 31 March 2011, with funding for subsequent years subject to negotiations as part of the next government Spending Review. PLR may also require initial investment in order to establish the appropriate IT and administrative systems to process the additional scope of publications.

Consultation Questions

- Q1:** 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.
- Q2:** 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.
- 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.
- 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?
- Q5:** 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?
- Q6:** It is our understanding that lending rights are currently under-enforced and/or poorly protected in respect of audio and e-books loans through UK public libraries – is this correct?
- Q7:** Where such contractual arrangements exist, how effective are these arrangements and do rights holders feel adequately protected/remunerated?
- Q8:** 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.
- Q9:** 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?

Annex A: List of Consulted Organisations

Organisations representing the interests of rights holders

Authors' Licensing and Collecting Society (ALCS)
Authors' and Performers' Lending Agency (APLA)
British Association of Picture Libraries & Agencies (BAPLA)
British Copyright Council (BCC)
British Entertainment Cinematograph & Theatre Union (BECTU)
British Equity Collecting Society (BECS)
Design and Artists' Copyright Society
Royal Society of Literature (RSL)
Society of Authors
Writers' Guild of Great Britain

Local government organisations

Department for Communities and Local Government (DCLG)
Local Government Association (LGA)

Public Library organisations

Chartered Institute for Library and Information Professionals (CILIP)
Society of Chief Librarians (SCL)

Literary agents and publishers

Association of Authors' Agents
Audiobook Publishing Association
BBC Worldwide
ISIS
Publishers' Association
Publishers' Licensing Society
Ulverscroft

Central government departments and organisations

All Party Parliamentary Group for Writers

All Party Parliamentary Group for libraries

British Library

CyMAL: Museums, Libraries & Archives Wales

Department for Business, Innovation and Skills (BIS)

Intellectual Property Office (IPO)

Museums, Libraries and Archives Council (MLA)

Northern Ireland Executive

Scottish Executive

Scottish Library & Information Council (SLIC)

Other organisations

Askews Library Services

Consumer Focus

The Reading Agency

Royal National Institute for the Blind (RNIB)

Share the Vision

Annex B: Seven Consultation Criteria

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



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