Handbook of Comparative E-Lending Policies in European Public Libraries

EBLIDA EGIL
(Expert Group on Information Law)

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PART II: BACKGROUND PAPERS TO THE EBLIDA-EGIL RECOMMENDATIONS ON A SUSTAINABLE E-LENDING POLICY IN EUROPE
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CHAPTER ONE: YEAR ZERO FOR A EUROPEAN POLICY IN E-LENDING IN PUBLIC LIBRARIES

BY GIUSEPPE VITIELLO

1. HOVERING BETWEEN A TOTEM AND A TABOO: INTRODUCTORY NOTES

The library sector is growing increasingly frustrated with the conditions through which digital copyright-protected material is circulating in libraries (e-lending). Outside the book sector, information and content providers are firmly and convincingly providing momentum to the digital transformation. Digital content is being created — very often in open access — and circulated; for many youths, access to culture and education is exclusively made through smartphones. Inside the traditional book trade chain, the digital transformation is still underway and there are no clear plans for the future. The first e-books came to light in the last decade of the 20th century; thirty years have elapsed, but questions about e-books and e-lending do not seem to have made great strides.

From a library perspective, publishers seem to be bogged down in their usual patterns of sticking to the totem (copyright) while driving away from a taboo (the Internet culture and its philosophy of sharing). The Directive on Copyright in the Digital Single Market has strengthened the protection of intellectual property against free handling of content by information and content service providers. Nevertheless, reinforced protection has not facilitated access to information. Restricted access comes together with complicated and specific systems of controlled access. Library users complain about the many constraints put to the circulation of digital content; as a result, they are encouraged to move away from the copyright-protected culture and resort to the material that is freely available on the Internet. Nowadays, free of charge digital content is published and aggregated in huge quantities on the Web and plenty of resources of educational and cultural nature are but 1 click away.

A double Kronos syndrome seems to affect a good number of publishers. Publishers fear that the digital book trade is cannibalising the printed book and that the e-lending in libraries is cannibalising the digital book trade. Cannibalisation is felt as a threat within publishing companies themselves, where marketing policies towards printed books and e-books are not always clearly defined. Meanwhile, publishing genres and traditional literary categories are starting to fall into desuetude; some of them have disappeared. For instance, reference works and geographic maps are no longer printed and have been replaced by, respectively, Wiki and Google products. Parents take their children to the round dome-ceilinged reading room in Great Russel Street – once, the reference room of the British Library – or to the map collection of the SZECHENYI LIBRARY IN BUDAPEST to show them bibliophilia embodied in printed encyclopaedias and geographical maps. If publishers do not act, other publishing genres may soon turn into historical heritage.

Posters and videos everywhere inform us that education will eventually tumble into the metaverse and students of history and language will learn from animated videos, represented life stories and avatars. Libraries have to adapt to it and complain about restricted access to digital publications and their high price, often three to four times bigger than that of printed publications. Libraries also complain about extensive windowing practices and embargoes that publishers set in place. As a consequence, they dream of free exchange of information based on open access.

University libraries have embarked upon this path since long. Librarians working in public libraries may be tempted to resort massively to the open access philosophy without really considering that the book trade is different from scholarly communication in its structure, nature and actors. Content aggregations based on wiki
practices clash with the very fact that the business of selecting, formatting and marketing cultural content is an art in itself - normally dubbed as the creative role of publishers.

Publishing functions require skills and competences which are beyond the reach of librarians. So much effort is put on the making of (e-)books that both libraries and authors can only regret that several hundred thousand titles, published every year and available exclusively in printed form, cannot be read on mobile devices or are accessible under many restrictions. A much more simplified environment would be beneficial to talented authors, who could benefit from the digital transformation and enjoy wider popularity.

All actors in the book trade are in the midst of a psychological conundrum. Publishers are constantly assertive about their own identity and are afraid of losing it, under the pressure of the societal changes and aggressive marketing strategies pursued by information and content service providers. As a result, they are reluctant to change practices and pattern schemes. Libraries do not know exactly what they are, but they fear that the many constraints they are facing in the acquisition of e-materials will not enable them to reach the status they dream of: information crossroads and local instruments of social cohesion through easy access to the content they acquire.

National and regional authorities are genuinely willing to adapt their public policies. They are confronted, however, with conflicting requests and confrontations internal to the e-book chain that do not help shed light on future scenarios. De Gaulle said that it is difficult to rule a country where there are four hundred varieties of cheese; similarly, the plethora of e-lending models and practices hammered out by content owners leads to confusion and discourages technical solutions promoting e-lending in libraries as a steady and popular practice in the digital environment. It is in the interest of authors, publishers and libraries to create a sustainable framework for the digital book ecosystem, where authors are rewarded for their creativity, publishers are fairly remunerated for their work, libraries have wide access to cultural and educational content at reasonable prices and users have unlimited and free access to quality content.

2. QUANTITATIVE DATA

The main quantitative result standing out from this EBLIDA Handbook of Comparative E-Lending Policies in European Public Libraries confirms what was stated in the EBLIDA First Overview of e-lending in Europe: the level of e-lending transactions in libraries is extremely, and anomalously, low. Data included in Table n. 1 below leads to the conclusion that e-lending is a budding business in practically all European countries, including those that boast a relatively high number of e-lending transactions. In spite of all efforts being made, we are still at the zero stage for e-lending in European countries and a lot has to be done before it becomes routine in public libraries.

This assumption is clearly inferred on the basis of two factors: a) the number of e-lending transactions in absolute terms and their percentage over the number of traditional lending transactions / per inhabitant; b) the percentage of digitally literate people in a country.

Table 1 below lists the number of e-lending transactions both in absolute and relative terms, in relation to the number of inhabitants. These figures are compared with similar figures resulting from traditional book loans in libraries. It can easily inferred that e-loan transactions are from 10 to 100 times lower than the number of book loans.

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1 EBLIDA (2022).
The last column in Table 1 includes the percentage of digital literates within a country. We have used Eurostat data, where digital literates are “those people who are able to carry out online transactions, pay a bill or use the digital services offered by the public administration” and, of course, read e-books.2

Table 1: E-lending per inhabitant and levels of technological literacy (Eurostat data, 2020)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Belgium (Flem, 2021)</td>
<td>378 000</td>
<td>6 653 062</td>
<td>0.05</td>
<td>3 726 663</td>
<td>0.5</td>
<td>54</td>
</tr>
<tr>
<td>Denmark (2021)</td>
<td>7 422 102</td>
<td>5 828 022</td>
<td>1.2</td>
<td>24,4 ML</td>
<td>4.2</td>
<td>70</td>
</tr>
<tr>
<td>Finland (2021)</td>
<td>1 509 599</td>
<td>5 560 384</td>
<td>0.27</td>
<td>76070,066</td>
<td>13.68</td>
<td>79</td>
</tr>
<tr>
<td>France (2020)</td>
<td>1 ML</td>
<td>65 526 762</td>
<td>0.01</td>
<td>280 ML</td>
<td>4.2</td>
<td>57</td>
</tr>
<tr>
<td>Germany (2020)</td>
<td>30,2 ML</td>
<td>84 254 408</td>
<td>0.35</td>
<td>274 ML</td>
<td>3.2</td>
<td>70</td>
</tr>
<tr>
<td>Greece (2020)</td>
<td>23 919</td>
<td>10 353 203</td>
<td>0.002</td>
<td>?</td>
<td>?</td>
<td>51</td>
</tr>
<tr>
<td>Ireland (2021)</td>
<td>2 184 087</td>
<td>5 123 536</td>
<td>0.42</td>
<td>10,753,548</td>
<td>2.1</td>
<td>70</td>
</tr>
<tr>
<td>Italy (2021)</td>
<td>1 474 013</td>
<td>60 461 826</td>
<td>0.02</td>
<td>45,4 ML</td>
<td>0.7</td>
<td>42</td>
</tr>
<tr>
<td>Latvia (2021)</td>
<td>39 346</td>
<td>1 866 934</td>
<td>0.02</td>
<td>11 ML</td>
<td>5.8</td>
<td>43</td>
</tr>
<tr>
<td>Netherlands (2021)</td>
<td>7,5 ML</td>
<td>17 754 400</td>
<td>0.42</td>
<td>63,2 ML</td>
<td>3.5</td>
<td>79</td>
</tr>
<tr>
<td>Norway (2021)</td>
<td>1 645 735</td>
<td>5 495 680</td>
<td>0.29</td>
<td>12,2 ML</td>
<td>2.2</td>
<td>83</td>
</tr>
<tr>
<td>Romania (2021)</td>
<td>NA</td>
<td>19 012 351</td>
<td>NA</td>
<td>34,2 ML</td>
<td>1.7</td>
<td>31</td>
</tr>
<tr>
<td>Spain (2020)</td>
<td>3 746 853</td>
<td>46 786 580</td>
<td>0.08</td>
<td>51 ML</td>
<td>1.1</td>
<td>57</td>
</tr>
<tr>
<td>Canada (2017) (4)</td>
<td>9,8 ML</td>
<td>38 353 949</td>
<td>0.2</td>
<td>523 ML</td>
<td>13.6</td>
<td>84 (5)</td>
</tr>
<tr>
<td>US (2017) (4)</td>
<td>218,3 ML</td>
<td>331 449 281</td>
<td>0.65</td>
<td>2 053 ML</td>
<td>6.1</td>
<td>84 (6)</td>
</tr>
</tbody>
</table>

(1) Statistics on e-lending refer to 2021 or 2020; they take into account the unintended effect of the pandemic on e-lending, which has grown spectacularly since 2020.

(2) Statistics about book lending in public libraries (5th column) are taken from the investigation carried out by PL2030, available on the PL2030 website ([https://publiclibraries2030.eu/what-we-do/eu-library-factsheets/](https://publiclibraries2030.eu/what-we-do/eu-library-factsheets/)). They refer to 2019; even when available, updated information on book loan data in public libraries in 2020 and 2021 has not been used because of the restricted circulation of physical products during the Covid crisis, when public libraries were closed to the public or open under severe restrictions.

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2 Eurostat.
Individuals who have basic or above basic overall digital skills, Annual, All Individuals, Percentage of individuals (https://ec.europa.eu/eurostat/databrowser/view/ISOC_SK_DSKL_I21/default/table?lang=en).

Eurostat Glossary definition: Digital literacy refers to the skills required to achieve digital competence, the confident and critical use of information and communication technology (ICT) for work, leisure, learning and communication (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Digital_literacy).


Underdeveloped e-lending transactions are apparent even in countries where e-lending is relatively successful, like Denmark and Ireland. Take Denmark, for instance, which is number two in Europe in e-lending absolute figures (7.4 Ml transactions in 2021) and number one in relative terms. In Denmark, statistics show that there are 1.2 e-lending transaction per inhabitant. This represents only 28 percent of traditional lending transactions, which are as high as 4.2 per inhabitant. In another Nordic country, Norway, digital literacy is also quite advanced with 83 percent of the population having basic or advanced technological skills. When we come to e-lending transactions, the proportion of e-lending transactions over traditional lending transactions is remarkably low: only 0.2 e-lending transactions per inhabitant against 2.2 book loans / inhabitant. The same applies in the Netherlands.

With its +30 million transactions per year, Germany seems to be in a relatively advanced stage. When we look at percentages, it is clear that the number of e-lending transactions is ten times less than that of lending transactions - a small percentage if calculated in relation to the number of inhabitants in Germany (0.35 pr inhabitant for e-lending; 3.2 per inhabitant for the lending of physical products).

Other countries do not perform any better. Spain and Italy, for instance, do not have a high level of lending transactions: respectively, 1.1 and 0.7 per inhabitant. This number is exceedingly low when we come to e-lending: only 0.07 and 0.02 respectively for Spain and Italy. In Spain only half the population is technologically literate; in Italy it is less than half. Latvia and Greece have marginal levels of e-lending, and Romania has none.

Data included in the current Handbook raise other fundamental questions which should be addressed not only in the library world, but also in the world of authorship and publishing. These questions are: the sustainability of quality reading in the digital environment, the soundness of the e-lending market in Europe, the role of libraries in the digital environment, their ability to promote e-reading, and the requirements enabling the increased participation of Europeans in the infosphere.

If the traditional role of libraries is to encourage reading in whatever form, the crucial question is: if e-lending transactions remain so low, how can the general rate of digital literacy at national and European level increase? Through which resources can a Europe that is smarter, more connected, more social and closer to its citizens enhance its penetration among an alerted citizenship? Europe is rightly proud of its almost inexistent number of illiterates; but how to deal with the missing quarter, or half of the population that is now technologically illiterate?

These trends also challenge publishers’ claims that e-content diffused in libraries may cannibalise the sales of e-books (see paragraph 9 below). If e-books, and the quality content they convey, are to be promoted with a wider audience, if published content is an alternative to the content diffused through social media, e-lending transactions should increase in quantity and reach levels that are at least comparable to those of traditional lending transactions in analogue format.
This increase would not be only beneficial to libraries. It is an extraordinary opportunity for authors, who would get a better diffusion and increase their reputation, and for publishers, as they would promote quality content in an infosphere which is currently hegemonized by information and content providers.

3. COMPARATIVE E-LENDING: GENERAL REMARKS

The EBLIDA First Overview on e-Lending in Europe reviewed e-lending in nine countries: Denmark, France, Germany, Greece, Italy, Latvia, Norway, Romania, Spain.\(^3\) The current Handbook increases the number of country profiles, with the addition of Belgium (Flemish community), Finland, Ireland and the Netherlands; it also consolidates data collected in the Overview.

It is fair to say that e-lending is running in a smooth way in some European countries; it is under development or taking off with many impediments in some others; and it is not developed at all in other countries.

National situations can differentiate from one to the other in accordance with several criteria, such as:

- Countries where there is a substantial offer of resources available for e-lending vs. countries where this offer is small (Greece, Latvia) or practically non-existent (Romania);
- Countries where e-lending resources are aggregated and offered through an intermediate layer - normally, an aggregator who negotiates with publishers on behalf of libraries - vs. countries where negotiations are carried out between libraries and publishers directly;
- Countries where mediators also aggregate resources, vs. countries where they only negotiate on behalf of libraries and do not aggregate resources;
- Countries where aggregators are directly controlled by local governmental agencies (Denmark, Finland, The Netherlands and, to a certain extent, Norway), or by entities linked with publishers and booksellers organisations (France and, to a certain extent, Norway), vs. where the aggregator is independent (eg: Germany, Italy, Ireland, Belgium);
- Countries where national libraries play a distinctive role (The Netherlands, Latvia, Greece and, to a certain extent, Norway), vs. countries where they do not play any role;
- Countries where the role of governmental agencies at national level (Belgium, Finland, France, Latvia, Netherlands) or at regional level (Norway, Denmark) is significant, vs. countries where this role is minimal (Italy).

Whatever the distinction, it is hard to find a common model of national e-lending agency throughout Europe. In a good number of countries e-lending solutions are still being worked out, new models are experimented, or a model has to be set up from scratch.

For the same reason, it is also hard to define what is best practice in setting up a national e-lending agency. Geographic areas which are considered homogeneous - as for instance, the Scandinavian region – offer a range of models that are not easily comparable. Too many variables and distinctive features shape the e-lending market and determine national scenarios and/or specific solutions. They are: the existence of an e-book / e-audio offer, the nature of the publishing market, the size and effectiveness of the library system, the quality and effectiveness of aggregators, the setting up of smooth business models and, last but not least, the investment made by national and regional library agencies for digital resources.

\(^3\) EBLIDA (2022).
It can be said, however, that the presence of aggregators - in particular when they also negotiate with publishers - has a normalising effect on e-lending models, as practices tend to standardise and the number of contractual solutions is reduced. Aggregators such as e-Roelen, Onleihe, MLOL or the Royal library of the Netherlands play a crucial role in the e-lending ecosystem, as they negotiate licences with publishers and deliver titles to libraries through their unique online platforms. Typically, multiple aggregators may compete within each jurisdiction or national e-lending market. Since aggregators charge fees for libraries to access their platforms, libraries may be using more than one aggregator, although finite budgets for e-lending do not allow for much freedom and encourage libraries to be selective about which aggregators they engage with.

In theory, aggregators only negotiate access to a content whose ownership lies with publishers and authors. Therefore, they are neutral and liaise between vendors and customers. In practice, their ability to monitor e-book transactions and to detect circulation trends enable them to play a significant role in shaping the e-lending processes and the successful use of e-books among users. In addition, they control circulation data, which is a powerful levy to identify users’ behaviour and practices and orient them. It is the reason why, whatever the nature of the aggregator and its relative clout in the e-lending trade, libraries should always have a statutory position in the governance of the aggregating entity. They should guarantee that users’ needs are precisely conveyed to publishers and that public money is spent well to the benefit of their customers.

4. E-LENDING MODELS COUNTRY BY COUNTRY

A naïve approach would look at the e-lending issue as a complicated mechanism where the more actors are involved, the more expensive is the cost of e-lending transactions.

The European e-lending overview shows instead that:

a) the number of involved actors in the e-lending process may be variable but in most cases exceeds the bilateral relation publishers-libraries,

b) a direct publishers-libraries relation is almost never a guarantee that the value chain has enabled the cheapest and most effective solution;

c) the existence of a national aggregator is often an incentive to simplify business models and to standardise access procedures.

In Denmark, two main actors play a major role in addition to publishers and libraries. The first is the Digital Public Library, an association that operates and manages digital services for all public libraries in the country’s 98 municipalities, as well as Greenland, The Faroe Islands, and South Schleswig. The Digital Public Library is maintaining the platform through which all public libraries offer their products and services. Among the services provided by The Digital Public Library, eReolen, the national e-lending service, is negotiating prices and framework contracts with publishers. A third party platform, Publizon, is the operator serving as the backend for both the public library and commercial vendors and streaming services.

This model is replicated in Finland, Belgium (Flemish Community) and Norway.

In 2017, in Finland, the Finnish Consortium of Public Libraries launched a tender for Finnish and Swedish (domestic) literature (Swedish is the second official language in Finland) and lending platform. The result was two service providers with different license models and slightly different content offerings. Libraries/municipalities were able to independently choose from these, some chose both due to the content. Therefore, CPL deals with three agencies operating in the e-book field, and not just one: Ellibs for Finnish e-books, Biblio (an Axiell app) for Swedish e-books, and Overdrive for English e-books. Since 2020,
Finland has been heading towards a permanent solution of e-lending platform where the content only is tendered. This work is done by the e-library project and aims to a one-platform only solution for all public libraries.

In the Flemish community of Belgium, Cultuurconnect, a regional agency, launched a public tender in 2020 requesting an aggregator and an IT-platform. As a result of the Call, an agreement was concluded with Standaard Boekhandel, one of the largest bookstores in Flanders, who took on the role of aggregator, and Bibliotheca, who provided the cloudLibrary platform as a technical partner.

In Norway, e-lending is implemented through the interaction of different layers: at the two ends of the chain, there are publishers and libraries, both at county and municipal levels. The key link of the chain is represented by two national aggregators: Bokbasen, owned by the largest Norwegian publishers and the two largest bookstore chains, and Biblioteksentralen, a non-profit cooperative owned by the municipalities. An important role is also played by the National Library of Norway, that recommends the combination of two e-lending models: licenses and pay per loan. County libraries, operating at regional level, normally use the model recommended by the National Library for e-media. The “one copy/one user” model (limited to five years) is implemented for book acquisitions facilitated by the Norwegian Arts Council. Time-unlimited one copy - one user model – i.e. digital lending put on equal footing as physical lending - is on the wish-list of some public libraries.

In a series of countries e-lending is controlled by private actors, whether as an emanation of publishers’ and booksellers’ association (France), or as an independent third party, which acts as liaison between publishers and libraries (Germany, Ireland, Italy and also, partly, in Norway).

In France, the e-lending value chain has been elaborated by library, publishing and authors’ entities in collaboration with the French Ministry of Culture. The resulting model - PNB (“Prêt numérique en bibliothèque”) – is based on the assumption that no actor operating in the printed book chain should jeopardise the opportunity of being present in the digital value chain. The French e-lending business model is triangular. At the one end of the PNB chain, publishers negotiate the marketing rights of digital books with the authors or their beneficiaries and then set the price and conditions of use for public libraries. At the other end of the chain there are libraries, which acquire tokens enabling them to access e-publications at the conditions set by publishers, and booksellers, with whom libraries place their acquisitions. In addition to publishers, libraries and booksellers, two more actors are present in the PNB process. The first is Réseau Carel, an association grouping both French and the Wallon community in Belgium public libraries. Réseau Carel contributes to the improvement of the editorial offers, the information systems, the pricing methods, ergonomics and accessibility. The second is Cercle de la Librairie, an emanation of the Syndicat National de l’Edition, representing authors, publishers and booksellers. Cercle de la Librairie controls Dilicom, a platform set in place since 2012 to operate PNB, which circulates information, deals with e-book records and loan requests as well as the metadata of titles. The system is open to booksellers, traditional suppliers to libraries, at least those who have set up an interface that allows a library to buy digital books. Not all booksellers have joined the PNB system since this represents a significant investment.

Interestingly enough, PNB only generates half of the e-lending offer in France. French public libraries often resort to the e-lending offer made available by e-content suppliers on their own platforms. E-lending mechanisms – libraries claim - are more straightforward and content is very often more relevant.

Since 2007, over 3,500 German libraries rely on Divibib, a subsidiary company of the ekz.bibliotheksservice, and on Overdrive Inc., active in all German-speaking countries and in Goethe-Institute sites all over the world. Licenses are negotiated by these two intermediate actors, which also act as aggregators. The Onleihe offer
includes E-Books und E-Paper, E-Audio und E-Music, E-Video and E-Learning. OverDrive provides ebook services for Germany since 2014 through a partnership with Libreka, one of the largest distributors in Germany representing over 40,000 publishers and more than 1,000 domestic and international trading partners. The OverDrive network uses a one-tap reading app, Libby.

The same triangular approach – publishers, aggregator, libraries - is replicated in Italy, where MLOL, the e-lending aggregator, applies a variety of models. MLOL negotiations are done in particular with two of the main distributors of e-books in Italy, namely Edigita (60% of the e-lending offer) and Mondadori (30% of the offer) - the residual 10% of the offer is ensured by Giunti. Edigita’s e-lending model is one copy - one (or two in many cases) user model and the licence is acquired to buy 40 downloads (twenty in the local system, twenty for digital ILL). This model has advantages and disadvantages: it is costly because it imposes an ILL quota to the detriment of the consumption in the local library; it is advantageous because it has no 14-day ceiling and therefore is good for long-selling books (and not for the loan of best-sellers). Mondadori offers both models: one copy - one (or two) user model and pay per loan.

Bolinda, a private company with a platform of both e-audiobooks and e-books, is the central agency for e-lending in Ireland. The Irish book trade is strongly dominated by the Big Five British-American publishers - HarperCollins, Random House / Penguin, Hachette, Simon & Schuster, and Macmillan – which distribute their resources. Each of the Big Five has its own strategy: Hachette, for instance, does not distribute e-books in Ireland. The Irish system is quite fragile, with contracts that are renewed every one or two years, and unsteady prices (normally three times more than the unitary price of a e-book). Moreover, as the management of the collections is externalised, libraries do not engage with their own users.

In only one country, The Netherlands, a public institution has the role of both negotiator with publishers and aggregator of the e-content. CB is the technical partner of the Royal National Library (Koninklijke Bibliotheek) and runs the e-lending platform; it is however the Royal Library which makes individual arrangements with Dutch publishers on a one-copy-multiple-users basis and maintains control on e-lending-related operations.

Do e-lending platforms in private hands perform better than those that are controlled by public institutions? The EBLIDA investigation does not prove at all this statement and there is evidence perhaps for the opposite. Denmark, Finland, The Netherlands, and, to a certain extent, Norway, have chosen to aggregate resources through a platform where public institutions (respectively, the Digital Public Library controlling eRoelen, the Consortium of Public Libraries in Finland, The Royal Library and the Biblioteksentralen) offer successful examples of the implementation of e-lending. Divibib in Germany and MLOL in Italy are entirely into private hands (although dbv, the German Library Association, is represented in the Divibib board) and are equally successful. In France PNB only manages 50% of the circulation of digital material – a sign that the Cercle de la Librairie, a private enterprise, does not play a pivotal role in e-lending.

5. LICENCING MECHANISMS, WINDOWING PRACTICES AND EMBARGOES

The EBLIDA Handbook seems to confirm the conclusions of a report delivered to the European Parliament almost a decade ago. There is no standard model in Europe: licensing terms, conditions, loan durations and pricing are far from being standardised and differ from country to country, even when the e-book is the same. Restricting procedures concern either users or files, or both users and files. In other words, an e-publication is never dealt

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5 Mount (2016).
with as a classical acquisition, but as a publication available for limited purchase (in time and/or number of uses). Practices are heterogeneous; nevertheless, two broad categories of licensing models can be detected.

The first category includes single-user licensing models, where there is an attempt to replicate physical book lending in the digital environment and one copy of the book is provided at any given time for the duration of its loan period. Different arrangements correspond to this basic pattern, including the one copy – one user or one copy – multiple user models, with a series of requirements and remuneration schemes that are hard to synthetise and vary according to national situations. It must be borne in mind, however, that these contracts are almost never of perennial nature and have to be renewed on an annual or pluriannual basis.

The second category consists of pay-per-loan / simultaneous-use model, where libraries pay publishers a fixed fee for each digital loan with no specified cap on the number of loans or simultaneous users. This model proves to be more negotiable and advantageous for both publishers and libraries if the loaned e-book is a best-seller.

Between the first and the second category of e-lending, there is a wide array of specific arrangements and adaptations which are hard to track down and do not change the overall description of e-lending practices. However, the single- or multiple-user licensing and the pay-per-loan models remain the main categories, and the German and Italian examples clearly illustrate this trend.

In Germany, the basic model is the one copy - one user loan model - a digital library can pay for multiple copies of a title when it pays accordingly, but only one user can borrow a copy at a specific time. When it comes to multiple copies, there are different licensing models offered by Divibib GmbH and Overdrive Inc., the two aggregators in Germany.

Two models are applied by MLOL, the Italian e-lending aggregator:

a) one copy - one user (and most generally, one copy - two users), with a cap limit of loans or windowing practice beyond which the copy has to be re-purchased; under this model, an additional archive copy is provided for local, and not remote, consultation;

b) pay per loan, where the publisher applies a fixed price for each loan with no limitation; this model is particularly suitable for books with a short life-cycle, for which e-lending costs are minimised. The pay per loan system is much appreciated by publishers because it guarantees a good balance between publishers’ revenues and library usage.

The one copy – one user model has received legal legitimacy after the decision made by the Court of Justice of the European Union in a case opposing VOB, the Association of Public Libraries of the Netherlands, against Stichting Leenrecht, the Foundation administering Public Lending Right in the Netherlands (case C-174/15). On that occasion, the CJEU ruled that e-lending should be included in the EU Rental and Lending Rights Directive’s scope and found similarities between e-lending and the regular lending of physical books. The CJEU decision prescribes the application of Article 6(1) of the EU Rental and Lending Rights Directive on the conditions that: a) the author is remunerated; and b) the e-lending occurs on the basis of the one-copy-one-user model.

This CJEU decision has had two consequences in the debate on copyright: first, copyright exhaustion after sale to library or PLR cannot be excluded in the case of e-lending of works in libraries; second, e-lending can be included within the scope of the Directive 2006/115 of 12 December 2006 on rental right and lending right, provided that authors at least obtain an equitable remuneration.

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6 Poort, 2018, p. 299 and 305. See also Vitiello (2022).
In spite of such authoritative endorsement, the CJEU decision has had no impact on national legislation, not even in the Netherlands which was the country where the lawsuit was filed. In this country, a Covenant, and not a formal provision, guarantees the regular development of e-lending operations. The Covenant was agreed between the Dutch publishers, libraries, KB (the Royal Library), the government, the Dutch Authors’ Association and the Collective Management Organizations (i.e. the organisations collecting royalties for authors).

The involvement of copyright collective management organisations is capital in making e-lending equivalent to lending. Contrary to the book, where a public lending right would normally be offered to authors and royalties be paid, in the e-lending chain authors do not normally receive royalties from the transactions and are normally excluded from the decision-making process. The e-lending value chain is therefore an opaque environment: the amount of royalties given by publishers to authors is not known and not all mechanisms receive appropriate monitoring.

Publishers make the point that e-lending is different from analogue lending. In order to borrow a printed book, users have to step physically into a library; if the book is on loan, they have to wait until the book is returned. This kind of “friction” is by no way replicated in the e-environment; therefore, price discrimination, embargos, licenses aim to replicate frictions also in the infosphere and make the circulation of e-books less easy.

Among the five biggest publishers active in the British-American book trade, HarperCollins sets a limit of 26 loan transactions, after which the e-book is no longer available. In July 2019, Hachette—a company still standardly selling e-books to libraries on perpetual licenses—changed to a two-year license with lower e-book prices. They were followed by Simon & Schuster, which also implemented a two-year license—it used to be a one-year license.

Another example of windowing practices is Germany, where e-lending only concerns 7% of publications of recent release; the bulk of the e-book catalogue concerns e-books published in the years 2014-2017 or older than 2010, with the result that the current offer of 500,000 e-book titles are not available to library users. Moreover, big publishing houses are used to set an embargo of up to 12 months.

Shortcomings of e-lending licensing have been singled out by an investigation carried out several years ago. Since then, it does not seem that these major impediments to free circulation of e-books in libraries have been eliminated or have dwindled in their effects. “Frictions” of this kind were categorised by Dussolier as follows:

- **A LIMITED DURATION** of e-lending;
- **THE LIMITATION OF ONE USER PER TITLE**: the model of one book / one user that prevails on current e-lending services;
- **EMULATION OF DETERIORATION**: licenses are renewed after a certain number of loans to replicate the deterioration of a paper book;
- **RECOUSE TO TECHNICAL PROTECTION MEASURES**: e-books products developed and marketed with embedded DRM;
- **APPLICATION OF AN EMBARGO OR WINDOWS RELEASE PERIOD** before a work can be available for e-lending, based on the principle that 75% of the revenues yielded by a book are generated in the first six months after its publication.\(^7\)

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\(^7\) After 26 loans, the book normally falls into natural deterioration.

\(^8\) Dusollier (2014).
With embargoes and windowing practices widely applied, the e-lending market seems to have shrunk considerably. An independent study carried out in Norway\(^9\) came to several conclusions which may have a general application.

**E-lending models are considered to be:**

a) complex, with librarians spending too much time in understanding the best model in relation to the publications they are acquiring;

b) selective, with a demand for e-books or e-audiobooks that is much greater than the supply;

c) expensive, offering therefore too little value for money.

Windowing practices and embargoes are also a stumbling block to a wider diffusion of e-books in society. This sort of “friction” is implemented on the basis of the assumption that a successful e-lending environment would overlap and eventually greatly undermine the free economic development of the e-book trade. In the next chapter, we are going to demonstrate how faulty this argument is.

**6. IS E-LENDING AN IMPEDIMENT TO A SOUND E-BOOK TRADE? MYTH-BUSTING STUDIES AND SOME FRESH REALITY**

Traditionally, the argument put forward by publishers to justify some kind of “friction” in the e-lending environment is that library loans impact on consumers’ acquisitions: when an e-book is lent, it is not purchased; for publishers, this translates into an unsold item and therefore, profit loss.

This argument is not new. It was raised with respect to the circulation of printed matters in libraries, but was also falsified by a series of studies, where it was clearly demonstrated that library lending and book trade are not intertwined for at least two reasons: because there are qualitative asymmetries between book borrowers and book buyers and because acquisitions and loans are not made synchronically.\(^10\)

The argument is proposed anew in the e-book field and is presented not as a thesis to be proved, but as self-explanatory evidence. A good example of this kind of prejudice is provided in the two surveys produced by the Federation of European Publishers (FEP), the first about the Swedish, French and Italian market, and the second conducted in Germany.

Since they remain unpublished, both surveys are known only through a secondary source.\(^11\) From this source it can easily be inferred that the focus of the FEP investigation is less about the negative impact of e-lending on the purchasing of books, as the title promises, and more about the level of education of e-lending users. According to the survey, e-lending users in the reviewed countries have the same average income and education

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\(^10\) Rouet (1995) demonstrated that acquisition and loans were not made at the same time, and 73% of book borrowers were also acquiring them, but only 37% of books buyers were borrowing books.

\(^11\) Cafasso (2022).
as those of e-book purchasers. This conclusion would clash with the common idea that “libraries are mainly for encouraging reading among groups of the population that would otherwise not have access to books.” 

Information of this kind only reflects publishers’ fears about e-lending. When users of Norwegian public libraries and of the National Library of Norway were explicitly asked about their usage of public and private digital networks, respectively 17% and 21% stated that they refrained from buying an e-book because they can access it through public services. The same investigation confirmed that some 35% believe that e-books are usually cheaper than paper books and therefore they are willing to purchase them.

Prejudice about e-lending is entrenched among publishers to such an extent that studies bearing evidence of the opposite - e-lending practices promote reading and therefore supports the e-book trade - are not even taken into consideration. In fact, a wide array of investigations released in publishers’ professional magazines prove that not only do e-lending transactions not have a negative impact on consumers’ behaviours, but are in fact boosting e-book sales. Setting limitations to the access to e-books may actually discourage current e-book buyers from buying more e-books, as they do not see a longer life for e-books through lending and resale. As a conclusion, the public library, “does not only incubate and support literacy, as is well understood in our culture, but it is an active partner with the publishing industry in building the book market, not to mention the burgeoning e-book market.”

An evaluation carried out by an independent think tank (and requested by eReolen, very likely among the most advanced e-lending suppliers in Europe) is adamant in its conclusions: “e-Reolen is a valuable complement to the commercial services [provided by publishers], with its diverse catalogue of genres and titles. For Danish publishers, eReolen plays an important role by being a window to titles and genres with less commercial opportunities. E-Reolen is there to inspire more people to immerse themselves in literature. The battle for the attention of Danes has never been more fierce, and the market for digital literature is full of commercial and free services, who continue to struggle to get Danes to stream their favourite books.”

But perhaps the most striking example of how library loans improve (e-)book sales is the case study explored by the Panorama Project - a data driven research project focused on understanding the impact of public libraries on book and author discovery, brand development, and retail sales. Based on the promotion of a single, specific title, the project investigated all possible impacts of title promotion in public libraries in an OverDrive environment, from printed book to e-book sales, number of check outs and related comments. Results are short of sensational: when promoted by libraries, an individual title may see a 818% growth in e-book sales and 201% growth in print sales (March to April 2018).

7. E-LENDING IN THE BRITISH-AMERICAN PUBLISHING WORLD: IS IT A MODEL OR AN EXCEPTION?

The British-American book trade was the first to release e-books to libraries through price models and business practices that differ from the patterns in use in the analogue trade. Some twenty years ago, models started to

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12 Ibidem.
13 BI Centre for Creative Industries (2019), p. 38 and 47.
14 Albanese (2011); Vassallo (2016); Albanese (2020); Sisto (2022).
15 Rebecca Miller, quoted by Albanese (2011).,

In the decade preceding the pandemic, the e-lending business adopted market-driven licensing models through the eradication of the ownership model, a partial elimination of perpetual terms – i.e. unlimited license – and terms of access restricted in time (one or two years, after which the license must be extended). Harper Collins first introduced the term of 26 loans, after which libraries can choose to repurchase a license at a discounted price. Random House started discriminatory prices no longer based on the unitary price of the book, but on prices which were two or three times bigger. Penguin started implementing a six-month embargo period on its licenses, but it dropped this practice after its fusion with Random House in 2013.18

Some twenty years ago, prominent vendors started to offer e-lending services to libraries. The most successful of them is OverDrive, a U.S. based company, dubbed as the largest digital content provider - 81,000 libraries and schools in 106 countries.19 Ranked n. 1 in the ReadersFirst Guide to Library E-book Vendors, OverDrive provides for a variety of library functions (search, availability, circulation, account) and opportunities to interface with most current library systems.20 Overdrive is also notable for providing titles in Kindle format by directing users away from Overdrive’s site to Amazon. Lending options to libraries are the following:

Simultaneous Use – Titles can be borrowed simultaneously by an unlimited number of users. Titles will typically never expire.

One Copy / One User – A digital library can only have one copy of a title, and only one user can borrow it at a specific time: titles never expire.

Metered Access – Similar to one One Copy / One User, but titles will expire after a determined period of time (typically 12 months).

Cost Per Circ (CPC) – Add a publisher’s entire catalog to library’s collection and pay when users borrow titles from that catalog.21

In 2018 Overdrive global operations included 185 million e-book loans.22 Usage of digital books increased in public and academic libraries during the Covid 19 pandemic: by 50% in the first three months.23 Similar and even higher figures are reported for European public libraries in terms of digital circulation.24

In spite of this broad offer, not all available publications in digital form are accessible. A group of researchers investigated this issue on a sample of 546 titles and, in a second investigation, at a large scale, over a sample of 100,000 titles made available to libraries on e-lending in five countries: the UK, US, Canada, New Zealand and Australia. Of these, 76% is available from at least one e-lending platform and 51% is available from all the platforms that were scrutinised (of which, 74% from Overdrive). Oldest titles are available at higher rates than the newest, with a concentration on titles published in the late 1980s and 1990s. 85% of the e-publications

17 Sisto (2022).
18 Ibidem.
19 https://company.overdrive.com/company-profile/who-we-are/.
20 ReadersFirst (2014).
21 yz2236 (2016).
22 Rebecca Giblin et alia (2016).
23 Ibidem.
24 EBLIDA (2022).
released by the **BIG FIVE** publishers are available on at least one platform; 68% are available in all e-lending platforms.25

Of the 90,450 titles available in at least two countries, licence terms are identical for 74,922 (82.8%), and different for the remaining 15,528. Normally, licences differences are attributable to the decisions made by the five largest publishing houses. In the five countries, availability pairings do exist between Australia and New Zealand, and between the United States and Canada. If a title is unavailable in Australia, it will very likely be unavailable in New Zealand too and available instead in both the US and Canada. Overall, the UK has the least attractive licence terms, the highest prices, and the lowest availability.

This shows that the Anglo-Saxon market is not a model likely to be extended to other countries. It should be understood – in terms of practices, accessibility requirements and price policies - as an exception.

**8. CONTROLLED DIGITAL LENDING: IS IT A SOLUTION?**

Controlled Digital Lending (CDL) is the practice whereby the digital copy of a work legitimately acquired in printed form and owned by the library is made available to a patron in the same form as physical copies – i.e. if a copy is on loan, it is unavailable for consultation.

Controlled Digital Lending is very much encouraged by the Internet Archive, a non-profit digital library of millions of free books, movies, software, music, websites, and more founded in 1996.26 In the framework of the Internet Archive, e-publications are made available for one hour, or a longer 14-day loan, after which the encrypted file using Adobe Digital Editions is no longer made available. Circulation in any format is **CONTROLLED** so that only **ONE USER** can **USE** any given **COPY** at a time, for a limited time. As an explanatory video produced by The Internet Archive concisely states, “Controlled Digital Lending is a common sense evolution of what libraries have been doing for centuries”.27

This practice has been running for more than ten years. In 2020, however, the Internet Archive was at the centre of a controversy which ended up in a lawsuit filed by a group of publishing companies. During the early days of the pandemic, the Internet Archive had suspended waitlists created by CDL practices for the 1.4 million book collection. The creation of a National Emergency Library allowed e-book borrowing seamlessly and, opposite to the CDL philosophy, multiple people were able to simultaneously check out the same digital copy of a book. The suspension of the waitlists was expected to run until June 30, 2020; it terminated two weeks earlier with a copyright lawsuit, where publishing companies were seeking for financial damages.28 CDL is therefore a practice which has to be kept within the limits provided by copyright rules.

In Europe, an important step towards the implementation of CDL was undertaken by the Court of Justice of the European Union in the case opposing VOB to Stichting Leenrecht (case C-174/15) (see paragraph 5 “Licensing

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25 Rebecca Giblin et alia (2016).

26 The Internet Archive currently holds over 20 million books and texts, 3 million movies and videos, 400,000 software programs, 7 million audio files, and 483 billion web pages in the Wayback Machine.

27 The Internet Archive.

models"). On the basis of the CJEU decision, any legal reflection around e-lending should revolve around two principles: on the one hand, the principle of free access to information which is essential for the functioning of libraries, and, on the other hand, the principle of appropriate remuneration to authors. In legal terms, a balance should be found between citizens’ right to use culture and content in a way that facilitates their individual educational and cultural development and the requests made by right holders.29 This balance is what EBLIDA calls: sustainable copyright.

The country profiles explored in this Handbook provide evidence that CDL is no real alternative to current e-lending schemes, for a series of reasons. First, it isn’t at no cost – a library has to digitise a book in printed form and this requires manpower for the production of a digital copy which may be available in the digital offer of aggregators. Second, the one-copy one-user model generated from CDL may be considered complementary, and not alternative, to the one-copy multi-user models generated from licensing schemes – it lacks the benefits flexibility of multi-user and it is good to remember that licensing is the natural expression of copyright in the digital world. Third, CDL is a decentralised model which is hard to apply at national level without the infringement of copyright law. Fourth, decentralisation in e-lending offsets the likely benefits from, and extension of, the use of data in a centralised system – for instance, the application of artificial intelligence tools.

CDL is a basic solution which should open up other possibilities and a clear demonstration has been the boost of the digital library from 2020 to 2022, during the pandemic. In Latvia, the National Library of Latvia came to an agreement with AKKA/LAA (Copyright and Communication Consulting Agency/Latvian Authors’ Association) through which a collection of digitised books was made available to users through a paid license. All authors in the collection are determinant for the Latvian culture. The National Library of Latvia issued a statement in relation to works not included in the AKKA/LAA-NL Agreement and asked their authors whether they wished to be excluded from the portal. One month after, no notification was received for works to be removed from the portal. This experience shows that multiple solutions can be found to boost e-lending, case by case and under several conditions, provided that there is a clear policy undertaken by public powers.

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29 Vitiello (2021).


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The Internet Archive. Controlled Digital Lending explained, s.d., https://archive.org/details/controlled-digital-lending-explained,


### ANNEX 1: SUMMARY TABLES

Table 1: E-lending Quantitative data (countries with aggregating agencies)

<table>
<thead>
<tr>
<th>Country</th>
<th>Number Transactions</th>
<th>Expenditure</th>
<th>Coverage</th>
<th>Users</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Belgium 2021</strong>&lt;br&gt;(Flemish community)</td>
<td>331,000 (e-books)&lt;br&gt;441,000 (digital magazines &amp; newspapers)&lt;br&gt;47,000 (interactive children books)</td>
<td>€600,000 every year</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td><strong>Denmark (2021)</strong></td>
<td>2,826,785 e-books&lt;br&gt;4,595,317 e-audiobooks&lt;br&gt;7,422,102 (both e-books and e-audiobooks)&lt;br&gt;20% of lending; Children: 1.3 m</td>
<td>12Ml for e-lending + 1.2Ml for platform maintenance&lt;br&gt;80,000 titles (99% publishing output)&lt;br&gt;40% transactions are fiction titles</td>
<td>715,000 users (over 5.8m inhabitants)</td>
<td>Unknown</td>
</tr>
<tr>
<td><strong>Finland (2021)</strong></td>
<td>Coordinator: CPL (Consortium of Public Libraries) and Aggregators. As from 2024, e-kirjasto / Finnish e-library</td>
<td>content 1.5 Ml, platform 0.155Ml</td>
<td>Coverage: 45,000 titles (about 85% of commercial e- and audiobooks) 50/50 fiction and non-fiction</td>
<td>389,914 active users in 2021 (ca 15% of the population)</td>
</tr>
<tr>
<td><strong>France (2020)</strong></td>
<td>+ 1Ml (625,005 in 2019, +79%)&lt;br&gt;(in 2019, 9.1 e-resources on average per Public Library)</td>
<td>2019: €9,182 per library (average)&lt;br&gt;240,190 titles (Dilicom)&lt;br&gt;59% fiction</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td><strong>Germany (2020)</strong></td>
<td>30,2Ml – 13,54% of total lending (223m)&lt;br&gt;35,8m copies sold</td>
<td>€14,9m</td>
<td>Divibib: 500,000 e-book titles (7,200 publishers) 7% recent e-books 40% e-books 2014-2017, more than 10% less than 2010&lt;br&gt;Overdrive, not known</td>
<td>1/3 of the users are unhappy (no new releases)</td>
</tr>
<tr>
<td><strong>Ireland (2021)</strong></td>
<td>900,441 e-books ; 1,283,646 e-audiobooks</td>
<td>1.7 mil euro</td>
<td>High level of coverage</td>
<td>Embargoes and all kinds of limitations</td>
</tr>
<tr>
<td><strong>Italy (2021)</strong></td>
<td>1,474,013</td>
<td>€428,000 (only Emilia-Romagna region)&lt;br&gt;95% of the Italian publishing output&lt;br&gt;An offer also for students including 70,000 titles</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td><strong>Netherlands (2021)</strong></td>
<td>5.4 million e-books;&lt;br&gt;2.1 million audiobooks</td>
<td>€7,018,230 (1.03/title)</td>
<td>High level of coverage</td>
<td>435,000; (satisfaction rate: 7.5 / 10)</td>
</tr>
<tr>
<td><strong>Norway (2021)</strong></td>
<td>1,008,674 (8.5% of total lending);&lt;br&gt;637,601 e-audiobooks&lt;br&gt;1,420,745 (both e-books and e-audiobooks in 2019: 603,535 e-book loans (3.9% of total lending)</td>
<td>Unknown</td>
<td>Unknown</td>
<td>0.18 per inhabitant (in 2019: 0.11 per inhabitant)</td>
</tr>
</tbody>
</table>
Table 2: E-lending Quantitative data (countries with no aggregating agencies)

<table>
<thead>
<tr>
<th>Country</th>
<th>Number Transactions</th>
<th>Expenditure</th>
<th>Coverage</th>
<th>Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>23 919 (1.34% of total lending)</td>
<td>Unknown</td>
<td>120 (out of 950) publishers offer ebooks; Only 15 publishers (1.6%) allow for e-lending</td>
<td>Unknown</td>
</tr>
<tr>
<td>Latvia</td>
<td>39 346 e-books loans (0.007 of total lending)</td>
<td>Unknown</td>
<td>Some publishers</td>
<td>Unknown</td>
</tr>
<tr>
<td>Romania</td>
<td>No digital offer</td>
<td>No digital offer</td>
<td>No digital offer</td>
<td>No digital offer</td>
</tr>
<tr>
<td>Spain</td>
<td>3 746 853</td>
<td>€1.5 Ml</td>
<td>33 265 items (31 326 ebooks, 1 628 audiobooks, 83 journals, 52 newspapers + 176 other)</td>
<td>257 315</td>
</tr>
<tr>
<td>Country</td>
<td>Actors</td>
<td>Models</td>
<td>Windowing practices</td>
<td>PLR</td>
</tr>
<tr>
<td>---------</td>
<td>--------</td>
<td>--------</td>
<td>---------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Belgium (Flemish)</td>
<td>On the basis of a tender, Standaard Boekhandel negotiates with publishers and Bibliotheca is the aggregator. Cultuurconnect funds operations; royalties for the e-book licenses are paid by the participating public libraries.</td>
<td>Single use model; licenses for 16-26 loans (2-4 years).</td>
<td>4 times more expensive than individual purchase.</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>A) Publishers supply titles; agreements with The Digital Public Library; B) Aggregator: The Digital Public Library (98 municipalities): negotiates prices and terms &amp; conditions; C) eReolen, national e-lending service (belongs to The Digital Public Library; D) Publizon; 3rd party platform; backend public library and vendors.</td>
<td>Pay-per-loan (one copy-multiple user) fees are vary; One copy – one user (only the big seven publishers)</td>
<td>Only the « big seven » publishers have windowing practices</td>
<td>Active both for lending and e-lending</td>
</tr>
<tr>
<td>Finland</td>
<td>Coordinator: Consortium of Public Libraries negotiates; Aggregators are: Ellips (for Finnish), Biblio (for Swedish) and OverDrive (for English) e-books</td>
<td>1 copy – 1 user, one copy-multiple user, pool model, Pay per loan</td>
<td>Windowing practices: embargos by some publishers, no advance information on e- and audiobooks available for library sale</td>
<td>PLR to be introduced in 2023</td>
</tr>
<tr>
<td>France</td>
<td>A) Publishers supply titles, B) PNB is the digital lending platform, C) A professional association, Réseau Carel negotiates rates and services (for 50% French libraries), D) Dilicom gathers e-book distributors and makes available metadata</td>
<td>License and related tokens (to be spent by each library)</td>
<td>Long-term license (for long-selling) Short-term license (for bestsellers and quick turnover)</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>A) Publishers supply titles, B) Divibib GmbH through Onleihe, and Overdrive Inc. in partnership with Libreka are the aggregators</td>
<td>Basic: 1 copy – 1 user Advanced: Licenses</td>
<td>(12-month embargos by some big publishers)</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>A) Only 15 Publishers, B) National Library of Greece</td>
<td>No clear model</td>
<td>Embargos by some publishers</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>Contract between IRL LGMA negotiating on behalf of libraries and BOLINDA, the aggregator having been awarded the contract for e-lending transactions through the BorrowBox platform.</td>
<td>Publishers decide licenses and windowing policies</td>
<td>Only for 59% of the e-collection there is no limit on loan or term.</td>
<td></td>
</tr>
<tr>
<td>Italy (2021)</td>
<td>A) Publishers provide content through two main distributors: Edigita (60% of the e-publishing offer) and Mondadori (30%), B) MLOL, negotiator on behalf of libraries and aggregator</td>
<td>1 copy – 2 user Pay per loan e-ILL for several titles</td>
<td>Windowing practices or overpricing are only marginal</td>
<td></td>
</tr>
<tr>
<td>Latvia (2021)</td>
<td>A) Publishers provide content; B) National Library platform <a href="https://www.3rd.lv/">https://www.3rd.lv/</a> based on direct relations with publishers</td>
<td>Conditions vary according to publisher</td>
<td>No windowing practices when agreements are set in place</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>Actors are: KB, (individual arrangements with Dutch publishers); CB, runs the platform; Odilo, delivers the platform to KB; Lira and Pictoright, CMOs, collect royalties. Data on e-loans delivered by CB via KB.</td>
<td>One-copy-multiple-users basis applies to 50% of Dutch publishers.</td>
<td>A Covenant signed by all involved parties guarantees transparency</td>
<td>Active both for lending and e-lending</td>
</tr>
<tr>
<td>Norway (2020)</td>
<td>A) Publishers provide content; B) Two negotiators and aggregators: Bokbasen (Norwegian big publishers and 2 largest bookstore chains); and Biblioteksentralen (owned by municipalities, non-profit cooperative); National Library of Norway tries to combine e-lending models</td>
<td>Bokbasen uses license models Biblioteksentralen uses pay-per loan models</td>
<td>Unknown</td>
<td></td>
</tr>
</tbody>
</table>
### Table 4: E-lending business models (countries with no aggregating agencies)

<table>
<thead>
<tr>
<th>Country</th>
<th>Number Transactions</th>
<th>Expenditure</th>
<th>Coverage</th>
<th>Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>A) Only 15 Publishers, B) National Library of Greece</td>
<td>No clear model</td>
<td>Embargos by some publishers</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>A) Publishers provide content; B) National Library platform <a href="https://www.3td.lv/">https://www.3td.lv/</a> based on direct relations with publishers</td>
<td>Conditions vary according to publisher</td>
<td>No windowing practices when agreements are set in place</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>No digital offer</td>
<td>No digital offer</td>
<td>No digital offer</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Actors: A) Publishers supply titles; B) eBiblio as the digital lending platform; acquisitions through support provided by the Region (Comunidad autonoma)</td>
<td>Licences for simultaneous use, depends on publisher</td>
<td>Publisher’s DRM also on eBiblio</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Public (national)</td>
<td>Public (regional) or hybrid</td>
<td>Private</td>
<td>National Library</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>----------------------------</td>
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<td>------------------</td>
</tr>
<tr>
<td>Belgium (Flemish Community)</td>
<td>Cultuurconnect (aggregators are: Standard Boekhandel and Overdrive)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>Digital Public Library (aggregator is eRoelen controlled by the Digital Public Library)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>Consortium of Public Libraries (3 aggregators: Elibs, Finnish e-books, Biblio Swedish e-books, and Overdrive, e-books in English)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Carel (only negotiates rights with publishers)</td>
<td>PNB (Joint venture of SNE, pub’ ass, and SLF, booksellers’ ass)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>Onleihe (DvD) and Overdrive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece (NA)</td>
<td>Bolinda</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>Bolinda</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>Horizons (MLOL platform)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td>NLL (some arrangements with LT RRO)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>The Royal Library is both negotiator and aggregator</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>Bokbasen (major publisher + 2 bookstores)</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
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<tr>
<td>Spain</td>
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ANNEX 2: DEFINITION OF E-BOOK AND E-LENDING

When dealing with e-lending, the very first problem concerns definitions. Quite often, e-lending and e-books are terms used to designate a variety of services and products with no clear distinction between them. Three documents may help define e-lending and related products: the EBLIDA working paper on the “Key Principles on the acquisition of and access to e-books”, issued in 2021;30 the 2014 IFLA document on e-lending in the Anglo-Saxon e-book trade;31 and the recent paper by Library Futures (2022), which deals with digital library policies and advocacy.32

Definitions change over time. E-books are defined in the same terms in the 2012 EBLIDA document and in the 2022 Library Futures policy paper: a “book” or a “text document” “composed or converted into digital format for display on a computer screen or handheld (portable) device”.33

IFLA categorizes the different manifestations of e-books, whether it is:

- owned by an individual or a library or more commonly licensed from the publisher/vendor;
- contained in a collection or bundle of eBooks marketed as one entity;
- augmented or supplemented by audio visual or other elements such as Global Positioning System (GPS) data as part of one file or through links to separate file(s);
- coexisting with a print on paper book of the same text or has no physical equivalent;
- downloaded to a device or streamed, which requires an Internet connection whenever the work is read;
- produced by a trade publisher or self-published for the general reader (the most common understanding) but may also be a scholarly or professional monograph published by entities such as university presses or professional organizations.34

For the purpose of this Handbook, digital versions of journals and newspapers are not considered eBooks.

The Library Future policy document also defines a “digital audiobook” as “a sound recording of a reading of any literary production that has been converted into or published in a digital audio file that may be listened to on a computer or portable electronic device.” 35 A definition of digital audiobook was strongly needed, since in current library reports, the lending of digital audio-books by far outnumbers e-books in e-lending transactions.

30 EBLIDA (2012).
31 IFLA (2014).
32 Library Futures (2022).
33 EBLIDA (2012) and Library Futures (2022).
34 IFLA (2014).
35 Library Futures (2022).
“Handheld” or “portable” devices are “any self-contained electronic device for personal use for communicating, reading, viewing, listening, playing video games, or computing, including a mobile telephone, tablet computer, electronic book reader, and other similar devices.” 36 In addition, the EBLIDA document makes a crucial difference between a “user” - any person using library services – and a “registered user” - a user who has registered with the library and whose identity is known to the library.37

According to the EBLIDA document, e-lending is “making a digital object available for use for a limited period of time and not for direct or indirect economic or commercial advantage”, either by giving the user access to the work for a period of time, after which the access is denied, or by letting the user download a self-destructive version of the work to a computer or reading device, so that the file is destroyed after a pre-determined period of time.38 The IFLA document considers that e-lending is “the temporary provision of an eBook by a library to a registered user for use away from the library premises and in the library should the user wish” in terms which can “be dictated by purchase agreement, license or by the library itself [...] or by a reader’s device from a vendor, publisher or library server.”39 In the Library Futures terminology, loan means “to create and transmit to a library user a copy of an electronic book or digital audiobook and to delete such copy upon the expiration the loan period.”40

On the side of the offer, a “publisher” is “any person in the business of the manufacture, promulgation or sale of books, journals or other literary productions, including those in digital form, consisting of text, imagery or both, and digital audiobooks.” This definition may also be extended to aggregators who enter into contracts with libraries for the purposes of providing materials for purchase or license from the publishers.”41

It can be inferred from all these definitions that “an unconditional ‘lending right’ might undoubtedly lead to the situation [...] that there is no need for anyone else to buy a work which is bought and made available to the public via internet. So obviously, there is a need to restrict the use of works made available as digital files in a way that prevents this scenario.”42

Restricting the use of works while improving access to information for all may be performed under the terms of what we would call as “sustainable copyright” - a compromise set between publisher’s business models, library need to provide widespread access to e-content, and the efficient use of public expenditure in financing library services.

36 Ibidem.
37 EBLIDA (2012).
38 Ibidem.
39 IFLA (2014).
40 Library Futures (2022).
41 Ibidem.
42 EBLIDA (2012).
E-lending within the book economy framework
A survey essentially oriented towards public libraries

Why are there so many different models of e-lending in Europe? Is it possible to envisage a uniformity of practices and solutions in this disparate landscape? And what are the respective roles of public authorities and of public libraries in this field?

Despite the progressive development of the e-book offer, libraries still encounter many difficulties in implementing e-lending. Those difficulties are of a variable nature - legal, technical, and financial. For some expert librarians, e-lending is mainly considered under a legal perspective, where the recognition of the derogatory status of digital library transactions in relation to copyright laws legitimises open access practices through customary fair use.

A valuable approach, this methodology has nevertheless some limits: in the European copyright system judges do not have the same latitude in interpreting the law as in the Anglo-Saxon system, where the right of access to digital publications is based on fair use. On the other hand, the judgement of the Court of Justice of the European Union (in the case opposing the Dutch Library Association to the Leenrecht Foundation, case C-174/15) made an important step towards the development of e-lending in libraries. The CJEU ruled that library lending of e-books is analogue to the lending of printed books, as long as books are lent in the “one copy-one user” model (as soon as one reader returns an e-book, a second reader checks it out, and so on, with no expiration date). They may therefore be included in the scope of the Directive 2006/115 of 12 December 2006 on rental right and lending right, provided that authors at least obtain an equitable remuneration.

Any legal reflection around e-lending should therefore revolve about two principles: on the one hand, the principle of free access to information which is essential for the functioning of libraries, and on the other hand the principle of appropriate remuneration to authors. In legal terms, a balance should be found between citizens’ right to use culture and content in a way that facilitates their individual educational and cultural development and the requests made by right holders. This balance is what EBLIDA calls: sustainable copyright.

Merely legal considerations, however, are analytically limited and do not help find appropriate solutions to the problem raised in libraries. The institutional background and the economic environment surrounding e-lending include the number of transactions of e-books in libraries, the content of the policy of public powers, the nature of the e-book trade (e.g. the popularity of e-books among young people), the practices linked to e-book acquisitions in libraries and the quality of publishers-libraries interrelation. All these factors are determinant in the structure of an e-book economy which, in the book trade, is mainly shaped by the national language(s) spoken in different countries and by their cultural development in terms of reading skills and access to knowledge.

In other terms, the linguistic and the cultural scope of the e-book diffusion weighs highly in setting up the objectives and the essence of the library advocacy to be developed at European level, since this advocacy has to be tailored in compliance with the structure of both the e-book trade and the national library system – and it is not taken for granted that measures implemented in one country can also be useful in other countries.

This holistic approach – legal, economic, institutional – has often been neglected in professional library circles as well as in sectorial studies. Apart from providing a more solid foundation to the understanding of e-lending policies, this methodology would also allow networked libraries to play a greater role in the digital distribution.
of electronic publications and better serve the interests of citizens – even more so that *tous les jeux ne sont pas faits* in the e-book life cycle.

This EBLIDA survey on e-lending in the context of the book economy, whose results will be known in Spring 2022, has the general objective to lay the foundation of a “sustainable copyright” in public libraries through the examination of three particular aspects:

- The dependence of the e-book library trade and library acquisitions on national economic factors, legal constraints and institutional requirements (number of users, percentage of publications available in a digital format, purchasing power of libraries, the role of intermediate layers negotiating with publishers on behalf of libraries);
- The role played by national public authorities in the choice of an e-lending model;
- The potential strength of a networked system where the library demand is aggregated, with an active e-book cultural policy carried out by libraries, alongside and beyond solutions focused on open access practices.

**Elements for a survey on e-lending within the book economy framework**

**General data and the legal framework**

- What is the number of e-lending transactions in your countries?
- In percentage, what does e-lending represent in relation to the overall number of lending transactions?
- Could you break down e-lending transactions by library category (academic, public, school)?
- Could you break down e-lending transactions on a regional basis?
- Could you break down e-lending transactions by subject category?
- What are the main difficulties / assets in collecting data about e-lending in your country?
- Which legal act / contractual agreement regulates e-lending in your country?
- How is e-lending implemented (through intermediate actors negotiating on behalf of libraries, a national agency, individual arrangements made by individual library or library system)?
- Which is the institutional or private entity in charge of collecting e-lending royalties on behalf of libraries? Do libraries play a role in its governance?
- Are local practices consistent with the law case 174-15 of the Court of Justice of the EU?
- What are the main difficulties / assets in setting up a legal framework on e-lending in your country?

**Interaction between authors/publishers/libraries**

- What is the business model underlying e-lending practices in your country?
- What is the percentage of publishers distributing digital publications for e-lending purposes?
What are the requirements set by publishers (e.g. embargos)?

Do publishers apply discriminatory prices to libraries in relation to individual buyers?

How are DRM devices implemented and who is dealing with them?

What are the main critical points in such interaction?

How is the level of piracy assessed and through which criteria has this level been assessed?

Would you consider that e-lending is a way to control (or to increase) piracy in the info-sphere?

Is piracy (or fear of potential piracy practices) a major impediment for authors and publishers to go digital?

The role of libraries and public powers

How are e-books purchased (individual e-books, purchase of collections’ bouquets, etc.)?

What kind of limitations are set to e-book usage in libraries?

Do public libraries aggregate themselves in consortia when they negotiate with authors / publishers / collecting societies?

How would you describe, and compare, e-lending mechanisms implemented in academic libraries and in public libraries?

Are there mediators assisting libraries in their negotiations with publishers (such as Onleihe in Germany, PNB in France, or MLOL in Italy)?

Are libraries aware that networking is a crucial asset for negotiations with publishers? Why?

Are libraries aware that, if the content is king, the role of distributors of e-books is that of king-makers?

Is e-lending a well-recognised measure supporting the book field?

What other accompanying measures are taken by public powers to support the e-book diffusion and reading policies? Could you categorise them?

To what extent are professional organisations and involved actors happy about e-lending mechanisms?

What is the annual amount of money / year levied for e-lending services in libraries?

How is this money re-distributed among right holders?

In percentage, what is the percentage of e-lending services in relation to the annual publishing turnover?

Is it possible to quantify e-lending royalties as a percentage to the average remuneration of authors?

What is equal / unequal about redistributive mechanisms?

Users’ practices

Are library users happy about e-lending services?
- Are they consulting traditional books and e-books regardless of their formats?
- Are official statistics about e-lending consultations available?
- How large is the e-book diffusion among children and teen-agers?
- Are users also provided with e-book readers, when the case?

**Other**

- Is there any issue regarding e-lending in your country or specific organisation that hasn’t been addressed in this questionnaire? If so, these issues are: ..........................
CHAPTER TWO: PUBLIC LIBRARY ACQUISITION POLICIES, OPEN ACCESS AND RELATED COPYRIGHT STRATEGIES

BY ZÉLIA PARREIRA AND GIUSEPPE VITIELLO

PREFACE, BY TON VAN VLIMMEREN

It can be said of copyright what Winston Churchill said about democracy, that it is the worst form of remuneration to authors, except for all other forms of remuneration that have been experimented from time to time. EBLIDA is fully committed to open access as it was formulated in the BOAI (Budapest Open Access Initiative), a “world-wide electronic distribution of the peer-reviewed journal literature and completely free and unrestricted access to it by all scientists, scholars, teachers, students, and other curious minds.”

When it comes to the book trade, however, a different strategy has to be followed and the whole history of EBLIDA will suggest that this strategy should be made of continuous collaboration with publishers and opposition to them, when necessary. This paper reports about main issues in the scholarly communication and book trade chains and how research libraries (RLs) and public libraries (PLs) should face current challenges. It deals with main differences between authorship in scholarly communication and authorship in the book trade value chains, with an emphasis on how quality is ensured within the two chains. Shortly said, the selection of scientific articles and quality insurance is a public endeavour in the scholarly communication chain. It is paid with public money, oriented at a global scale, guaranteed by peer reviewing and the academic scrutiny of the evidence-based nature of its content. In the book trade, instead, quality insurance is within the scope of individuals (authors) and private companies (publishers), in their respective roles of creating an artistic and/or educational work often oriented to a small cultural and language group and bringing it to the market at their own risk and expenses.

The report also describes the state of the art of the open access strategies pursued by RLs. It focuses on the great achievements performed by the open access movement and the RL resilience in the face of the tough economic constraints set by the oligopoly of academic publishers. It also expands upon the strategic gaps research libraries are facing when it turns to distribution and what PLs may learn from the research library experience.

Another important section of the report deals with the strategy that could be pursued by public libraries in a digital environment. The book trade is largely dominated by the paper format. The fact that the sector is technologically lagging behind in relation to the scholarly communication chain can be turned into an opportunity. *Tous les jeux ne sont pas faits* in the relationship between the book trade and public libraries, provided that the latter are ready to take the lead in the digital environment and build upon what has been done, what is being done and what could have been done.

Politicians and policy-makers in Europe are now in the process of demonstrating that the crisis generated from the pandemic is not going to be wasted. They are injecting huge amounts of resources into the machinery of recovery and resilience for the post-Covid age. Just as policy-makers, European libraries should demonstrate that they are not jeopardising the financial opportunities made available in the European context. There is a time for lawyers and Court practitioners and a time for library strategic policy and planning. I believe that, for copyright purposes, the time is come for strong policy changes and forward-looking library planning.
INTRODUCTION

Politicians and policy-makers in Europe are now funding gigantic investment plans for the post-Covid age. Just as policy-makers, European PLs should demonstrate that they are able to make the most out of these opportunities and maintain the digital library “normal” they created and/or boosted during the Covid crisis. In an expanding digital library, PL negotiations with publishers cannot be managed in the old traditional way. A policy should be set up, with a view to facilitating the elaboration of viable projects with realistic requirements and objectives.

RL acquisition policies have been permeated by the BOAI (Budapest Open Access Initiative), which was launched in 2002. The BOAI is still now a fundamental drive for RL action (together with Lessig theories and Pirate Party programmes).

Open Access (OA) has made great strides with a panoply of successful projects, platforms and other initiatives. Even if the bill for RL acquisitions remains high, OA has contributed to the stabilisation of the market and to galvanising the advocates of products and channels which are alternative to the oligopoly of commercial scholarly publishing. What has been achieved in RLs can be transferred to PLs, but only with adjustments and adaptations that reflect the different nature of the book trade in relation to scholarly communication.

In the book trade, authorship and the selection of quality production – a public endeavour in the scholarly communication chain – is within the scope of private companies and of individuals. While scholarly communication is fully digitalised, the penetration of digital technologies in the book trade sector is still not pervasive - the paper format represents the large majority of publications, up to 90-95%. Despite increasing e-book sales and e-lending in libraries during the Covid-19 crisis, the percentage of digital publications in the book trade remains the same.43

This may be the reason why PLs delayed their reflection on negotiation policies and their interaction with the book trade in the digital environment. This also means that tous les jeux ne sont pas faits for PLs. How should they proceed? Should they adopt the Budapest Declaration (2002) as it stands? Or should they build up an initiative of their own?

This paper illustrates the peculiar nature of the book trade in relation to scholarly communication and the main differences between RL and PL acquisition policies. It takes into account market constraints, but also opportunities. Within the framework of the current European legislation this paper also describes some possible models for PL acquisition policies and their related copyright strategies. A viable model in medium-large countries, for instance, could be the setting up of a centralised entity negotiating rights with publishers and decentralised points of distribution where copyright-protected resources are combined with OA resources, blogs, conversations with users and other useful tools.

The primary aim of this paper is therefore:

- To illustrate the main differences between the book trade and scholarly communication and how these differences impact on the acquisition policies of PLs and RLs,
- To set up an appropriate PL acquisition policy, which may contribute to build up “rich” platforms partially controlled by PLs.

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This paper is endowed with a set of SWOT tables which illustrate how PLs and RLs are currently embedded in the book trade / scholarly communication chains. For each of the links of the chain – Authorship, Production and Distribution – the SWOT tables in Annexes intend to build upon PL and RL strengths and opportunities and to enhance their positions within the chains. It is to be hoped that, by pursuing an appropriate policy, PLs will improve their negotiation skills and also shape up a copyright strategy which may help them play a distinctive role in the book trade chain.

1. SCHOLARLY COMMUNICATION AND THE BOOK TRADE – WHAT IS THE DIFFERENCE?

The publishing sector is not a monolith, but a highly heterogenous and diversified sector, often working in a haphazard manner. Scholarly communication is only a section of the publishing industry; to look at it as the dominant model in publishing is not only misleading but may cause a false perception about the quality of interaction between PLs and their publishing counterparts. It may also create misunderstandings about products and services that are released within the chain RLs and PLs are part of. There is in fact little in common between the production and the marketing of a scientific journal and the production and the marketing of a literary work, normally in the form of a book. Points below emphasise the main differences between scholarly communication (point 1) and the book trade (Point 2).

A. Authorship

A1. In scholarly communication, authorship and the selection process is in public or non-profit hands. Researchers writing papers, academics offering the results of their researches to an academic arena are normally employed by universities / research centres. Authorship is not limited only to creators, it also involves other researchers / academics who accept to select articles to be published and comment / amend a scientific paper under a peer-reviewing process for free. Academics, who are voracious readers of scholarly journals, are per definition employees. The authors of a scientific article do not expect any economic return for their published research, but a consolidation of their academic reputation generated from being enrolled in the list of authors in a peer-reviewed journal with a high impact factor. As a consequence, the intellectual property of such work should be public (and not personal) and publishers’ rights be limited to the value they add in the chain.

A2. Books are written by authors who make their living, or increase their own revenues, out of their published output. Authors in the book trade may have personal motivations to write (what is called the “psychic income”); nevertheless, they have taken the personal risk of choosing the book channel as the way of diffusing and making known their artistic talent. As a rule, they negotiate their authors’ rights with publishers, who normally perform the following functions: a) they discover new authors, themes and forms of publishing; b) they finance the fabrication of the work; c) they take the commitment of diffusing and distributing works written by authors; d) they promote not only the work of an individual author, but the whole of the published collection; e) as private companies, they have an obligation to make profits. The authorship process in the book trade is in private hands; therefore, intellectual property may have a public component (the work is made public and, as such, should circulate as widely as possible); nevertheless, authors should enjoy the fruit of their talent and publishers’ rights be rewarded for the value they add in the chain.

44 Cuntz (2018).
45 Schuwer (2002), Ch. 1.
B. Products.

B1. In scholarly communication, the publishing output is normally a journal, a bulletin, and any other publication format which allows for the quick dissemination of research results. A scientific journal is a peer-to-peer product: the director of the publication and its scientific committee are normally prestigious academics in the field of specialisation of the publication. Unless the publication is in open access, a journal is normally acquired through subscriptions that are paid by university libraries, although both the price of scientific periodicals and the business models of scholarly publishers have greatly changed in the last twenty years. With the exception of Humanities and Social Science, books are secondary products in scholarly communication.46

B2. The publishing output in the book trade is a book. As already mentioned, books are the result of artistic talent and of the efforts made by the publisher who takes the financial risk of selecting, fabricating and diffusing it. The book trade has low barriers for new actors entering the market; this is the reason why it is considered the sector where freedom of expression and the multiplicity and diversity of opinions and expressions are better guaranteed, if compared with other media – film, music, and other entertainment industries.

C. Economics of publishing

C1. A handful of scholarly publishers dominate the sector. The scholarly publishing market has gradually grown oligopolistic: between 1973 and 1990, the current five dominant publishers combined accounted for less than 10% of the published output. By 2013, their share had increased to more than 51%, meaning that, in 2013, the majority of papers were published by journals that belong to five commercial scholarly publishers. “Specifically, in 2013, Elsevier accounts for 16.4% of all SSH papers (4.4 fold increase since 1990), Taylor & Francis for 12.4% (16 fold increase), Wiley-Blackwell for 12.1% (3.8 fold increase), Springer for 7.1% (21.3 fold increase), and Sage Publications for 6.4% (4 fold increase). On the whole, for these two broad domains of scholarly knowledge, five publishers account for more than half of today’s published journal output.”47

C2. The total book market value was estimated at €36–40 billion in 2017. 575,000 new titles were issued by European publishers in 2015 – an amount of titles which increases year after year.48 The book trade, too, has grown oligopolistic, with a few publishing house taking the lion’s share of the market. In France, for instance, the 10 leading publishers (with a battery of brands under their control) make 88,9 % of the publishing turnover (62 % for three of them) in 2018.49 In Germany, around 7 percent of publishers account for 95 percent of the total turnover and the 40 biggest publishers (representing 2% of all publishers in publishing statistics) make 78,8% of the total publishing turnover. Small and medium publishers (87% of all publishers) only make 6% of the publishing turnover.50 In Portugal, two major publishers, representing 0,3% of publishing houses (667), published 13% of the titles between 2013 and 2017.51 And in Spain, where the number of publishers remained almost the same between 2013 and 2017 – 3,086 in 2013 and 3,032 (2017)52 - 46 publishers representing 2% of all publishers control the market with a a publishing output going beyond 300 titles/year.53

46 Vitiello, G (2020).
49 France (2019).
50 Peischel (2019).
51 Portugal (2021); APEL (2021)
52 Orús, A (2021)
53 Enelmar (2021)
In spite of this high level of concentration, a dense network of independent publishers is in existence in all European countries, if by independent is meant (at least in Germany) a “publishing house [that] does not belong to any group, has a professional publishing and sales structure, and publishes at least two titles a year.” The publishers show high resilience and take more risks than leading publishing companies because the sale of their books is not supported by a “friendly” distribution system.

**D. Global/Local**

**D1.** The few enterprises working in the scholarly communication publishing segment operate at global level, and use English as standard language. There are high entry barriers, also due to the cost of platforms devised to create the data banks of articles where indexing services and evaluative functions are performed. The sector is technology-intensive with a high level of customer-oriented technologies and AI tools.

It comes as no surprise then, that four of the major scholarly publishers rank among the first eight biggest publishers in the world in the 2017 list released by Publishers Weekly: 55

<table>
<thead>
<tr>
<th>2017 Rank</th>
<th>2016 Rank</th>
<th>Publishing Group or Division</th>
<th>Parent Company</th>
<th>Country</th>
<th>2017 Revenue</th>
<th>2016 Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Pearson</td>
<td>Pearson PLC</td>
<td>U.K.</td>
<td>$6,070</td>
<td>$5,617</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>RLEX Group</td>
<td>Reed Elsevier PLC &amp; Reed Elsevier NV</td>
<td>U.K./U.S./Netherlands</td>
<td>$5,609</td>
<td>$4,864</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Thomson Reuters</td>
<td>The Woodbridge Company Ltd.</td>
<td>Canada</td>
<td>4,941</td>
<td>$4,819</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>Bertelsmann*</td>
<td>Bertelsmann AG</td>
<td>Germany</td>
<td>$4,240</td>
<td>$3,697</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>Wolters Kluwer</td>
<td>Wolters Kluwer</td>
<td>Netherlands</td>
<td>$3,994</td>
<td>$3,384</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
<td>Hachette Livre</td>
<td>Lagardère</td>
<td>France</td>
<td>$2,735</td>
<td>$2,390</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>Grupo Planeta</td>
<td>Grupo Planeta</td>
<td>Spain</td>
<td>$1,974</td>
<td>$1,889</td>
</tr>
<tr>
<td>8</td>
<td>10</td>
<td>Springer Nature</td>
<td>Springer Nature</td>
<td>Germany</td>
<td>$1,956</td>
<td>$1,715</td>
</tr>
</tbody>
</table>


54 Ibidem.
D2. The national book trade normally operates in printed form in a market that is restricted by language, and is very restricted in those cases when speakers of that language do not exceed some hundred thousand (Baltic, Slavic, or Balkan languages). Even for larger markets, when the language is spoken by several million people, there is a natural barrier that does not allow for further expansion, but is essential for the preservation of the national language and people’s cultural identity. The German book trade is among the largest in Europe; nevertheless, the comparison between the turnover of scholarly communication big players and that of the major companies publishing in German shows that, while the first count is in a thousand million (because they are scholarly and because they publish in English), the second count is in tens of millions, as the following table will show:\textsuperscript{56}

<table>
<thead>
<tr>
<th>Publisher</th>
<th>Turnover in M€ Euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Random House</td>
<td>293,0</td>
</tr>
<tr>
<td>2  Bastei Lübbe (Independent)</td>
<td>84,0</td>
</tr>
<tr>
<td>3  Carlsen (part of the Swedish Bonnier Group)</td>
<td>70,7</td>
</tr>
<tr>
<td>4  S. Fischer (part of Holtzbrinck group)</td>
<td>67,2</td>
</tr>
<tr>
<td>5  Rowohlt (part of Holtzbrinck group)</td>
<td>67,0</td>
</tr>
<tr>
<td>6  Ravensburger Buchverlag (part of the Ravensburger game and toy company)</td>
<td>61</td>
</tr>
<tr>
<td>7  Dtv (paperback publishing house common to 11 publishers)</td>
<td>60,2</td>
</tr>
<tr>
<td>8  Droemer Knaur (part of Holtzbrinck group)</td>
<td>57,9</td>
</tr>
<tr>
<td>9  Ullstein (part of Axel Springer group)</td>
<td>46,1</td>
</tr>
<tr>
<td>10 Hanser (Independent)</td>
<td>43,4</td>
</tr>
</tbody>
</table>

E. Reading in Scholarly Communication

E.1 Scholarly communication is a closed circle: academic authors write for academic readers - themselves academic authors and university students. The main product circulating in this segment is the academic article and the market knows no crisis also in light of the increasing number of papers written by Asian researchers. There are expectations that more granular products may take over in the future, like videos of experiments, statistical tables, pictures - digital objects which are identified by identifiers having a low level of granularity such as the DOI (Digital Object Identifier). Nevertheless, this trend has not yet become dominant. What is dominant is instead the implementation of evaluation systems, such as the Impact Factor, which is widely used by universities and research centres. The “market” for indicators will certainly grow in the future.

\textsuperscript{56} Boersenverein des deutschen Buchhandels (2019).
Reading books is a declining practice. According to a study published by the Börsenverein des Deutschen Buchhandels, in only four years, from 2013 to 2017, the number of book sales decreased by 17.8 percent. The long-standing common belief that half of the German population are book buyers is no longer true; in 2017, only 29.6 ml German citizens bought one book, corresponding to 44 percent of the population above the age of 10. Declining figures are confirmed by reading trends in public libraries, as the following table is demonstrating:

<table>
<thead>
<tr>
<th>LIBRARY LOANS</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>1 895 534</td>
<td>1 828 621</td>
<td>1 715 132</td>
<td>2 067 263</td>
<td>1 983 489</td>
<td>4.64%</td>
</tr>
<tr>
<td>Estonia</td>
<td>11 198</td>
<td>10 718</td>
<td>10 382</td>
<td>10 007</td>
<td>10 154</td>
<td>-9.32%</td>
</tr>
<tr>
<td>Finland</td>
<td>68 985 936</td>
<td>68 547 619</td>
<td>67 944 365</td>
<td>67 337 146</td>
<td>66 602 013</td>
<td>-3.45%</td>
</tr>
<tr>
<td>Germany</td>
<td>374 897 196</td>
<td>364 005 121</td>
<td>363 215 343</td>
<td>335 439 623</td>
<td>346 032 584</td>
<td>-8.82%</td>
</tr>
<tr>
<td>Portugal</td>
<td>2 394 237</td>
<td>2 120 472</td>
<td>2 118 437</td>
<td>2 100 947</td>
<td>2 126 076</td>
<td>-11.20%</td>
</tr>
<tr>
<td>Slovenia</td>
<td>26 332 506</td>
<td>25 755 260</td>
<td>25 796 762</td>
<td>25 692 211</td>
<td>24 365 483</td>
<td>-7.47%</td>
</tr>
<tr>
<td>Spain</td>
<td>56 563 781</td>
<td>52 054 604</td>
<td>51 745 244</td>
<td>48 292 336</td>
<td>46 970 378</td>
<td>-16.96%</td>
</tr>
</tbody>
</table>

The main reason for these trends is lack of time and daily stress, which discourage people from performing a practice which requires slow social habits and proper reading skills. In Germany – but the same remark can be extended to all European countries - reading is less present in people’s experiences and its practice has been eroded by the quick consumption of content diffused through Google, Facebook, Instagram, Twitter and other social media. Other competitors of the book are TV series and stream platforms.\(^{57}\)

\(^{57}\) Krise im Buchmarkt Studie (2018).
2. PUBLIC LIBRARIES AND RESEARCH LIBRARIES - WHAT IS THE DIFFERENCE?

PLs and RLs differ in the public they address. This statement may seem self-explanatory, but it is worth being stated and restated. PLs are open and serve everyone: their working universe is the community they refer to. Their aim is to open pathways to learning and reading. They develop general information services while promoting special services like story time activities, provision of new titles and, in general, any other service which contributes to the development of individuals, the attainment of social inclusion and the integration of their patrons in society.

RLs have a specific purpose. Often specialised in academic disciplinary fields, they promote access to knowledge which is stored in data banks, repositories and other cloud services provided by scholarly providers. Their working universe is usually smaller than PL, but is intense and specific: they build up areas of expertise and promote knowledge in all its aspects.

2.1 PUBLIC LIBRARIES

What kind of information is accessed in PLs? Where and how? In general, PL users wish to know what is available in the library in relation to a subject of their interest, whether in an analogue or in a digital format. Users are in the first stage of their research and have a concrete objective to fulfil: a project for school or a problem to solve in a timely and appropriate way.

Nevertheless, this typology of essential information, which encouraged many people to come to PLs to consult basic information sources, such as inventories or encyclopaedias, is now found on the Web. The length, width and depth of the PL scope is in their leisure status – PLs are venues where people converge, meet and develop, by using appropriate material like books. Therefore, the first expenditure to be cut in PLs with tight budgets for acquisition is non-fiction.

At the beginning of the Third Millennium, it may be strange that the bulk of the PL products on offer is still the printed book. It is PLs’ response to the remarkably high demand for books. It is not surprising that books represent the largest (and sometimes only) share of PL acquisitions. Some years ago, the CD and DVD market seemed to be on the rise, but the Internet and streaming services have reversed this trend. Products available on the Web are accessible on digital devices with no library help.

So, how can PLs continue working and still be relevant?

In recent times, some library theories have pointed to the role of PLs as third place, a relaxed and loose infrastructure between home and the work place, a nice place to spend time where individuals find opportunities for their own development. An indispensable condition to play this “third” role is a place, and this place cannot be empty; it is to be filled with books and services on offer. 58

This is the main reason why PL acquisitions should turn to books, again. Libraries buy new titles, follow the printed publishing market and establish partnerships with bookstores and distributors. PLs remain the institution owning the property of tangible information, partly also because some PL staff may still be anchored to the “magic” of printed paper. As demand for books normally concerns items highly requested in bookshops, the

dilemma for a public librarian is whether they should buy bestsellers in a big number of copies, which may become redundant after the hype has passed.

An updated collection is the first criterion to attract people; diversity is its corollary, since publications must reflect a variety of opinions and currents of thought. Small authors, different movements of expression and literary genres open up minds and contribute to the formation of a critical spirit and a well-grounded citizenship. When services are planned and collections are managed, literature represents between 40 and 60% of PL book acquisitions. And the main objective remains the consolidation of reading skills.

The transition to digital publications in PLs is not easy. Only a few libraries have regular programmes of acquiring and lending eBooks; when it happens, this takes place mainly in urban centres, where users are more comfortable with new gadgets, ask for technological upgrades and are keen to dematerialized reading materials.

The hesitation of public librarians to accept digital runs parallel with an offer that is still poor and unable to meet the diversity requested in public libraries. Big publishers and distributors are not interested in investing in a market that doesn’t offer the guarantee of minimum levels of profit, their reluctance is expressed in the possibility of inhibiting or, at least, limiting sales to PLs. Libraries also need additional investment in hardware enabling everyone, including economic disadvantaged people, to have equal access to publications.

A small, but important step has been the offer of digital newspaper services. The old newspaper corner in PLs has been transformed into digital reading access points, where the bulk of newspaper content is available in the library, at home, at the office or in vacation resorts, if the user has access to the Internet and a compatible device. This requires that library users are registered (and it is good for statistics); remote use, however, does not require people’s presence in PLs and weakens their role as third place.

The Covid-19 pandemic boosted digital forms of e-lending. PLs were forced to innovate and create new ways of contacting users. Unfortunately, many PLs limited themselves to releasing publications on social media. The transition to a digital PL implies both investments and good policy and planning - now that the pandemic is gradually coming to an end, are PLs on the verge of digital transition?

This depends on the negotiation ability of public librarians. In the printed book world, PL make small and frequent acquisitions, have accounts open with local bookstores or friendly distributors and still manage to purchase books directly with small publishers. While research- and scholarly publications are presented to a world-wide stage of scientists, local acquisitions made by PL are connected to local culture, heritage and politics and, as such, add to the fabric of the community.

In the digital environment, what is the margin for freedom of choice and freedom of expression? Will there be room for new and unknown voices in a market that is strongly monopolised? Open Access may play an important role in this landscape, as an opportunity to get small authors known to the public. But this solution requires a mechanism equivalent to the institutional repositories of RLs and financial input.

Even with no major investments in hardware and acquisition of digital library materials, one relevant service PLs are now performing is the fight against fake news and awareness raising on misinformation and disinformation. Certified information has always been a duty (if not a mission) of PLs, but has gained today new meaning and relevance. For public libraries to be pictured as safe harbours of information a double level of certification is needed: the selection and certification made by publishers, and the selection and certification made by public libraries.

59 EBLIDA (2020).
Acquisitions in libraries are made easier with the support of the selection made by publishers. This collaboration also extends to e-books, certified information in the printed world and certified information through e-books and e-publications have very much in common. Both formats need a panoply of reviewers and editors who process information and help build critical thinking and judgement in the community. For e-books and publications, however, new digital skills are required as well as a proactive attitude towards the evaluation and the validation of information in the digital environment.

2.2 RESEARCH LIBRARIES

RL users know what they are looking for and rarely resort to library expertise, however competent this is: they are in control of what they are looking for. What matters to researchers is how they get access to the relevant information that will upgrade their knowledge and take them to the next level of their research. Information needs are high and intense: the latest scientific publications, the most cited authors, the publications having the highest impact factor.

RLs have a carefully designed collection development, strongly associated with the focus of their umbrella institution, aiming to support university courses and research trends. RL acquisition policies are heavily focused on digital reference journals, with most updated information being available at users’ fingertips. Printed formats have been replaced almost totally by digital materials and new forms of channelling information; the ownership of library material has left the floor to temporary access to bundled aggregation of periodicals available on the platforms of scholarly publishers.

Budget restrictions turn RLs towards the acquisition of a combination of OA and paid-for resources. Since their first criteria of choice is the Impact factor, to restrict digital collections exclusively to sources in open access is virtually impossible. RLs have the obligation of providing certified information, in real time, to guarantee that their users – students and/or researchers – have access to the best opportunities for learning and to carry out research; by doing so, they also contribute to the reputation of their research institution.

Therefore, scholarly publishers charge RLs not only for the content they channel or the editorial service they perform, but mainly for the reputation they have built upon their publishing output. Technologies designed to provide fast and easy access to resources have turned into their opposite: limitations to the content through contractual clauses and a more than adequate price clearing all technological restraints.

In response to this market appropriation, RLs have joined forces in consortia and given birth to ad hoc associations, in an attempt to get some leverage in negotiating contracts with publishers and shift the negotiation power from the seller back to the buyer. Some of these consortia are funded through the generous support of external actors, like non-profit organisations; the bulk of them is however supported through university money.

This system benefits smaller institutions, since financial participation in consortia intends to provide equal opportunities to all members and, therefore, is proportional to the potential number of users. Minor universities pay less but gain access to the same window of knowledge designed for major institutions. Not all RLs share the same portal created by library consortia; the largest universities, for instance, have created their own platforms.

In this respect, the ability for researchers to perform text and data mining in search of new insights and knowledge is essential for the progress of a research where there is unhindered access to vast quantities of information stored in databases and repositories. Text and data mining is guaranteed through Article 3 of the
EU Directive on Copyright in the Digital Single Market, which allows research organisations and cultural heritage institutions to carry out text and data mining of works.

Scientists, researchers and librarians are developing a justified concern with the proliferation of fake science. This perverse process can be contrasted only through the reinforcement of peer reviewing mechanisms ensuring the reliability of the published information. The centrality of the Impact Factor, too, as an instrument designed to regulate prestige, reputation and career development, is a warrant of scientific trustworthiness. Both tools submit the content of scientific information to wide scrutiny and, therefore, certify the validity of the information made available.

3. OPEN ACCESS IN RESEARCH AND PUBLIC LIBRARIES

3.1 OPEN ACCESS IN RESEARCH LIBRARIES

The official start of Open Access has a date and a name. The date is 14 February 2002 and the name is the Budapest Open Access Initiative. Right from its outset, OA was aimed at changing publishing requirements in scholarly communication and in scientific journals:

“An old tradition and a new technology have converged to make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment, for the sake of inquiry and knowledge. The new technology is the internet.”

The ideals enshrined in the Budapest Declaration include easy access to content (“remove access barriers to this literature”), personal enrichment and learning (“accelerate research, enrich education, share the learning of the rich with the poor and the poor with the rich”) and free of charge access to information (“The literature that should be freely accessible online is that which scholars give to the world without expectation of payment”).

The BOAI did not come out of blue, but was the result of a long season of what was called “serials crisis” – i.e., the cost of subscription to journals increasing at a much higher rate than the Consumer Price Index. Statistics released by the Association of Research Libraries showed that the price of periodicals had grown by 210% from 1986 to 2000, while the Consumer Price Index and salary increases for academic personnel had grown, respectively, by 52% and 68% in the same time lapse.

The reason for this depended, and still depends, on two factors: horizontal concentration and vertical integration in the scholarly communication chain. The horizontal concentration is an oligopoly of five major publishing houses – RLEX Group (former Reed-Elsevier), Thomson Reuters, Wolters Kluwer, Springer Nature and Taylor & Francis – which have clout enough to impose their sale requirements and prices to RLs. None of these companies resort to external distributors, but each of them has its own distribution platform where scientific periodicals are aggregated and offered to RLs.

60 BOAI (2002).
61 Ibidem.
Platforms are innovative tools offering any kind of indexing service and, most importantly, releasing usage statistics to their users through the Impact Factor, an indicator evaluating the number of times each periodical is consulted as well as the number of times an author or an article is quoted in other publications. These services are much appreciated by universities and research centres, to the point that one can say that the income of scholarly publishers is generated as much as from the products than from the services they deliver.

A wide range of products and services fall under the scope of the Open Access movement. Among the products, open access scientific journals take the first place, whether they follow the Gold or the Green OA model. Gold OA is when publishers make all articles and related content available for free immediately on the journal’s website, but charge the author for the work they do to process the article. Green OA is the case of a publication which is posted on a website controlled by the author (self-archiving); a post-print publication is posted after it has been peer-reviewed, a pre-print is posted before peer-reviewing. The Wikipedia article on OA also reports cases of hybrid OA, when articles in closed access and in OA are hosted in the same journal issue; bronze OA, when the article is free to read on the publisher’s website, but licensing conditions are not clear; “diamond/platinum” OA, when peer-reviewed journals sponsored by institutions publish OA articles without asking for charges related to article processing. And finally, there is also a Black OA, when articles are freely available, but only after infringement of copyright rules. 63 A list of OA journals is in DOAJ, the Directory of Open Access Journals.64

OA also endowed itself with a set of platforms which are major disciplinary assets. An example is ArXiv, in principle an archive of pre-prints (i.e, articles not yet peer-reviewed) in the fields of physics, mathematics, computer science, quantitative biology, quantitative finance, statistics, electrical engineering and systems science, and economics. Other major publishers of OA journals in the Gold OA mode are the Public Library of Science, Hindawi Publishing corporation, MDPI and BioMed Central.

The OA is not only a new publishing practice; it is also a movement with a number of activists, politicians and philosophers. Activists are to be found among researchers and librarians; campaigns launched by them have achieved significant results: in 2002, Timothy Gowers, an eminent British mathematician, posted a petition named the Cost of Knowledge,65 in which he invited researchers to stop supporting Elsevier journals.  This call for a boycott included almost 20,000 signatures.

The OA movement also managed to have OA policies approved in many countries. According to a recent SPARC-Europe report, OA policies in Europe are official in 11 countries and unofficial in 14 countries [quote is needed]. While the Registry of Open Access Repositories (ROAR) stores a database of OA institutional repositories,66 the ROARMAP (Registry of Open Access Repository Mandates and Policies) (ROARMAP)67 is an international database of policies. Another important entity is cOAlition S,68 a coalition of institutions exerting pressure on commercial scholarly publishers with a view to consolidating the principle of transformative agreements of contracts shifting away from the subscription model in the short or medium term and dropping paywalls or article fees. According to a recent investigation, in 2019, 31% of all journal articles were available in open access and 52% of article views related to OA articles. Estimates forecast that 44% of all journal articles and 70% of article views will concern OA publications in 2025.69

63 Open Access (Wikipedia).
64 DOAJ.
65 Cost of Knowledge (2012).
66 ROAR.
67 ROARMAP.
68 Plan S.
More than horizontal concentration, it is the vertical integration of production and distribution in scholarly communication that has generated the most disruptive consequences for research library budgets. The distribution of academic journals internalised in proprietary platforms has reinforced the oligopoly of scholarly publishers. In spite of the incorporation of open access practices, we have seen that their turnover, normally generated from academic library acquisitions, keeps growing and exhibits profit margins stabilized at around 15-25% of their revenues.

RLs have been less effective in facing vertical integration. For years, they have pursued a sterile opposition to the Impact Factor, touted as the pillar underpinning the economic hegemony of commercial scientific publishers. They missed the point that the Impact Factor is a major factor to evaluate science, academies and researchers themselves – an exercise much needed in academic institutions. They were unable to take advantage of their proximity to the places where research is produced and engineered on at least two occasions.

The first was the TULIP project in 1992. In a pioneer project undertaken with Elsevier, RLs were offered the possibility of distributing digital publications of scholarly publishers at a time when horizontal concentration was not complete and vertical integration had not yet taken place. The reason why RLs rejected this opportunity can easily be understood. In the TULIP project, RLs were asked to use their technologies to administer copyright revenues on behalf of Elsevier in an environment where the price of scientific journals was already spiralling up. The proposal seemed, more than an opportunity, an outrageous request to subcontract Elsevier administration to libraries for free.70

More regrettable is the fact that RLs were unable, at the turn of the Millennium, to set up global platforms curated by them where open access resources would be stored, made accessible and linked with rating systems. This task was performed by the private and the non-profit sector – ResearchGate, Academia.edu, etc. The opportunity of creating a distribution system was therefore jeopardised and research libraries were unable to take the lead in linking evaluation tools to the needs of the academic community they refer to.

3.2 THE THEORETICAL FOUNDATION OF OPEN ACCESS

The theoretical underpinning of the OA movement is to be found in a philosophical-political undertaking advocating for a radical change in the copyright paradigm. Especially popular in the academic milieux, these thesis call for a more simple implementation of copyright rules which are considered to be hampering free expression and being a stumbling block to innovation. A prominent lawyer, Lawrence Lessig, among the originators of the Creative Commons Public Licences, has in particular emphasised two aspects leading to the reconsideration of copyright: the new nature of digital culture and the commonisation of cultural products on the Web.

For centuries writing and reading were considered two different cultural practices, the first being the “romantic” act of a writer expressing its genius in an artistic work, the second being the practice of a silent reader. With the advent of digital technologies, writing and reading may take place simultaneously; they are the object of constant interaction. Lessig calls this new nature of digital culture Remix, based on a read/write culture and replacing a read-only culture. Each new work based on a read/write culture is technically a derivative work in copyright regulations – it includes elements of copyrightable work but is autonomous and different to the one from which it originates. According to current copyright rules, any derivative work can be published only after authorisation of the copyright holders. In Lessig’s theories, Remix is an ordinary business on the Web; therefore, the use of derivative works should be allowed in order to encourage innovation and further creativity.

70 Vitiello (2021).
Commonisation – the governance of a common good through the use of shared rule – is the other feature Lessig identifies, which allows the sharing and use of creativity and knowledge. In previous theories, individuals having open access to a resource act independently according to their own self-interest cause depletion of the resource – what is called the “tragedy of commons”. Creative commons licences provide the response, since they allow file sharing and innovation based on collective intelligence. 71

Both remix and creative commons support an understanding of the Internet where the economic concept of scarcity no longer plays a role. The Internet is characterised by a relative abundance of resources. In this post-scarcity environment basic knowledge products may be offered free of charge, while more advanced products are paid-for or are offered following freemium (free + premium) models. According to this theory, popularised by Chris Anderson in his book *Free: the future of a radical price*, information is abundant and free, while copyright is re-creating an artificial regime of scarcity. 72

In politics, voice to these academic theories was given by the emergence of pirate parties, the first of them being born in Sweden in January 2006. Successively, pirate parties spread through some 30 countries, especially in Europe and North America, and were particularly active in Sweden and Germany. Even if pirate parties have practically disappeared in the political theatre, or merged with other formations, their programme has been summarised in five points: a) **No changes to the moral rights of authors**; b) **Free non-commercial use of products, for instance for file-sharing**; c) **Five years of commercial exclusivity**; d) **Free sampling — codified “fair use”**, so that the default rule becomes that it is legal to create new works out of existing ones; e) **A ban on “Digital Restrictions Management” (DRM)**. 73

### 3.3. THE IMPACT OF OPEN ACCESS ON RESEARCH LIBRARY ACQUISITION POLICIES

Open access has made great strides; with all evidence, library expenditure for acquisitions would have gone beyond any emergency level without the vigorous action of open access activists. RL expenditure has stabilised, although it is not clear whether changes in indicators for library acquisitions depend on the effect of the OA revolution. What follows is library expenditure for acquisitions in France and Germany observed in 1984 (France) and in 1999 (Germany) – therefore, before the “price periodical crisis” reached its peak - compared to RL expenditure in 2020 in the same countries:

<table>
<thead>
<tr>
<th></th>
<th>Expenditure</th>
<th>Per student</th>
<th>Expenditure</th>
<th>Per student</th>
<th>Expenditure</th>
<th>Per student</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>FF 64 Ml</td>
<td>€ 43.3</td>
<td>€ 93,282,983</td>
<td>€ 50,94</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>€ 20.0 Ml (2020 equivalent)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>€ 216,128,149</td>
<td>€ 98.46</td>
<td>€ 358,749,534</td>
<td>€ 77.3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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71 Lessig (1999).
72 Anderson (2009).
73 Engström - Falkvinge (2012).
74 Sources: For French statistics, “Enquêtes (1985) and ESGBU; for German statistics: DBS.
These figures are ambiguous and do not tell whether increases, or decreases in library expenditure are the result of the increased cost of scientific publications or of decreasing budgets for acquisitions allocated to French and German RLs. A better indicator may be the operating profit margins of major scholarly publishers. Since RLs are the main, if not the only purchasers of academic publications, there might be a direct relation between publishers’ profits and library expenditure on acquisitions.

RLEX (previously Reed-Elsevier) and Taylor & Francis are among the biggest scholarly publishers all over the world, the first operating in science and business, the second in social and human science. In the last ten years the turnover of both organisations has been pretty steady; their operating profit margins have rarely gone below 20% of the global turnover.

**RLEX and Taylor&Francis operating profit margins (in percentage over the turnover)**

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</thead>
<tbody>
<tr>
<td>RLEX</td>
<td>16%</td>
<td>18%</td>
<td>25%</td>
<td>24%</td>
<td>25%</td>
<td>26%</td>
<td>26%</td>
<td>21%</td>
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<tr>
<td>(Reed-Elsevier)</td>
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<tr>
<td>Taylor&amp;Francis</td>
<td>20%</td>
<td>25.5%</td>
<td>19%</td>
<td>14.7%</td>
<td>19%</td>
<td>15%</td>
<td>18%</td>
<td>16%</td>
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A company’s operating profit may also be an ambiguous indicator, since profits can be the result of better management controls, more efficient use of resources, improved pricing, and more effective marketing. It is interesting, however, to see how regular the financial inflow for these companies has been in the course of decades. An arguable, but realistic conclusion is that OA has not helped RLs to lower their acquisition bills, but has certainly contributed to stabilising them.

The reason for such high level of profits for publications whose raw intellectual capital (the content of an article) is provided for free is not only the result of the monopolistic positions scholarly publishers hold in specialised academic fields. The concentration process was a gradual process which started in the last decades of the Second Millennium, when Elsevier, Wolters Kluwer, Springer, T&F massively purchased publishing companies or the publishing sections of a learned society in order to be hegemonic in specialised academic fields. The high profits of scholarly publishers are also the result of strategic choices, and in particular of the vertical integration between the production and the distribution segment with platforms allowing for the bundle sales of scientific periodicals. By raising barriers for newcomers, they manage to eliminate possible competitors; the high Impact Factor of their journals has been essential in maintaining leading positions in the market.

We have mentioned the boycott of Elsevier publications called by Timothy Gowers in its cost of knowledge petition launched in January 2012. Two months later, Elsevier announced that it would be a champion of open access, in the wake of Springer Nature, another major scholarly publisher, who had acquired BioMed Central, then the major open access publisher with more than 200 OA publications in the biomedical sector.

The incorporation of OA journals into the core business model of scholarly publishers shows that OA products are not enough to change the fundamentals of the economics of scholarly communication; as long as OA is

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75 from RLEX (2020) and RLEX Annual Report Archives; T&F Annual Reports can be consulted in Informa Annual Reports Archive.
integrated into the development strategies of scholarly publishers, as long as they add value to the content they
distribute, OA, too, can contribute to the centrality of their platform among users and acquirers. Scholarly
publishers will not fall soon into irrelevance, unless RLs are able to produce new activities of interest to their
sponsoring universities and research centres, like evaluation systems concerning new university and research
activities or citizens’ science programme.

3.4 LIBRARY ACQUISITION POLICIES IN PUBLIC LIBRARIES AND THE TRANSFER OF OPEN
ACCESS PRACTICES

PLs functions are evolving towards features of social hubs; they share some of the traditional functions of other
social services and agencies. Within this new environment, new practices are built up and autonomous content
is produced, which is distant from the traditional book and knowledge chains and their communication channels.
The production of this autonomous content consists of the fabrication of open educational resources, tutorials
and other intellectual output as a result of “conversations” with users (incidentally, on the rise during the Covid-
19 crisis). In spite of these innovative attitudes, new content elaborated in PLs very often lacks in quantity and
in quality if compared with the results of a well experimented and professional book trade; in terms of content
aggregation, they represent a minimal contribution to the publishing output. Publishers are not merely releasing
content produced by authors; they take the risk of, and invest in, the selection and the discovery of new authors,
themes and forms of publishing. Moreover, by making the commitment of financing their fabrication, they
submit work to the expert advice of critics and users, thus providing legitimacy both to the work of the authors
and their own expert work. In other words, they contribute to the legitimacy to the published output as a whole.
In conclusion, copyright strategies should reflect the differences between scholarly communication and the book
trade and Open Access practices cannot be applied in the book trade as they are in scholarly communication.

When dealing with library acquisition policies in PLs and how OA practices can be transferred from RLs to PLs,
the following issues should be taken into account:

1. Declining reading practices in the book trade and in PLs;
2. The resilience of traditional paper format and the still uncertain future of platforms distributing content in
digital form in the book trade;
3. Licensing systems;
4. The evaluative function in the book trade;
5. The fight against fake news and opinions.

1. Declining reading practices. The news that there are not as many book buyers in Germany as before is
devastating not only for German publishers, but also for libraries. Reading is a skill which gets lost if it
is not constantly and extensively practiced. And constant contamination and convergence of text,
images and sound on the Web and social media has not (yet) resulted in social practices widely diffused
and supporting the development of individuals and of communities. Individuals may perhaps send a
video instead of a detailed cv for job applications and for tutorials; nevertheless, the construction of a
communication act, the way thinking is organised, the reporting structure, and other daily skills based
on a narrative structure rely on text, text rhetoric and text construction. This is the reason why books,
whether in paper or in digital form, are still needed, and why libraries and publishers should ally to stop
and deflect reading declining practices and work together to reinforce them.
2. **Resilience of traditional paper format in the book trade and design of platforms distributing content in digital form.**

In Europe, the e-book trade covers only a small percentage of the book market – up to 6–7% of the total book trade and with significant disparities between countries. In France and Spain, the e-book share is only 3%, while in Germany, Italy and the Netherlands it is around 4.5–5%. The sale of databases and subscriptions reaches more relevant percentages in the United Kingdom (11.5%) and in Denmark (18%). In 2020, during the Covid crisis, sales of e-books rocketed not only in terms of access to digital platforms, but also of e-channels of book sales. E-book sales were up 12.1% in Sweden, 37% in Italy, 16.2% in Germany (passing from 5% to 5.9% of the total market); small percentages in other European countries are recorded while, in Greece, publishers re-entered the ebook market after several years of absence. The Covid crisis also saw an impressive growth of e-lending in many countries; in France, for example, ebook loans via the Library Digital Lending service (Prêt Numérique en Bibliothèque, PNB) grew by 78% in 2020, reaching more than 1 million.77

The importance of setting up shared platforms should therefore be a priority. In Chapter 5.1 We have seen that, in 1992, RLs were offered the possibility of distributing digital publications of scholarly publishers through the TULIP project and that it was the private/non-profit sectors, some twenty years later, that created global platforms distributing open access publications. The importance of maintaining control of the distribution segment cannot be underestimated: if content is king, the distributor is the king-maker. The entity managing the distribution segment is able to balance different inputs, create temporary or permanent content aggregations, respond to urgent demands when needed, enrich basic read-only content with read/write elements (blogs, evaluative instances, etc.). A platform partially or totally controlled by libraries, distributing digital content among library users on the basis of agreed rules (see point 3) would not only provide strong impulsion to digital content distribution, thus aligning book trade practices to societal trends. It would also give PLs the possibility of shaping up a well-defined position in the book chain of which, willingly or unwillingly, they are an essential link and emphasise the legitimacy of the content they distribute. 78

3. **Licensing systems in the book trade.** A reference milestone in this domain is the Judgement passed by the Court of Justice of the European Union in 2015 (VOB vs Stichting Leenrecht) allowing for e-lending to be applied under Article 6(1) of the EU Rental and Lending Rights Directive. E-lending is permitted on the conditions that: a) the author is remunerated; and b) the e-lending occurs on the basis of the one-copy-one-user model.79 This model mirrors the practice of the Internet Archive (one-copy-one-user model) with the difference that the American platform finds its legal ground on the fair use practice.

This legal bottom line (one-copy-one-user model with fair remuneration to authors in compliance with the EU e-lending directive) can also find other possible ways of remunerating authors for non-commercial consumptive uses online.80 OA activists have been very active in contrasting licensing systems, in particular when Big Deals are provided by scholarly publishers. It should be kept in mind, however, that licences remain the most practical way to ally copyright rules and technologies.

4. **Evaluative functions in the book trade.** OA activists have often mobilised against the Impact Factor which has objectively provided more clout to scholarly publishers and allowed them to create

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77 FEP (2021, p. 6-7.
78 On the need for legitimacy of the content distributed by PL, see Bats (2019).
79 CJEU (2016).
monopolistic positions in specific disciplinary fields. It is, however, to confuse the ends with the means to identify in the Impact Factor the pillar underpinning the hegemony of commercial scientific publishers in scholarly communication. After all, the Impact Factor is a very effective tool designed to measure the productivity of researchers.

A PL evaluative stance should be embedded in any platform distributing publications in libraries and evaluation tools should allow for the measurement of the success or failure of a publication and its relative reputation with an objective audience of critics and influencers. An evaluative policy is not just a calculator ensuring fair remuneration of authors. It should also be an instrument of cultural policy and assess the way PLs can exert their influence and strike some balance in a book trade where the turnover is concentrated in the hands of a dozen big publishing groups.

5. **Fight against fake news.** Finally, it should not be forgotten that libraries are playing a fundamental role in the fight against misinformation and disinformation. In scholarly communication, the mechanisms of selection, control, correction and editing are unpaid tasks and are on the shoulders of academics who are rewarded with prestige in their affiliation to Editorial Committees or peer-reviewing panels. In the book trade, these mechanisms are entirely in private hands and it is advantageous for PLs to picture themselves as safe harbours of information. Their “safe” nature is ensured by a double level of legitimacy and two quality checks made on the distributed content: the selection and the certification made by publishers, and the selection and the certification made by PLs.

4. **FREE ACCESS TO INFORMATION IN PUBLIC LIBRARIES – A DOUBLE-DECKER ARCHITECTURE FOR OPEN ACCESS IN PUBLIC LIBRARIES**

4.1 More, and better, knowledge about e-lending for sustainable copyright

According to the Council of Europe EBLIDA Guidelines, “libraries are created for the benefit of their user communities so as to further their rights of access to information and ideas”. They achieve this task mainly but not only, through lending books, both in printed and digital form. Therefore e-lending is an essential component of their core mission.

E-lending is perhaps the most promising development for public libraries, as the EBLIDA report on libraries during and after the Covid age has clearly demonstrated. Nevertheless, it is surprising to see how little e-lending is known in terms of relevance for, and acceptance in, public libraries. There are two reasons for that. The first is that literature about the quantity and the quality of digital distribution of e-books in libraries has been constantly dominated by enquiries in research libraries – suffice is to mention the series of excellent studies published by SPARC Europe as a way to promote open access literature in research libraries. The second is that speculations about e-books in libraries have strongly focused on legal and institutional aspects, usually overlooking their economic dimension. The only Europe-wide study elaborated by Mont for the European Parliament describes current e-lending models. This study, however, fails to explore how closely linked the model is to facts and figures of the national publishing industry and its institutional and economic environment – actors, the volume

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82 EBLIDA (2020).
83 SPARC Europe, https://sparceurope.org/what-we-do/sparc-europe-key-resources/sparc-europe-documents/.
of e-lending, support provided by the State, the size of the national publishing industry and its level of concentration.

The limits of an exclusively legal campaign are apparent in Germany. The Onleihe platform is the leading e-book lending platform for German libraries and is associated with the “Buch ist Buch” (A Book is a Book) campaign, organised by the German Library Association.\(^85\) The campaign encourages the implementation in the e-book environment of the same rules that are applied in the traditional book environment. The German Library Association claims that publishers should lift the so-called "windowing" from the licencing system - e-books offered to libraries after a waiting period of about one year -, so that PLs and RLs are able to pay the so-called *Tantième*, the royalties to authors for the lending of e-books. The argument raised by German libraries is effective, since it shows that publishers’ resistance to enter into licensing agreements is not only detrimental for libraries, but also for authors. Nevertheless, advocacy made by the German Library Association would be much more effective, if authors were made aware of how much money they are losing by if libraries are unable to raise the *Tantième* for them.

To be fair, a comprehensive study of e-lending in Germany has been published by the Boersenverein des Deutschen Buchhandels. The conclusions drawn in this study emphasise that: 1) The Onleihe consumers are the same as the book trade, as two third of them also buy printed books; 2) There is a direct impact of the e-lending system on the book trade, since half of borrowers have decreased or even stopped the acquisition of books; 3) demographically, the strongest group of Onleihe borrowers are young people, whose age ranks between 30 and 49; 4) it is not true that resorting to e-lending is done for economic purposes, since borrowers have normally a good economic position and educational background; 5) Onleihe borrowers are satisfied with the current Onleihe offer and therefore, do not need more new publications.\(^86\) Presumably, the Onleihe data are open to both publishers and libraries. Therefore, it should not be difficult for libraries to demonstrate the so called *post-hoc* fallacy of this study, if the issues to be investigated do not remain at the surface of consumers’ behaviours and enter into the complexity of their choice – in other words, what they borrow, why they do so and how library practices are determinant in ratcheting the whole e-book trade up.

During the Covid crisis, the National Library of Latvia managed to come to an agreement with AKKA/LAA (Copyright and Communication Consulting Agency/Latvian Authors’ Association) – an unparalleled example in Europe. At the beginning, the agreement concerned the collection of e-periodicals (the digital versions of more than 1,400 newspapers and magazines published in Latvia from 1748 to date). AKKA/LAA agreed on a License Agreement providing public access to the periodicals portal at no cost for the National Library until the end of the state of emergency. The portal itself was upgraded in response to the AKKA/LAA’s request to receive detailed statistics at the end of the emergency time.

A collection of digitised books - more than 10,000 works from the 17th century to the end of the 20th century, including some 2,500 authors - were made available to users through a paid license until the end of the state of emergency. Additional expenses for accessing e-books are covered by the Ministry of Culture of Latvia and concern both the number of times the publications are accessed and the number of sessions. It is also important to mention that the e-books subject to the AKKA/LAA - National Library of Latvia agreement represent only a limited share of the portal and do not cover commercial works. After the agreement, the National Library of Latvia issued a statement in relation to works not included in the AKKA/LAA-NL Agreement and asked their authors whether they wished to be excluded from the portal. One month after they were notified, no author had asked to be removed from the portal. It is very likely that this experience will continue after Covid with satisfaction of all parties involved.

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85 Bibliotheksverband.
86 Boersenverein des deutschen Buchhandels (2019).
The importance of maintaining control of the distribution segment cannot be underestimated: if content is king, the distributor is the king-maker. The entity managing the distribution segment is able to balance different inputs, create temporary or permanent content aggregations, respond to urgent demands when needed, enrich basic read-only content with read/write elements (blogs, evaluative instances, etc.). A platform partially or totally controlled by libraries, distributing digital content among library users on the basis of agreed rules would not only provide strong impulsion to digital content distribution, thus aligning book trade practices to societal trends. It would also give public libraries the possibility of shaping up a well-defined position in the book chain of which, willingly or unwillingly, they are an essential link.

**A platform controlled by public libraries should have the following features:**

- Centrally negotiated contracts with publishers, in order to consolidate their position in the distribution segment and provide more clout in negotiations with book trade actors;
- Decentralised architecture in order to encourage open access experiences and the exchange of OA applications among public libraries.

A good example is free access to language learning books designed for non-native speakers. The internet is full of linguistic resources that can be freely used for language learning: dictionaries, sentences in context, videos with translated subtitled, grammars, exercises, specialised training sessions, tandems with native speakers and, in some cases, free of charge, fully-fledged language courses arranged by level and progressive learning objectives. In spite of this considerable offer in open access, language learning handbooks and books circulate; their trade is more prosperous than ever. Authors and publishers aggregate resources meaningfully, enrich textbooks with exercises and tests and order them in accordance with the linguistic objectives corresponding to the Council of Europe scale proficiency and qualification (Common European Framework of Reference for Languages, from A1 to C2).

On the other hand, every teacher of English, French, Italian, etc. as a foreign language knows that the teaching material is often prepared and produced in classrooms as a joint exercise of teachers and students. The classroom, with its specific level of education and curriculum, is the living textbook and a formidable publishing machinery producing open access material.

A double-decker platform partially or totally controlled by public libraries would enhance the circulation of both copyright-protected and open access e-material. The first, centralised level is the one where resources are delivered to users through e-lending after having been negotiated with publishers. A platform of this kind would be particularly useful for small independent publishers, who produce a large quantity of titles but have no marketing capacity to convert and distribute them in a digital format. The second, decentralised level is the one where autonomously produced resources are stored and shared with other users as open access material. In these decentralised points of distribution, therefore, copyright-protected resources are combined with OA resources, blogs, conversations with users and other useful tools.

This strategy of free access to information through a combination of licenses and open access resources is a win-win situation where PLs take the lead in the digital transition of the book trade, users are served at no detriment of authors and publishers’ rights, in particular of small and medium publishers, and open access material is made available to all.
5. CONCLUSIONS

This report has explored various issues, going from the differences between scholarly communication and the book trade to the publics of PLs and RLs and the implementation of open access initiatives in libraries. It has focused on the different motivations of authors publishing in the two different channels, with researchers caring about reputation in scholarly communication, and writers searching for reputation and remuneration in the book trade.

Nowadays, libraries - all libraries - are facing major problems in delivering information and knowledge for all: publishers are refusing to sell e-publications to libraries, they are applying discriminatory price policies which result in expensive library purchase, or are setting up embargo policies which exceedingly restrict the availability of publications.

The contractual nature of these issues may conjure up radical responses based upon a hard legal background. Libraries may appeal to governments and request compulsory standard contracts where clauses restricting access in libraries are offset. They may evoke the public nature of copyright and advocate for the universal adoption of open access rules. They may demonstrate how technological systems of data protection ensuring digital rights management are hindering free access to information. They may even plea for the re-establishment of the primacy of the first sale doctrine – the doctrine exhausting intellectual property rights after the copyright-protected product is sold to a third party. There is no doubt that the implementation of these measures would provide more liberty to libraries and increased clout in their relationship with their publishing counterparts.

There are two major shortcomings in dealing with publishing-library relations exclusively from the legal perspective. The first is that, without a robust reflection on how authors’ remuneration is ensured, all these measures are far from being enforceable. The 2019 EU Directive 2019/790 on copyright in the Digital Single Market has made explicit that Member States may allow for copyright exceptions “for the sole purpose of illustration for teaching” (Art. 5) and has mandated collective management organisations to “conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works” (Art. 8). In all other cases the EU Directive has reinforced the rights of intellectual property owners against free use of copyright-protected content. At least in Europe, the success of a radical approach based on legal grounds other than the Copyright Directive is dubious.

Another consequence of an exclusively legal approach in copyright strategies is that it may be beneficial, or neutral, for RLs and harmful for PLs. Within the scholarly communication realm, publishers will continue selling e-publications to libraries (their main, and sometimes only, customer), libraries will persist in subscribing journals and databases, also hoping to have cheaper subscriptions, and authors will keep on writing scientific papers. In the book trade, instead, an exclusively legal approach can bring about an exacerbation of publishing-library relations: the more PLs adopt an anti-publisher/author stance, the more they are vocal about open access, the more publishers will be reluctant to sell their e-publications to libraries (after all, a minor market in relation to the book trade) and to keep their economic returns on the safe side through embargo policies.

This does not mean that PLs should not spell out their claims and state, loud and clear, that libraries are not cows to milk, but arenas of democracy which guarantee free access to information for all. This narrative, however, would be much more effective if it is implemented together with non-legal arguments and an in-depth consideration of the economic foundation of library copyright strategies. There is not much awareness on how libraries contribute to the (e-)book chain as a whole, to its sustainability and to the diffusion of reading and information literacy in all layers of the society. Library activities repair what is a typical market failure – the creation, maintenance and enrichment of reading skills, whatever the product and the format they apply. Therefore, the priority for PLs - institutionally isolated and administratively fragmented - is to federate and to create a common network where best practices are shared and resources and experiences are transferred. The
creation of a networked environment is instrumental in demonstrating the value of PLs and their ability to provide services not only to users, but also to other actors in the value chain.

Likewise, public libraries should promote open access publications within a well-established framework of policy objectives and directions as well as a working digital infrastructure where much requested e-books are made available together with e-publications in open access having a more scholarly nature. Until now, PLs have not played a big role in the digital swirl and their offer is traditional, very much rooted in the printed environment. During the Covid crisis, access to digital publications in PLs boomed and many librarians started to manage digital objects as new library normals. Prior to this, in order to make the most of a digital infrastructure, library public policies should be re-oriented towards a centralised-decentralised governance: centralised, in order to negotiate with publishers in a consortia-like way, and decentralised, in order to exchange open access products and practices in a networked environment.

The Internet is still the vibrant place where a huge amount of resources and free content is made available. Nevertheless, it is no longer the realm where trust and source reliability are, in a way or another, at users’ fingertips. Especially during and after the Covid crisis, with so much disinformation and misinformation circulating, Internet users have started appreciating paid-for services where accurate information and trustworthy services are accessible. And the more users value paid-for services, the more they prize library points of access where such information and services are made available for free.

RECOMMENDATIONS FOR PUBLIC LIBRARIES AND THEIR ACQUISITION POLICIES, OPEN ACCESS RESOURCES AND RELATED COPYRIGHT STRATEGIES

PLs should reduce their dependence on e-content provided by publishers and be able to have better coverage and lower bills for library acquisitions, while protecting the rights of creators, contributors, and users in a digital environment.

PLs should:

**In relation to the general Book Trade:**

- promote reading in all its forms, which is a much needed competence in today’s society and provides a boost to the whole of the book trade chain;
- analyse the book trade chain, in the attempt to understand major shortcomings and how the concentration process in the publishing industry is a barrier to the diversification of cultural, out of mainstream products;
- wherever possible, have distributive platforms incentivising e-lending systems attracting authors and small/medium publishers, in alternative to mainstream commercial systems dominated by big publishers;
- within these platforms, carry out independent cultural policies corresponding to the interests of the communities PLs refer to and designed to enhance access to information.

**In relation to Authorship:**

- promote quality authorship in sync with the communities they refer to;
- devise initiatives in collaboration with authors and small/medium publishers aiming at making library platforms, totally or partially controlled by libraries, an attractive channel for content distribution;
elaborate contracts with authors and small/medium publishers aiming at making library platforms, totally or partially controlled by libraries, an attractive channel for content distribution, on the basis in particular of long-tail mechanisms;

- encourage prosuming practices (consumers who become producers), thus diversifying PL sources of acquisition and reducing PL dependence on acquisitions from publishers;

- set up, or encourage the setting up of, adequate evaluating systems within library platforms (book influencers, statistics regarding the circulation of e-publications) which are linked to the communities PL refer to and truly independent;

- present themselves as safe harbours for information, and committed to the fight of fake news through a double level of certification: that of publishers and that of libraries.

**In relation to the production of library-oriented digital platforms:**

- stimulate, as much as possible, the creation of platforms where interactive forms of “conversations” with users are promoted in connection to, or commenting, e-publications and get an adequate form of legitimacy for further circulation;

- record all forms of publications, generated both from publishers and from users, with adequate bibliographic coverage;

- promote open access content in response to information needs in library-oriented platforms through adequate forms of selection, formatting, marketing.

**In relation to content distributed in library-oriented digital platforms:**

- take advantage of their capillary distribution and wide dissemination of reading points and create a library-oriented platform distributing content previously negotiated with publishers by a centralised entity;

- design platforms in ways that best fit the communities they refer to but keeping the concept of a centralised entity negotiating contracts with publishers;

- where they exist, this task may be addressed by a layer of intermediate actors, whose role is now limited to the negotiation of rights between publishers and PLs;

- most importantly, library platforms should be so designed that they are able to facilitate the conversion of consumers into prosumers, thus facilitating the production and the distribution of autonomous content legitimated by the library itself;

- where possible, create library platforms allowing for direct conversion of different Digital Rights Management.

**In relation to copyright strategies in library-oriented digital platforms:**

- take into account that copyright is a fundamental cultural right; it is the task of PLs to support the right of authors in the digital environment while ensuring at the same time wide access to information;

- consider that the 2019 Directive on copyright in the digital single market allows for library exceptions for research/education purposes, but also requires fair remuneration for authors;

- and that, similarly, the judgement passed by the Court of Justice of the European Union in 2015 (VOBvs Stichting Leenrecht) allows for e-lending to be applied under Article 6(1) of the EU Rental and Lending Rights Directive on the conditions that: a) the author is remunerated; and b) the e-lending occurs on the basis of the one-copy-one-user model;

- to promote the one-copy-one-user model as far as possible also envisaging, in line with the EU judgement, fair remuneration to authors as they are ensured by e-lending rights;
• elaborate contracts with authors where limitations to copyright for the works circulating in the library-oriented platform are compensated through active promotion of the same works and their authors;
• library-oriented platforms should also allow for easy purchasing of the same e-book, should users be willing to buy it;
• when authors do not get royalties, green open access and greater uptake of opportunities for rights retention for researchers be provided, in order to maximise impact and access.


DBS (Deutsche Bibliotheksstatistik): https://www.bibliotheksstatistik.de/.


ESGEBU, https://esgbe.esr.gouv.fr/broadcast/indicators


RLEX Annual Reports Archive. https://www.relx.com/investors/annual-reports/archive

ROAR (Registry of Open Access Repositories), http://roar.eprints.org/


