



## E-Lending and copyright:

### EBLIDA position

The Hague, 5 June 2015

In September 2014, EBLIDA published a [press release](#) on the Court of Justice of the European Union (CJEU) to launch a consultation over the lending of e-books via public libraries in the near future.

Recently, the CJEU launched the consultation process towards EU Member States governments. The CJEU asks “*whether “lending” in the Directive includes making digital copies of various books available for users to download in such a way that the downloaded copy becomes unusable after a certain period and during that period the original copy cannot be downloaded by others*<sup>1</sup>”.

Find below EBLIDA position containing answers to the four questions asked by the CJEU.

### EBLIDA’s Answers:

1. *Are Articles 1(1), 2(1)(b) and 6(1) of Directive 2006/115 to be construed as meaning that ‘lending’ as referred to in those provisions also means making copyright-protected novels, collections of short stories, biographies, travelogues, children’s books and youth literature available for use, not for direct or indirect economic or commercial advantage, via a publicly accessible establishment:*
  - *by placing a digital copy (reproduction A) on the server of the establishment and enabling a user to reproduce that copy by downloading it on to his/her own computer (reproduction B),*
  - *in such a way that the copy made by the user when downloading (reproduction B) is no longer usable after a limited period, and in such a way that other users cannot download the copy (reproduction A) on to their computers during that period?*

**Answer:**

**Yes.** In order to function in an age where information content is increasingly and often solely in digital formats, libraries must be permitted to make available copyright-protected works in electronic formats to their users for a limited period of time i.e. to lend materials regardless of format as provided by Directive 2006/115 Art.1(2)(b) and described in this Question.

Libraries should, at the least, be able to benefit from the one copy/one user model referenced in the question above.

2. *If Question 1 is to be answered in the affirmative: does Article 6 of Directive 2006/115 and/or any other provision of EU law preclude Member States from imposing on the application of the restriction on the lending right included in Article 6 of Directive 2006/115 a condition that the copy of the work made available by the establishment (reproduction A) must have been brought into circulation by an initial sale or other transfer of ownership of that copy within the European Union by the rightholder or with his consent within the meaning of Article 4(2) of Directive 2001/29?*

**Answer:**

**Yes.** Directive 2006/115 Art. 6 must be taken in the context and intention of the Directive as a whole. Thus Article 6 does preclude Member States from imposing on the application of the restriction on the lending right included in that Article a condition that the copy of the work made available by the establishment (reproduction A) must have been brought into circulation by an initial sale or other

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<sup>1</sup> Excerpt from an email from the UK Intellectual Property Office dated 29 May 2015.

transfer of ownership of that copy within the EU by the rightholder or with his consent within the meaning of Article 4(2) of Directive 2001/29.

Furthermore, as long as the acquisition is lawful, a Member State should not impose restrictions.

In short, Directive 2006/115 provides in Articles 1 and 9 that the method of distribution can be “otherwise” than by sale and that it does not affect lending right. Therefore, the distribution method cannot affect the ability for publicly accessible establishments to lend.

3. *If Question 2 is to be answered in the negative: does Article 6 of Directive 2006/115 lay down other requirements for the source of the copy (reproduction A) provided by the establishment, for instance the requirement that the copy was obtained from a lawful source?*

**Answer:**

As stated in answer Q.2 above, Directive 2006/115 Art. 6 must be taken in the context and intention of the Directive as a whole. However, while the Directive itself is unclear on the specific matter, as far as publicly accessible libraries are concerned, obtaining the copy from a lawful source (whether by purchase, subscription or donation) is an absolute prerequisite.

4. *If Question 2 is to be answered in the affirmative: is Article 4(2) of Directive 2001/29 to be construed as meaning that the initial sale or other transfer of ownership of material as referred to in that provision also means making available remotely by downloading, for use for an unlimited period, a digital copy of copyright-protected novels, collections of short stories, biographies, travelogues, children’s books and youth literature?*

**Answer:**

In case of the Court’s affirmative answer to Question 2, the answer to question 4 should be affirmative as well.

It should be recognised that libraries have a right to use the digital copy (reproduction A) for all the utilisations permitted by exceptions and limitations provided by the EU directives, including making it available for lending as referred to in answer 1.

The transfer of ownership referred to in Q4 should concern transfer of ownership of the copy **to the library** that has either (1) purchased a copy of the material, or (2) purchased access to the material, or (3) received it as a lawful donation. The library’s subsequent making available of that material to library users remotely by downloading, for use for a *limited* period would *not* transfer ownership as that is e-lending and would fall under the definition of lending in Directive 2006/115 Art.1(2)(b). As we indicated in our answer to Q1, this must include a digital copy of copyright protected works (i.e. novels, collections of short stories, biographies, travelogues, children’s book and youth literature).

To learn more about EBLIDA’s position, please go to: <http://www.eblida.org/e-read/home-campaign/>

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**About EBLIDA**

The European Bureau of Library, Information and Documentation Associations (EBLIDA) is an independent umbrella association of library, information, documentation and archive associations and institutions in Europe representing 100+ members in all EU member states and other European countries, as well as by extension 70.000 libraries in Europe.

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