Virtual loans and vanishing payments

Ebook lending. the SoA asks: *where is the money?*

Since ebooks arrived as a force within UK publishing, doubts about what is covered in contracts – even those with reference to digital rights – have been rife. Among authors, the suspicion has grown that the digital deal they get from their publisher may not reflect the business done in their name. Now attention has focused on one area of digital that previously passed under the radar: ebook loans from public libraries.

As with digital book sales, 'elending' started slow but has grown fast. Over the last two years, eloans from libraries have almost quintupled – from 208,000 in 2010/11 to 972,650 in 2012/13, according to the Chartered Institute of Public Finance and Accountancy (CIPFA). This growth is more startling when one takes into account that publishers have as yet licensed less than a fifth of their ebooks to public libraries, according to CILIP (the Chartered Institute of Library and Information Professionals).

Meanwhile, authors are exposed to losses on two fronts (criss-crossing fronts, actually, if such things exist). First, they are open to potential exploitation by publishers unable or unwilling to recognise the rights of authors to fair remuneration for the supply of an ebook to a library. Secondly, they stand to lose out on their right to payment for the onward loan of that ebook by the library to the borrower/reader.

In practice, the two rights are often bound up together in one licence. If that sounds offputtingly technical (and, be warned, it's about to get more technical) keep bearing in mind that we are talking about a million-odd loans of ebooks. And keep asking yourself this question: why would anyone pay to buy an ebook online when they can borrow it online for free?

Publishers and most authors agree that if ebooks could be passed around freely, as some 'copyleft' buccaneers advocate, there is a justifiable fear that the book market would crumble in short order, leaving a rump print industry and a world populated by a dwindling band of hobbyist authors unable to afford to research properly, or spend time editing, or perhaps write at all…

When it comes to payment, publishers and the Society of Authors are very far from agreed. Publishers mostly license an intermediary (an aggregator such as Overdrive) to supply the ebook to libraries under quite specific licence terms. For instance, a library might be limited to permitting the ebook to be being read (only by one borrower at a time) no more than two-dozen times before the library has to buy a fresh ebook copy. These restrictions in the licence are known in the trade as 'frictions' – and they are intended to ensure that, as far as practicable, the fate of a library ebook mimics that of the printed book.

The Society's concern is that in most authors' contracts, the transaction is treated as the sale of a copy, so the publisher typically retains 75% and the author is paid 25%. (The fairness of the split of ebook royalties is a whole other debate.) The Society strongly believes that as the transaction is merely the licensing of rights (in the same way that a publisher might license another company to produce a translated edition), authors should be paid accordingly – which would mean that the author would receive anything from 50% to 85% (the publisher should be retaining 50% at most) depending on the individual contract.

Think about those million eloans. The difference between 25% and 50% – let alone 85%! The Society strongly advises authors to check their contracts (or ask us to do so) and to ask questions of their publishers (see box).

The existence of frictions, and copyright law, have further implications. Authors receive payment from their publisher for the supply of a printed book to a library, and also receive PLR which recognises that the loan of that book is a separate transaction. But when it comes to e-lending, authors are not being remunerated for their share of the value in that lending right.

Few book contracts cover this new situation. Understandably, the Society is unhappy with what appears to be a land grab by publishers exploiting a contractual vacuum. 'Publishers did not have digital lending in mind when contracts were drafted and clauses covering payment for such lending may be unclear or non-existent,' explains Nicola Solomon. 'Authors are not being given information about ebook licences sold to libraries, and nor are they being remunerated for the lending element of the rights. One thing that makes authors angry is that we don't know who gets the money.'

Contracts are being stretched, admits agent Sam Edenborough, president of the Association of Authors' Agents: 'Whether or not publishers have the right to grant remote ebook rights unless specifically licensed in an author's contract is not clear, because many contracts were drawn up before ebooks came along.' He adds that until hard data is available that can be used in negotiations,

What to ask your publisher

- What does my contract say about e-loans?
- Which of my e-books are being borrowed?
- Are they being borrowed remotely, or only on site at the library?
- Are you paying me for digital loans?
- What are you paying me?
- Are you itemising those loans clearly in my statements?

We thank Danuta Kean for her research and contributions to this article..

Public Lending Wrongs

There is a widespread misconception that loans of ebooks are paid through PLR, just like real loans of physical books. Even among authors who don't make this assumption, many think that when PLR extends to digital and audio loans through public libraries on 1st July, all eloans will be covered.

'I get PLR, which is very welcome income, but I don't understand how ebook loans work,' admitted Rowan Coleman. Her response was typical. 'Most authors bank their cheques and don't read their royalty statement,' observed children's author Alan Gibbons. 'We just feel as long as the money comes in, it's OK.'

But in the case of ebooks the money isn't coming in. The killer detail in the PLR changes this summer is that only ebooks downloaded through terminals on library premises – described as 'on site loans' – will be covered. 'Remote' loans, made from the comfort of the library member's home or office via the wonderful new facility of the world wide interweb, are not covered.

But who exactly chooses to visit a library to download an ebook – rather than use an internet connection? Let's face it, on-site sales of ebooks haven't exactly been a huge success in high-street bookshops. In fact, librarians generally agree that on-site lending is dead, which implies that authors will not be paid through PLR for somewhere in the region of a million e-loans – and rising. And, worse, the ease of remote elending may keep borrowers away from libraries – so PLR payments received from print loans made by casual browsers could be hit as well. The Sieghart review recommended that PLR be extended to remote loans but the Government has no plans to do so at present.

agents regard deals cut between libraries and publishers for ebooks as under a 'temporary' licence. In other words, so that clients do not miss out on any sales revenue, publishers' deals with library aggregators are struck with agents' tacit but temporary approval.

It will seem strange to many that in an age where there is an algorithm for everything, little if any hard data is available about public library elending or its impact on sales. Although publishers have invested heavily in data mining, analysis of e-loans appears to have been poor. Library e-lending simply wasn't deemed big enough to bother anyone. It has taken a government review, led by

Get up, stand up

In April, the European Bureau of Library, Information and Documentation Associations (EBLIDA) launched a petition for its campaign 'The Right to E-Read', aiming 'to draw the attention of politicians and citizens of the European Union both to the risks and threats at stake for libraries and their patrons (therefore also to the citizens) with the current situation in the volatile market of ebooks in which libraries have very few rights.' Leaving aside the Orwellian name of the group (and the long-way-sub-Orwellian prose) the petition's aims should make authors sit up. 'Libraries want', the campaign trumpets,

- to allow all citizens – not just those who can afford it – to benefit from free access to ebooks in libraries;
- to provide library users with the latest ebooks as they do with printed books;
- to buy ebooks at fair prices and on reasonable terms;
- authors to receive fair remuneration for the lending of ebooks to the public.

http://www.eblida.org/news/press-release-the-right-to-e-read-on-world-book-and-copyright-day.html

William Sieghart, to focus minds. The review contained a number of recommendations, notably that the problem of loan payments be addressed by extending PLR to eloans through public and volunteer libraries. It also recommended that eloans should emulate paper loans through libraries with proper licensing agreements. It is a solution the Society would back provided the PLR fund were properly increased to reflect the much wider demands that would be made on its resources.

Meanwhile, the Publishers Association and Society of Chief Librarians are forging ahead with a year-long pilot scheme examining the impact of eloans on sales. It will assess the impact on sales of over 1,000 titles not available for elending elsewhere within four library authorities – Vivacity Peterborough, Newcastle City Council, Royal Borough of Windsor and Maidenhead and Derbyshire County Council. Loan periods will be limited to either seven or 21 days. From this it is hoped that transparent data will emerge with which contracts can be negotiated.

Richard Mollet, chief executive of the Publishers Association, says there is no hidden agenda behind the initiative – although a request that the Society be represented in meetings to discuss its implementation was refused. 'It is a genuine fact-finding experiment,' Mollet insists. But he admits the pilot is not about remuneration models for authors. 'This is not an experiment in what should be done with PLR. It's to see if eloans take away from retail sales,' he adds.

What he doesn't say is that the Society wrote to all publishers involved in the pilots and asked for specific information to be given to the authors whose books were involved. Most publishers declined to give it. This lack of openness with authors and the Society can do nothing but feed suspicion among writers that their interests will be overlooked and incomes already undermined by the rise of digital will be further eroded.

The detail may be bewildering, but authors need to ask tough questions now (see box) if they are to avoid that situation. Any data you collect should be fed back to the Society so that we can build a clear picture of how e-lending affects members' income. As author David Thomas points out: 'We have to get wise to this now, because clearly we have to ensure that proper revenue streams are established, because right now this is a great hole in the way we do business.' And, if this isn't resolved with authors' interests in mind, the hole could develop into an abyss.