



## [NEW] Article *Squater* – E-Lending

Library lending ensures that all members of society have access to all types of (physical) published content, irrespective of where they live or their financial situation. In European countries where the Rental and Lending Right Directive<sup>1</sup> has been implemented, public libraries have the right to lend any physical book they own to a member of the public, subject to remuneration being paid to rightholders.

However, the situation for e-books has been less clear, given both the status of e-books as services rather than goods, and uncertainty as to whether lending digital materials can fall under the same rules as the lending of physical ones. A recent European court case (C-174/15 VIB vs. Stichting Leenrecht) has clarified this, ruling that libraries buying and downloading e-books available for purchase by anyone, and then lending them to patrons on a one-copy-one-user basis can fall under the current Directive. This puts eBooks and library lending on the same basis as before, allowing libraries to act as they have always done - buying any book they chose and then lending them to their members.

However, the interplay with terms and conditions that come with eBooks and how to lend if technological protection measures that prevent their lending are in place, still remain important and legitimate public interest concerns. Moreover, it does nothing to facilitate the development of other models of lending, such as one-copy-multiple-users, despite these being better suited to library needs, user expectations and smart exploitation of digital opportunities.

### **Our Ask**

- Ensure the exception to copyright allowing for library lending (at least on the one-copy-one-user model) is both mandatory, and covers books in any form, including digital so that any e-book made publicly available in the market can be lent to library patrons.
- Ensure that contract terms or technological measures applied to e-books cannot be used to prevent libraries from lending.
- Taking this as a starting point, promote dialogue between rightholders and libraries to develop acquisition and lending models better suited to library needs.

**What does the Commission's Proposal Say?** In the communique accompanying the proposals, the Commission declared that it planned to wait for the CJEU judgement before deciding whether to act. Further to the judgment, no action has been taken by the Commission, and as such, there is no provision on e-lending currently in the Commission's proposals.

**What's Missing?** It follows that libraries still need guarantees that they can benefit from the public lending right for e-books by making the ECJ ruling into law, and ensuring that lending cannot be subject to override by contract terms or technological protection measures.

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<sup>1</sup> 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