

Consultation on the extension of the Public Lending Right to Rights of holders of books in non-print formats

February 2014

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

**Introduction**

1. This consultation seeks your views on the practical detail of the changes that will need to be made to the Public Lending Right (PLR) Scheme so that it covers:

* audio-books;
* e-books downloaded on a library’s premises for use away from library premises[[1]](#footnote-2); and
* producers and narrators

2. The Government does not propose to make any changes to the existing provisions of the PLR Scheme which only covers printed and bound books. The proposed changes are intended simply to mirror, as far as possible, those arrangements and extend them to audio-books and on-site e-books.

**About this consultation**

3. The Digital Economy Act 2010 (the DEA) contains provisions[[2]](#footnote-3) for the extension of the PLR to loans by public libraries of audio-books and to e-books downloaded on a library’s premises. One of the recommendations made by William Sieghart in his ‘Independent Review of E-lending in English Public Libraries’[[3]](#footnote-4) was that the Government should enact those provisions. As stated in the Government Response[[4]](#endnote-2)[[5]](#footnote-5)in the challenging economic climate, it has not been possible to do so. However, in the Government Spending Round 2015/16 funding for Public Lending Right was protected and will be maintained at 2014-15 levels in 2015-16. This was specifically to implement and deliver the extension of the PLR scheme to onsite loans of e-books and audio-books, as provided for in the Digital Economy Act 2010.[[6]](#footnote-6)

4. This consultation seeks the opinions from stakeholders across the UK about the effects of such changes, as well as any views on the proposals outlined here.

**Responding to this consultation**

5. We would encourage individual authors, translators, illustrators, librarians, producers and narrators to relay their views through a relevant representative group (e.g. the Society of Authors), rather than responding individually. Comments from individuals and those who are not members of trade or professional bodies are of course welcome.

6. A list showing the organisations to which this consultation has been sent directly is attached at **Annex A**.

7. Responses to:

Libraries Team

Consultation on the Extension of Public Lending Right

Department for Culture, Media & Sport

4th Floor

100 Parliament Street

London SW1A 2BQ

Email: PLRextensionaudio&e@culture.gsi.gov.uk

8. The consultation starts on 13th February 2014 and will close on 13th March 2014.

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

10. DCMS will publish a summary of the responses and a statement outlining next steps within 4 weeks of the closing date.

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

**Background**

**What is the Public Lending Right?**

12. The Public Lending Right (PLR) is the right of “authors”[[7]](#footnote-7) to receive compensatory payment for the loans of their printed books from public libraries in the UK. The Public Lending Right Act 1979 (the “1979 Act”) established this right, and the rules of operation (the PLR Scheme) were set out in secondary legislation in 1982 (under the Public Lending Right Scheme 1982 (Commencement) Order 1982).

13. The PLR Scheme has been managed by the British Library Board (“the Board”) since 1 October 2013, and is grant funded by the Department for Culture, Media and Sport. Authors resident in the UK and other European Economic Area (EEA) states are eligible to apply for registration in respect of eligible works

14. A register of eligible authors and books is maintained by the PLR office. PLR entitlement for registered authors continues for 70 years after death.

15. Payments are made annually to eligible authors who register their books with the Board. The amounts paid are calculated 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.

16. More than 22,000 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 2014, £6.1 million was distributed, equating to a rate per loan of 6.20 pence. A maximum payment per author of £6,600 applies.

17. This consultation is therefore applicable to payments from spring 2016, based on loans data collected within the period 1 July 2014 – 30 June 2015.

**Getting to this stage**

18. The European Union Rental and Lending Directive 2006[[8]](#footnote-8) gives certain rights holders an exclusive right to license or prohibit the lending of their works by libraries. However, Member States may derogate from the grant of this exclusive right provided that they remunerate rights holders for the loans of their works.

19. In the UK, lending rights are currently conferred upon authors, performers and producers by the Copyright Designs and Patents Act 1988 (the 1988 Act) allowing these rights holders to authorise or prohibit the lending of their works. 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 on-going arrangement to reflect the right to receive remuneration for lending.

20. The 1988 Act provides that any eligible works currently lent under the PLR Scheme are lent without infringing copyright under the 1988 Act[[9]](#footnote-9), and the PLR Scheme financially compensates eligible and registered authors for such ‘implied consent’ by making payments to authors on the basis of how often their books are borrowed from public libraries. The PLR Scheme is currently restricted to authors, editors and translators of printed books.

21. In order for public libraries to make loans of audio-books or e-books, the law currently requires libraries to seek individual contractual arrangements from rights holders.

22. Extending the PLR Scheme to include new types of works and new types of rights holders removes the need for libraries to obtain consent for lending of newly eligible works. In exchange for this expanded ‘exemption’, the Scheme will be required to remunerate the rights holders of newly eligible works where such rights holders were eligible and registered with the PLR Scheme.

23. As under the current provisions of the PLR Scheme, eligibility would apply to all rights holders primarily resident within the EEA. In 2013, 3% of the PLR central fund was paid out to rights holders elsewhere in Europe. The lending rights of non-EEA rights holders conferred by the 1998 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 the appropriate arrangements for consent from, and licensing payments to, such rights holders are in place.

24. PLR payments cannot currently be made in respect of audio-book and e-books formats but this will be possible once the relevant provisions in the DEA are brought into force. Section 43 of the DEA contains provisions to extend the Public Lending Right Act 1979 so that the term ‘book’ includes audio-book and e-book and the term ‘author’, in the case of a work recorded as a sound recording, includes a producer and narrator.

25. These provisions will come into force before 1 July 2014 to enable loans data to be collected during the period 1 July 2014 – 30 June 2015.

**Proposed amendments to the PLR Scheme**

26. The Government is proposing to amend the PLR Scheme so that it extends to audio-books and on-site e-books following the existing provisions in the PLR Scheme as far as possible. There are instances, however, where the arrangements for registration of audio-books and on-site e-books and the apportionment of the PLR shares will need to be slightly different to provide greater certainty for rights holders and the administration of the PLR Scheme.

**Licences**

27. Once the PLR Scheme is extended to audio-books, e-books downloaded on a library’s premises for use away from library premises, narrators and producers, it will not be possible for rights holders to enter new ‘licences and contractual arrangements with public libraries to lend their audio-books and their e-books when downloaded on a library’s premises. This is because public libraries will not be liable for any infringement for making any such loan.

28. However, any existing licences and contractual arrangements between libraries and rights holders will be preserved. This means that they can run their agreed term, but such libraries and rights holders will be free to negotiate the termination of such licences and arrangements and join the newly expanded PLR Scheme instead.

29. Rights holders would be able to register their works with the Board under the PLR Scheme at the point **after** any existing agreement or licence ends or is terminated. They must do this during the 1 July 2014 – 30 June 2015 period in order, potentially, to qualify for a PLR payment in February 2016.

30. The practical justification for this approach is that it:

* will provide greater clarity and consistency in the arrangements governing remuneration of authors for the lending out of their works by public libraries, and provide an independent means of ensuring that they and other rights holders receive appropriate remuneration for the free loans of their works;
* will mirror the system for printed works in the PLR Scheme;
* will remove the burden of making contractual arrangements;
* may encourage greater acquisition and lending of such works by public libraries.

**Assignments/ licenses of rights by authors, narrators and producers**

31. Eligible authors (i.e. authors, translators, editors, narrators 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 PLR payments with the Board

**Eligibility criteria**

32. Extending the PLR Scheme to audio-books will introduce two new categories of contributor who will potentially be eligible to join the PLR Scheme – the narrator and the producer. It will also require some changes to the Scheme’s eligibility provisions for the following existing categories of contributor – the author, translator and editor. So that the eligibility of these contributors can be verified, we are proposing that the following requirements should apply:

* Authors and narrators are named on the outside of the case containing the audio-book. **We are proposing to rely on the naming of these rights holders on the case of the audio-book in order to verify their eligibility,** and the Scheme will be amended accordingly.
* **Producers, editors and translators are not usually named on the case containing the audio-book. Therefore,** **our proposal is that these contributors be required to provide a copy of their contract with the publisher when registering with the Board in relation to an audio-book**.

33. The current requirement for any eligible books to have an International Standard Book Number (ISBN) number will continue to apply. The ISBN system is voluntary, and authors who self-publish may elect not to register their works for an ISBN. Nevertheless, **we propose that the requirement for an ISBN should be retained for an audio-book or e-book and is consistent with the requirement for printed works.**  As the number of self-publishing authors grows we will keep this requirement under review, in the context of loans from public libraries.

**Shares**

***Fixed Shares for audio-books***

34. **We are proposing fixed shares of PLR for the author, narrator and producer of an audio-book**.This is different from the PLR Scheme’s rules for authors and illustrators of printed books and e-books who are required to seek agreement on the apportionment of their shares of the PLR based on their respective contributions to the book.

35. We take the view that a fixed share approach will be more convenient for audio-book authors, narrators and producers as:

1. we anticipate that it will be difficult to reach agreement on shares based on contribution given the very different nature of the contribution made by each to an audio-book (e.g. a simple page count which can be used in the case of printed books is not possible for sound recordings); and
2. for the very practical reason that in many cases arrangements for the production and publication of the audio-book will have been managed by intermediaries and the contributors may find it difficult to establish the contact that will be needed as a basis for discussions over PLR shares.

36. With fixed shares, individual contributors can separately register their share of the PLR payment without the requirement to identify and seek agreement from the other contributors.

***Apportionment***

37. **We are proposing that the author, as the originator of the text of the book, should receive the largest share of the PLR payment and that this should be 60%. We propose that the remaining shares should be divided equally between the narrator and producer who would then qualify for 20% each.**

38. Under the current PLR Scheme, editors and translators of printed and bound books qualify for fixed shares of 20% and 30% respectively of the whole book. **We are proposing that editors and translators of audio-books should receive 20% and 30% shares of the author’s 60% share and not of the whole audio-book.**

39. We take the view that the contribution made by an editor or translator may be seen in the context of preparing the author’s text for publication as an audio-book. It would therefore seem appropriate for their shares to be found from the author’s share, and not impinge on the shares allocated to the narrator and producer. For authors, fixed shares could mean that their share of the PLR payment in audio-book versions of their work may be smaller than the share they receive from the PLR payment for the printed version of the same work.

40. We take the view that the allocation of a substantial 60% share in an audio-book’s PLR payment to the author means that it is fair and reasonable to allow for an editor’s and/or translator’s share to be deducted from the author’s share of the PLR payment.

**General exclusions**

***Remote e-book downloads***

41. Remote downloads of e-books (e-books downloaded outside a library’s premises) are not covered in this consultation and are not covered in the provisions in the DEA which will extend the PLR. This would stray into the communication to the public right in the Copyright Directive[[10]](#footnote-10) which has been implemented in section 182CA of the Copyright Designs and Patents Act 1988 (i.e. “making available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time of their choosing”).

***One loan of a work at a time***

42. The 2009 Government Response to the Consultation on the Extension of Public Lending Right to Rights Holders of Books in Non-print Formats[[11]](#footnote-11) set out the intention that PLR will be paid on the basis of one loan to one reader at one time, and in Response to the Sieghart Review in 2013, the Government stated that the interests of publishers and booksellers should be protected so that a library should only lend a single digital copy of a work at a time. This consultation is restricted to the implementation of the provisions of section s 43 of the DEA (new rights holders and new formats), and the matter is therefore not within scope for this consultation. However, please note that the European Commission has recently launched a review of the copyright rules of the European Union and this covers e-lending by libraries more generally.[[12]](#footnote-12)

**Do you agree with the proposed amendments to the PLR Scheme set out below?**

1. **It is proposed that pre-existing contractual arrangements between libraries and rights holders for loans of audio-books and on-site e-books should be preserved to run their agreed term 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.**
2. **We are proposing to use the naming of an author and narrator on the case of an audio-book to verify eligibility for the PLR Scheme,**
3. **We are proposing that producers, editors and translators of an audio-book will be required to provide a copy of their contract with the publisher when registering with the Board under the PLR Scheme.**
4. **We propose that the requirement for an ISBN for an audio-book or e-book is consistent with the requirement for printed and bound books.**
5. **We are proposing fixed shares for the author, narrator and producer of an audio-book.**
6. **We are proposing that the author, as the originator of the text of an audio-book, should receive the largest PLR share and that this should be 60%. We propose that the remaining shares should be divided equally between the narrator and producer who would then qualify for 20% each.**
7. **We are proposing that editors and translators of audio- books should receive 20% and 30% shares of the author’s 60% share of the PLR payment rather than a fixed share of the total PLR payment for the whole audio-book.**

**Annex A**

**Consultees**

**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**

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

Arts Council England

Department for Business, Innovation and Skills (BIS)

Intellectual Property Office (IPO)

Northern Ireland Executive

Scottish Executive

Scottish Library & Information Council (SLIC)

**Other organisations**

Askews Library Services

Consumer Focus

The Reading Agency

Royal National Institute of Blind People (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.

**Confidentiality & Data Protection**

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.

1. [↑](#footnote-ref-2)
2. Sections 43 and 47. [↑](#footnote-ref-3)
3. https://www.gov.uk/government/publications/an-independent-review-of-e-lending-in-public-libraries-in-england [↑](#footnote-ref-4)
4. [↑](#endnote-ref-2)
5. Government Response to the Independent Review of E-lending in Public Libraries in England’ March 2013 [↑](#footnote-ref-5)
6. https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/210554/Public\_Lending\_Right-Letter.pdf [↑](#footnote-ref-6)
7. As defined in section 5(2) of the Public Lending Right Act 1979 [↑](#footnote-ref-7)
8. 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 [↑](#footnote-ref-8)
9. Sections.40A(1(a) of the Copyright Designs and Patents Act 1988. [↑](#footnote-ref-9)
10. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, also known as the Information Society Directive or the InfoSoc Directive [↑](#footnote-ref-10)
11. http://webarchive.nationalarchives.gov.uk/+/http:/www.culture.gov.uk/images/publications/PLR\_nonprint\_books\_government\_response.pdf [↑](#footnote-ref-11)
12. http://ec.europa.eu/internal\_market/consultations/2013/copyright-rules/index\_en.htm [↑](#footnote-ref-12)