

Government response to the public consultation on the extension of the Public Lending Right to rights holders of books in non-print formats

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Introduction

1. The Public Lending Right (PLR) is the right of authors to receive payment for the loans of their printed books from public libraries in the UK. Payments are made annually to eligible authors who register their books with the PLR office, to a maximum of £6,600 per author per year. The PLR Scheme (the Scheme) has been the responsibility of the British Library Board (the Board) since 1 October 2013 and receives grant-in-aid from the Department for Culture, Media and Sport (DCMS) to fund the running of the Scheme and the payments to authors.

2. DCMS ran a four week public consultation from 13 February to 13 March 2014 on proposals to extend PLR to rights holders of books in non-print formats, to cover:

* audio-books
* e-books downloaded on a library’s premises for use away from library premises
* producers and narrators

3. The consultation document was published on the GOV.UK website and sent directly to organisations and bodies with an interest in the issue.

4. The consultation dealt with the extension of PLR to rights holders of books in non-print formats, and does not affect the ability of public libraries to lend e-material for which they have licensing agreements that enable off-site lending.

Government response – executive summary

5. The aim of the proposed extension of PLR is to include books in non-print formats in the Scheme, thus extending PLR to rights holders of audio and e-books. The Government proposes to enact the corresponding provisions in the Digital Economy Act 2010, as recommended by William Sieghart in his ‘Independent Review of E-lending in English Public Libraries’.

6. The Government has considered how to meet these aims taking account of the responses to the consultation and the issues raised.

7. In total, 20 consultation responses were received. The Government would like to thank all those who responded to the public consultation.

8. The main issues raised in the consultation responses related to:

1. the requirement for existing licences to be recognised and taken into account before rights holders can register for PLR
2. the requirement for rights holders to provide a contract to verify authorship or narration in order to register for PLR
3. the requirement for audio and e-books to have an ISBN in order to be eligible to register for PLR
4. the author’s entitlement to a larger share of PLR than other eligible rights holders
5. the fact that PLR is not being extended to cover remote loans of e-books
6. the total amount of funds available for PLR in light of the increase in the type of rights holders

9. The issues raised in the response to the public consultation are set out in more detail in the following paragraphs, followed by the Government response to each aspect, which is set out in bold.

10. The Government is committed to keeping the Scheme as close as possible to the current Scheme for printed books and considers that the proposed amendments address the majority of concerns regarding the extension of PLR.

11. Key issues that have been considered in light of the responses to the consultation include: the position of existing licences; how rights holders can prove their eligibility for PLR; and whether to maintain the requirement for audio and e-books to have an ISBN in order to be eligible for PLR registration.

12. The Government acknowledges that many respondents raised concerns that PLR will not be extended to remote lending of e-books. Although this is not possible at present because of the constraints of EU law, the Government will revisit the issue as part of a continuous review of e-lending.

13. In summary the Government understands that stakeholders welcome the proposed amendments to the PLR Scheme, and extension to new rights holders, and therefore intends to proceed with the extension of the PLR to rights holders of books in non-print formats.

Responses to the consultation and Government response

14. The 20 responses to the public consultation comprised of: 3 individual rights holders, 5 organisations representing rights holders, 11 groups representing libraries and library authorities and 1 from a devolved administration.

15. The consultation set out 7 areas where amendments are proposed and summaries of the responses to each are set out below, followed by the Government response. 9 respondents referred to, or answered all of the proposals in their response, and the analysis that follows against each of the proposals is based upon these responses. The other 11 respondents did not refer specifically to the proposals, but gave their opinions in general to the proposed extension of PLR to rights holders, and raised issues covered within this response document.

*Proposal 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 that libraries and rights holders would be free to negotiate the termination of such arrangements in favour of the newly expanded PLR Scheme.*

16. Six respondents agreed with this proposal without comment and 3 respondents raised concerns.

17. One respondent was concerned that some rights holders contracts do not clearly address the consents necessary for authorising lending of the performer’s work, and stressed it is important that narrators of audio-books are able to register for PLR from the commencement of the revised Scheme, without having to wait for any existing contracts to expire.

18. Another agreed with the proposal as long as libraries and rights holders are able to retain an agreed contractual agreement and opt out of the PLR Scheme.

19. One respondent pointed out that rights holders may have a series of contracts and that more than 5 contracts covering different rights holders may be relevant for one audio-book to be loaned from a public library. Moreover, rights holders may not always be fully aware of which rights they have assigned under those contracts.

**Government Response: The Government remains of the view that existing licencing arrangements whereby, for example, a rights holder has granted to a third party the right to receive revenue due from public lending of an audio-book or an e-book must be allowed to run their contractual term unless the parties to the relevant licence agree otherwise.**

**The PLR Board will ask applicants to confirm that to the best of their knowledge their lending rights have not been transferred, assigned or licensed to another party.**

*Proposal 2: This Government is proposing to use the naming of an author and narrator on the case of an audio-book to verify eligibility for the PLR Scheme.*

20. Six respondents agreed with this proposal and a further 3 raised the point that rights holders are not always named on the cases, and that a contract proving input to the work should also be used to verify eligibility for the scheme.

**Government Response: Rights holders will be able to prove eligibility for the PLR Scheme by being named on the case with which the audio-book is sold, or by written contract which refers expressly to his being an author; or by being named within the audio-book.**

*Proposal 3: The Government re proposes 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.*

21. Nine respondents who commented on this agreed with this proposal.

**Government Response: Rights holders will be able to prove eligibility for the PLR Scheme by being named on the case with which the audio-book is sold, or by a written contract which refers expressly to his being an author; or by being named within the audio-book.**

*Proposal 4: The Government proposes that the requirement for an ISBN for an audio-book or e-book is consistent with the requirement for printed and bound books.*

22. Six respondents agreed with the proposal and the other 3 respondents expressed concern about this proposal, commenting that not all e-books are issued with ISBNs in the same way as printed books.

**Government Response: The Government proposes to retain the ISBN requirement for audio-books and e-books for the time being but will keep this requirement under review, particularly in relation to e-books.**

*Proposal 5: The Government is proposing fixed shares for the author, narrator and producer of an audio-book.*

23. Eight of the respondents agreed with this proposal.

24. One respondent considered that neither the narrator nor the producer should receive any share of the PLR, as it would be expected that they had already negotiated a fee.

**Government response: The Government will enact this proposal.**

*Proposal 6: The Government proposes 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.*

25 Eight respondents agreed with this proposal and 1 did not agree as below.

26. One respondent did not agree that narrators or producers should get any percentage of the PLR share. While another raised concerns that the extra rights holders eligible for PLR were not being covered by extra allocation of funds.

**Government response: The Government will enact this proposal. The Government has already announced the protection of PLR funding for 2015/16, and is confident that there will be sufficient funds to cover the new rights holders who will benefit from the Scheme.**

*Proposal 7: The Government proposes 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.*

27. Five respondents agreed in full with this proposal, while 4 others agreed, but also raised additional points.

28. Two respondents made the point that the author should always receive the majority of the share; 1 other raised the point that there are detailed rules within the Scheme dealing with when editors should receive a share of PLR and these should be replicated for audio and e-books and the other respondent sought clarification that ‘editor’ in this context refers to those who abridge a book for the audio edition.

**Government Response: The Government will enact this proposal, and an editor will also refer to those who abridge books for the audio edition. Abridgers are already treated as editors in the existing PLR arrangements for printed books.**

**Other Issues / Concerns Raised in Response to the Consultation**

29. The majority of respondents pointed out that while they welcome the extension of PLR the extension does not go far enough, and needs to cover remote lending of e-books and e-audio books.

**Government Response: On 27th March 2014 the Intellectual Property Office released a press release outlining changes in copyright law to reflect our digital age; within these changes are amendments that allow libraries to lend e-books.[[1]](#footnote-1) However, the extension of PLR to remote lending cannot be enacted at the moment as there is no relevant exemption in the Copyright Directive (2001/29/EC).**

**The Government response to the Independent Review of E-Lending in Public Libraries in England 2013 stated: “If remote loans are becoming the primary method of E-Lending from public libraries, then a fit for purpose PLR should reflect these habits and recompense authors as for other loans from public libraries. Extending the PLR to incorporate remote lending will require primary legislation, and is an amendment we will seek to pursue in future parliamentary sessions, subject to considering whether that would be compatible with the Copyright Directive”. This position remains.**

30. One respondent called for PLR to be extended to volunteer-led and community libraries.

**Government Response: Under the Public Libraries and Museums Act 1964, library authorities have a statutory duty to provide a comprehensive and efficient library service. This means they must provide public library services which best meet local need in light of their available resources. Library authorities will know which libraries fall within their statutory public service and which libraries do not.**

**PLR payments only apply to libraries within “the statutory public library service” delivered and funded by library authorities under the 1964 Act. Libraries outside of the statutory service are not covered by PLR. This is consistent with the existing Scheme for printed books.**

31. One respondent stated that aggregators of e-books keep statistics, and getting these statistics would create extra work for public libraries.

**Government Response: The Government is aware that public library authorities will need to work with the PLR office in making any arrangements necessary for the collection of data relating to on-site e-book loans. The PLR Scheme already makes provision for the PLR office to reimburse library authorities for costs incurred in providing loans data.**

Next steps

32. In line with the responses set out above, the Government will make a number of amendments to the draft regulations. The Government intends to lay the regulations in Parliament with the aim to allow rights holders to register their works from the 1st July 2014 to allow for payment in February 2016

1. http://www.legislation.gov.uk/ukdsi/2014/9780111112755 [↑](#footnote-ref-1)