



E-BOOK LENDING BY PUBLIC LIBRARIES

SUBMISSION FROM THE BOOKSELLERS
ASSOCIATION TO THE REVIEW PANEL SET UP
BY THE CULTURE MINISTER, ED VAIZEY

9 points for special consideration

To: *William Sieghart, Esq., Chairman of the Panel*

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**To: Members of the e-Book Lending Review Panel:
E-Lending@culture.gsi.gov.uk**

- **William Sieghart**, Chair of the e-Lending Review, Founder of Forward Publishing and the Forward Prize for Poetry;
- **Janene Cox**, President, Society of Chief Librarians and Commissioner for Tourism & Culture, Staffordshire County Council;
- **Roly Keating**, Chief Executive of the British Library and formerly Director of Archive and Content for the BBC;
- **Caroline Michel**, CEO Peters Fraser & Dunlop;
- **Stephen Page**, Chief Executive of Faber & Faber;
- **Jane Streeter**, Bookseller, past President at the Booksellers Association and soon to be Chair of Writing East Midlands
- **Joanna Trollope, OBE**, author.

1 INTRODUCTION

1.1 The Booksellers Association welcomes the opportunity to give its views on e-book lending by public libraries to the independent Review Panel chaired by William Sieghart.

1.2 This submission from the Booksellers Association makes several points, including a list of recommendations that the Association believes the Review Panel should consider seriously. At its heart, these points are motivated by two principles.

- The first is that it is of paramount importance that ‘the literary creative value chain’ continues to be well funded. Without adequate reward, authors and publishers could not create and bring to market the wide¹ selection of titles that we benefit from at present. The primary way in which this value chain is funded is via the sale of books, whether in printed form or e-book format. Libraries make only a small contribution at present. Making e-book lending available on a free basis from libraries without safeguards risks undermining the sale of books, and therefore risks reducing the funding to this creative sector of the economy (or imposing a greater burden on the state to fund the creative sector).
- The second is that libraries, and indeed all publicly funded institutions, should avoid distorting competitive markets. Whether an individual book shop survives or thrives, or whether one e-book format or another does well, is ultimately a decision for consumers. Without safeguards - such as those outlined here - e-book lending on a substantial scale by libraries risks distorting these choices, and therefore distorting competitive markets. Publicly funded operations, such as the BBC’s iPlayer and GP-based pharmacies, often have limits placed on their activities for exactly this reason. Bookshops and bookselling websites play a crucial role in helping consumers discover new titles; were these to be harmed by libraries’ lending practices then this would directly harm consumers.

1.3 The first of these points is critically important as the creation of the capability to distribute books (and other published materials) has changed the underlying relative economics of selling (ie readers buying books) and lending (ie readers borrowing books). If the rules on selling and lending are not attuned to this new paradigm, there is a possibility that the sustainability of the production process (ie authors and those who transform their output into what readers want to consume) is undermined. This could result in serious consumer harm, albeit almost certainly an unintended consequence.

¹¹ 149,800 new titles were published in 2011 (excluding self-published books). Source Nielsen Book.

BA membership

1.4 The Booksellers Association [the “BA”] is a trade association, based in London WC2, currently with 3,618 bookselling outlets in membership, of which 1,056 relate to independent bookshops².

1.5 Our members cover a diverse range of different bookselling businesses - large High Street chains with mixed businesses (e.g. W H Smith); large specialist bookselling chains (e.g. Waterstones); independents (e.g. Daunts); library suppliers (e.g. Askews); school suppliers (e.g. Heath Educational Book Supplies); specialist internet booksellers (e.g. Eddington Hook); supermarkets (e.g. Tesco); and the two national wholesalers (Bertrams and Gardners).

1.6 BA members sell to all markets (consumer – fiction/ non-fiction/ reference/ children’s; academic – academic/ professional/ school/ English Language Teaching) from terrestrial shops and over the internet in a variety of different formats (hardback, paperback, audiobook and e-book).

1.7 This autumn, book retailers in BA membership will be heavily involved in promoting e-book readers and e-books. As far as the main e-readers are concerned:

- Waterstones and Tesco are selling Amazon’s Kindle
- WHS and independent booksellers are selling Kobo e-readers
- Blackwells, Foyles, Sainsbury and Tesco are selling The Nook
- Easons are selling their own branded e-reading device
- Independents are selling Gardners’ GoTab e-reader.

1.8 Many of our members have a strong business relationship with their libraries. 505 of all BA members supply libraries with printed books and e-books. The main e-book suppliers in BA membership are:

- Anobii (Sainsbury is the major shareholder)
- Askews (owned by Gardners – the national wholesaler)
- Bilbary (supplying US libraries at the moment but will move to the UK)
- Blackwell
- Coutts (part of US Ingram)
- Dawsons (owned by Bertrams – the national wholesaler)
- Hive (owned by Gardners)
- Holt Jackson (owned by Gardners)
- Kobo (Associate BA member – as registered outside the UK)
- OverDrive (Associate BA member – as registered outside the UK).

The BA

1.9 The BA helps its members to sell more books; operate from a lower cost base; improve competitiveness and productivity; network with others in the ‘book world’ and further afield and, most importantly, to represent their views..... as we are now doing.

1.10 The BA Council – the top policy body within the BA which represents the views of the membership – is very much concerned over how e-book lending by libraries might develop. In Part A following we outline the Council’s concerns, and then in Part B we set out 9 particular recommendations which we would like the Review Panel to consider.

1.11 But first we highlight in an Executive Summary *overleaf* the key points we are making.

² 1 – 5 outlets.

2 EXECUTIVE SUMMARY

2.1 We would like to put forward to the Review Panel the following 9 recommendations for special consideration.

- 1. Any e-book lending model proposed should be carefully tested by authors and publishers and its impact evaluated on the complete production and consumption chain before introduction, to ensure that the rightsholders' interests and sales are not adversely affected. [Section 7]**
- 2. The Libraries' remit is to loan books so as to give (limited) access to copyright material to users while the user avoids the personal expense of having to buy the material outright. This applies to both the printed and electronic version of that material. To avoid distorting competition libraries should not be funded by the taxpayer to sell books and compete against commercial booksellers. Potential book buyers should be directed by public libraries to booksellers. [Section 8]**
- 3. Copyright – libraries should only be able to loan out an e-book if the rightsholder(s) has/have given prior permission. [Section 9]**
- 4. Professional lenders (ie libraries) should be required to pay a charge for lending an e-book (with concessions, of course, for disadvantaged borrowers). [Section 10]**
- 5. Publishers should individually consider imposing a 'window' on new titles whereby libraries are licenced to loan an e-book only after a period decided by the publisher has elapsed from the trade publication date. [Section 11]**
- 6. Publishers should be supported in any initiatives they deem appropriate to prevent the illegal copying of e-books. [Section 12]**
- 7. Public Lending Right should cover e-books and Section 43 of the Digital Economy Act should be introduced as soon as possible. [Section 13]**
- 8. If a National E-book Lending Library is set up, consideration should be given to establishing a Private/Public Partnership. [Section 14]**
- 9. Any National E-book Lending Library arrangements should not end up undermining bricks & mortar libraries. [Section 15]**

PART A: BA CONCERNS

1 WHY IS THE BA CONCERNED?

1.1 Our concerns revolve around the following:

- E-books are growing rapidly in the book trade while print sales are falling. The distribution of e-books, and the economics of reproducing e-books, is very different from that of printed books. As a result, the universal availability of free e-book lending from professional lenders (i.e. libraries) is likely to have significantly different consequences compared to the free lending of printed books from libraries.
- The potential is for e-book lending to be so easy – easier than buying or borrowing a printed book, and potentially as convenient as buying the same e-book.
- If you can obtain an e-book from a library for free at the click of a mouse in your own home, why would you then buy an e-book or go into a bookshop to buy a printed book?
- Booksellers' sales (both on-line and in the high street) could be seriously harmed, with serious consequences throughout the production chain.
- We believe that as the lending of e-books develops, it has the potential to put at risk the underlying economic model that currently supports the full production chain, from authors through to both on-line and high street bookshops. This could result in less content being produced and also significantly fewer bookshops in our towns and cities.
- If that happens, consumers and communities will suffer.
- So, too, will publishing, publishers, authors and agents.
- Certain forms of e-book lending could also mean that many bricks & mortar libraries will end up closing, depriving sections of society from access to published material if they have no access to computers or who are not computer literate.

1.2 We would now like to elaborate on each of these areas of concern.

2 E-BOOKS ARE INCREASING AS A PERCENTAGE OF ALL BOOKS

2.1 The full description of the changes in the market is set out in Appendix A (paragraphs A1 to A23 *inclusive*). In summary, looking at what has happened in the last few years, it is our belief that e-books will represent between a third and a half of all book sales by 2020. The economics of the entire production process will, therefore, be dependent on how the production and distribution of material can be paid for when the product is an e-book. Unless this structure can support economically both production and distribution, there is a danger that the book will not be created, leaving both consumers and the industry in a worse position. The rules on lending e-books will have a significant impact on how this structure works and whether or not it is capable of supporting continued production and distribution. The rules that are set now, even if they have a limited impact in the short run, will greatly determine the long term, and in ways that are potentially destructive.

2.2 In addition, even in this world where e-books are of such importance, it is clear that bookshops are needed. Media forecast and research firm, Simba Information, has released the fourth edition of *Trends in Trade Book Retailing*, which compiles data from multiple sources. Simba maintain that the loss of bookstores would not translate into growth of e-books. "*It may go against common sense, but the loss of hundreds of physical bookstores and several million square feet of book retailing space in 2011 actually negatively affected the expansion of e-book usage. The publishing industry can either continue to watch its business get smaller through this unsustainable pattern or find ways to allow in-person discovery of content work in favour of the physical stores that are paying for that discovery to be available*³." Simba found that bookstores feed into the e-book universe by serving as a 'book showroom' for the roughly 10% of adults who buy e-books.

³ Michael Norris, senior analyst of Simba Information's Trade Books Group.

3 THE POTENTIAL FOR E-LENDING TO DESTROY THE PRODUCTION OF CONTENT

3.1 Libraries and bookshops carry out very similar functions to supply a 'customer' with a book or an e-book. Both librarian and bookseller want to be the first point of Discovery. In very broad terms, both:

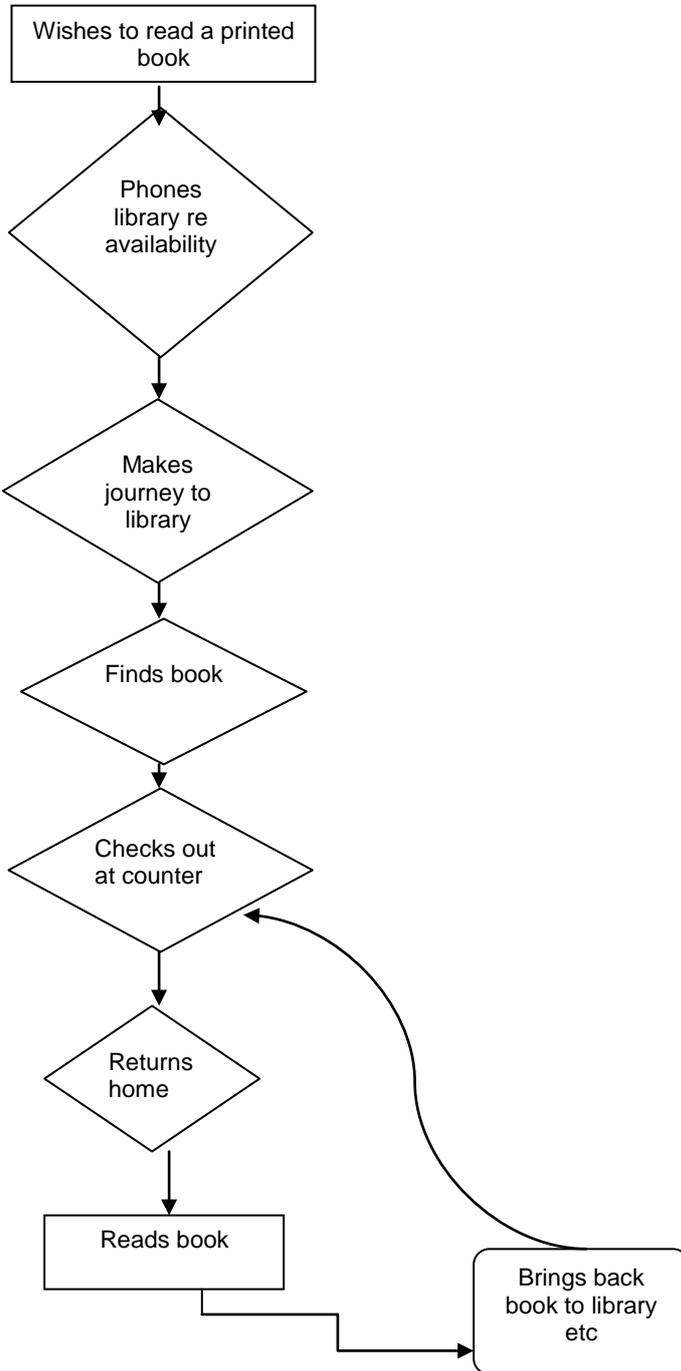
- Obtain the book/e-book from the publisher, or digital aggregator
- Promote the book on a website
- Offer it for sale or loan
- Obtain customer information
- Log the sale/loan
- Sell or loan the book.

3.2 Unlike printed books, e-books require no physical servicing (e.g. jacketing, insertion of plastic covers/bar codes, security devices etc), and they never suffer wear and tear and have to be replaced. One single file has the potential to be copied and loaned out many times.

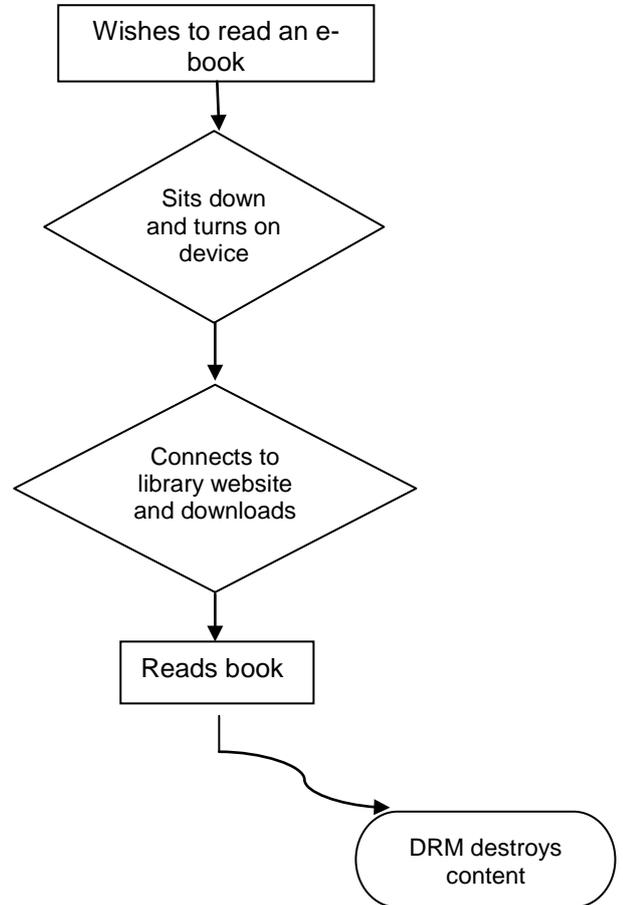
3.3 The difference between a bookshop and a library is that the commercial bookseller has to cover costs from the gross margin obtained from the sale and the business has to stand on its own two feet economically, without financial support from the public sector or die. The library, on the other hand, is funded by the taxpayer and receives a number of fiscal benefits.

3.4 The lending of printed books by libraries requires real 'effort' on the part of the borrower. Consider the processes of borrowing a printed book against an e-book as set out in the flow chart on the next page:

Borrowing a printed book



Borrowing an e-book



Benefits of e-lending

3.5 e-book lending offers consumers undeniable benefits. These include:

- Electronic access to a very large number of books, journals, magazines, newspapers and 'objects'
- Ease of access from wherever consumers are – at home, in the workplace, on the move
- Convenience – obtaining the content is easy and consumers don't have to travel to receive the content
- Search, sort and bookmarking routines
- Being able to increase the size of the type – particularly of help to those who are visually impaired.

Balance between booksellers and librarians

3.6 Booksellers have been relatively relaxed in the past about the fact that libraries were in a position of competitive advantage, as borrowing a printed book required real effort on the part of the consumer. The sale of books through booksellers (or other commercial channels) and the lending of books through libraries could co-exist. Indeed, somewhat surprisingly, the biggest users of libraries are, in fact, heavy book buyers.

3.7 But the situation changes dramatically if e-book loaning becomes so easy – if it is possible to dial up 24/7 from your home or workplace, or even on the move. The SCL President, Janene Cox⁴ said: *"e-books provide us with an opportunity for our books to be 24/7 and for people to access them remotely and for people to download them on to their own digital device"*.

3.8 In an open letter to the American Publishers Association, the President of the American Library Association asks publishers to join them *"..... in a future of liberating literature for all. Books and knowledge – in all their forms – are essential. Access to them must not be denied"*⁵.

3.9 But as Richard Mollet, Chief Executive of The Publishers Association, said at the House of Commons on 24th October⁶: *"In a world in which it is as simple to borrow as to buy, people will borrow, not buy"*. Publishers are right to be concerned over the potential impact that universal e-book lending could have on their business models and on authors' earnings, as well as concerns over the risks of piracy.

3.10 In their reply to the ALA the following day, the American Publishers Association said: *"Publishers support the concept of e-lending but must solve a breadth of complex technological, operational, financial and other challenges to make it a reality. Each publishing company is grappling individually with how to best serve the interests of its authors and readers, protect digital intellectual property rights and create this new business model that is fair to all stakeholders"*⁷.

3.11 If, as a result of its ease, e-book lending becomes the dominant way material is provided to end users, that distribution channel must be able to generate the revenues to support the content creation and distribution channels that consumers actually want.

4 BOOKSELLERS THROUGH TO AUTHORS COULD BE SERIOUSLY HARMED

4.1 If faced with the choice of paying to read a book obtained from a bookshop, or being able to read it free (in e-book form) from a public library, who wouldn't opt – in most cases - for the latter? If e-book lending is so easy – and you can read the book for free at the click of a mouse – why would you want to go into a bookshop to buy?

⁴ President of the Society of Chief Librarians.

⁵ Maureen Sullivan's letter on 24/09/12 to the American Publishers Association.

⁶ E-book Summit, called by Justin Tomlinson MP.

⁷ President of the American Publishers Association in a letter 25/09/12 to the ALA.

4.2 As Richard Mollet has said: *“Ultimately, the activities of selling and lending have to be able to co-exist with neither unduly harming the other. If e-book lending were untrammelled it would pose an extremely potent threat to the retail market which in the long-term would undermine the ability of authors, and the companies which invest in them, to see a reward for their creativity. This would be hugely a negative outcome for everyone, including libraries and their communities.”*

4.3 If the wrong framework is introduced by the Review Panel and DCMS and bookshop sales suffer, there is a very real risk that booksellers will be forced out of business because consumers are being enabled by the taxpayer to borrow books for free or at considerably subsidised terms.

OverDrive

4.4 OverDrive (BA Associate Members) are the main providers of e-books to US and UK libraries. OverDrive offer template websites to libraries; they do a lot of the hard work to help libraries; they apply whatever DRM the publishers wish to adopt; and they make it easy for consumers to borrow.

4.5 The BA is aware of OverDrive's US library network data for the first eight months of 2012 (Jan. 1 – Aug. 31): Total OverDrive library catalogue visits: 34.8 million: Library catalogue page views: 1.82 billion:+ Average pages viewed per visit: 13.82: Average time spent browsing or searching per visit: 9:46: Book cover images viewed: 5.4 billion (est.): e-book samples viewed since OverDrive Read introduced (early Sept.): up 783% from March. We think OverDrive do a great job in helping consumers to ‘discover’ books through libraries. However, we have not been convinced that promoting e-books in libraries will always lead to an increase in bookshop sales. Our fear is the opposite – namely that untrammelled e-book lending will harm bookshop sales.

4.6 The point has been made that in the US book sales have shown an upward trend because of libraries lending e-books. We would argue that in the USA, libraries have expressed frustration that the leading six US publishing houses have not been providing them with the e-books they require to satisfy the undeniable demand. So the supply hasn't been there. And because of *not* being able to obtain the book from the library, consumers have then gone off to buy a copy from a commercial bookseller.

4.7 But we don't think this will be the case if the librarians receive all the e-book titles they want. Consumers would find what they want on the library website and will borrow – not buy.

BA approach to e-book lending

4.8 We have made clear to the Minister of Culture [see the BA's last letter to Ed Vaizey about e-book lending in Appendix B] on many occasions this last year that the BA is not against e-book lending by libraries. What we don't want to see is a framework being developed which uses public money to destroy the commercial infrastructure of our industry.

5 POORLY DESIGNED E-LENDING HAS THE POTENTIAL TO PUT BOOKSHOPS OUT OF BUSINESS

5.1 Bookshops, we believe, are the best places for Discovery. *“Publishers should be working around the clock to find ways to make chain and independent bookstores stronger, and not for reasons having to do with sentimentality. If the only retailers left selling books are those that don't need to, publishers will lose their power and relevance overnight. I genuinely worry that books may follow the same dreadful path of music, where gadgets like the iPod spring up to make consumption easy, the showrooms for media discovery close, piracy becomes a cultural expectation and the market shrinks by billions as more people buy less”⁸.*

⁸ Trends in Trade Book Retailing 2011: <http://www.reportlinker.com/p0611387/Trends-in-Trade-Book-Retailing.html>

5.2 Bookshops play a critical role in stimulating impulse purchasing. Research has indicated that about half⁹ of retail book sales were made on impulse, because consumers saw the titles displayed and stocked in a bookshop.

5.3 “Books are central to the acquisition of literacy, education and knowledge of all kinds: special and general, informal and formal, whether for adults or children, providing the basis of reading skills, inquiry, comprehension and individual enterprise¹⁰”. If bookshops close, all these aspects will suffer. Consumers and communities will be the poorer.

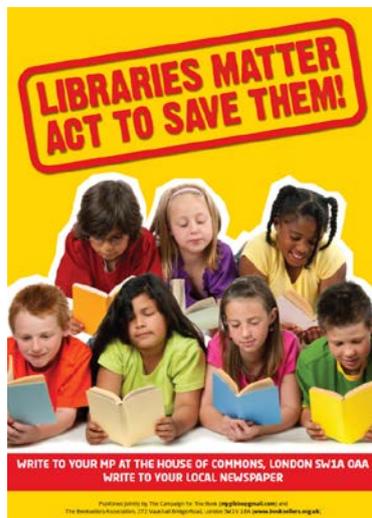
5.4 For the reasons outlined above in section 4, if e-lending is made too attractive to consumers through subsidy from the tax-payer, other forms of book distribution could wither as a result of this distortion. And if bookshops are forced to close, authors and publishers will be adversely affected. Fewer books will be promoted; fewer books will be sold; revenues to the rightsholders will fall; and ultimately fewer books (and e-books) will be published.

5.5 For Government, the localism agenda will be undermined; jobs will be lost; fewer taxes will be paid to The Treasury; and there will be a kick-back against the Coalition’s growth agenda.

6 THREAT TO BRICKS & MORTAR LIBRARIES

6.1 The BA has been very vocal in supporting libraries. Below is specially commissioned Point of Sale poster the BA produced for its members to display in bookshop windows, to encourage library patrons to write to their MPs if they believed their library was facing closure.

6.2 The BA also encouraged its own members to express any concerns over library closures to their own MPs.



6.3 As we have stated in 1.8, a large number of our members have business relationships with libraries.

- 6.4 Libraries are very much supported by booksellers because they:
- Help promote reading
 - Help with the Discovery of Books – especially with new writing
 - Are very much part of the local community
 - Support the concept of ‘localism’
 - Have premises in high streets etc and are facing similar problems to booksellers who have bricks and mortar businesses.

⁹ Source: PA/BA Lost Book Sales study carried out by BML.

¹⁰ National Book Committee: Don’t Tax Reading campaign.

6.5 When we first started to think about the issues brought about by e-book lending, we took the view that the bookselling community would be the most vulnerable sector. We now think that the libraries themselves may be even more vulnerable.

6.6 It seems to us inconceivable that one library authority will be hosting a website and another authority hosting its own website, each offering pretty similar e-book titles to consumers for borrowing. Duplication of effort would lead to unnecessary expense.

6.7 Therefore we would assume that there would be scope for only one national body hosting a website and offering e-books for lending. The prime candidate for this would seem to be The British Library.

6.8 Our concern over such an arrangement is that the BL (or whoever) is likely to develop a direct relationship with the individual borrower: the latter would download an e-book from the BL website.

6.9 If that would be the case, there would be little need for e-book borrowers to go into their local library. Numbers of visitors to the bricks & mortar library would fall. If fewer people end up visiting libraries in the future, local authorities could well end up closing them.

6.10 So what could be done to address the BA's concerns?

PART B: WHAT COULD BE DONE TO ALLEVIATE BA CONCERNS?

7 TESTING OF E-BOOK MODELS

Recommendation 1: Any e-book lending model proposed should be carefully tested by authors and publishers and its impact evaluated on the complete production and consumption chain before introduction, to ensure that the rightsholders' interests and sales are not adversely affected.

7.1 The most important point for the BA is to ensure that no future framework is introduced which adversely affects the commercial sales of e-books, and the ability of the use of e-books to support economically the production and distribution of new content. We stress again that we are not against public libraries loaning e-books; many of our members currently supply libraries with e-books. But we are against the latter being loaned by public libraries in such a way that sales in the bookselling sector are being artificially depressed.

7.2 We remain unconvinced at the present moment that the promotion of e-books by libraries leads to an increase in bookshop sales. As we have said, any evidence that suggests this might be happening could be something to do with the fact that the libraries currently haven't got many of the e-book titles that the public are seeking, and members of the public, in some frustration perhaps, have therefore bought the books instead.

7.3 Mike Shatzkin, is an extremely well respected American industry commentator, specialising in digital developments and digital publishing. His view on the situation is extremely interesting and deserves careful consideration. This is what he said:

7.4 *"The data point that interested me is that 41% of respondents who at some time borrowed an e-book from a library bought the most recent e-book they read. To some, this could suggest that publishers' fears that library patrons will be weaned away from buying e-books are overblown. Indeed, it is certainly possible that "discovery" at the library of a desirable e-book could lead to the purchase of a title for which the wait would be too long. It could mean that.*

7.5 *"What it seems to me more likely to mean is that the lack of library access to the most commercial titles forces those readers who care more about what they read than what they pay to purchase titles which the library doesn't have (and which they probably "discovered" somewhere else.)*

7.6 *“It could also well be that the number purchasing books would drop sharply if all the commercial publishers made their most popular titles available, particularly if they did it without windowing.*

7.7 *“A couple of other data points from the study feel like they support my view that publishers are doing the right thing for their commercial interests. Pew found that 55% of the e-book readers who also had library cards said they preferred to buy their e-books and 36% said they preferred to borrow them from any source—friends or libraries. But among the e-book borrowers, only 33% say they generally prefer to buy e-books and 57% say they generally prefer to borrow them.*

7.8 *Combined with the point that has gotten a lot of early attention, that most patrons don't even know that libraries offer e-books, I see a very strong suggestion that library availability of e-books will reduce sales more than stimulate them”¹¹.*

7.9 The writer of this submission planned a holiday in Scotland. His wife sent him out to buy a copy of the DK Eyewitness Guide for Scotland. He saw that an e-book copy could be downloaded free in a PDF format from an English library authority's website in the Home Counties. The book was downloaded to his e-mail address in seconds. He was not a member of the library in question. The PDF was not destroyed after a time elapse and is still on the writer's laptop. A bookshop sale was lost, and the rewards to the ultimate creator of the content diminished.

7.10 Various payment models have been proposed for librarians when they loan an e-book, in order to try and limit the damage caused by the potential to reproduce digital content at virtually zero cost. The main options¹² appear to be:

- One file = one user at the time (as a result, more e-books would need to be sold to support the same level of lending)
- One file = only use for x number of loans (equal to the number of loans before a book is worn out, again increasing the sales of e-books)
- Limited purchase/limited users (limited in time or number of uses)
- Some form of subscription model.

7.11 In our view, e-books should be treated simply as a different book format and be subject to restrictions in the same way as printed books. We have noted suggestions that some sort of subscription model¹³ ought to be adopted. Our preference at the moment is the first option in 7.10 above - one e-book/one user at the time. In our view, libraries should also pay each time they loan, and payment should be related to each loan – rather than to each book.

7.12 We believe that more research in this area would be useful and we look forward to having sight of the research being carried out by the Harvard Business School on e-book lending and book retailing¹⁴. (We hope, though, that this work hasn't been commissioned by librarians only, but that the commissioning has also involved representatives from the rightsholders and bookselling communities.)

7.13 We urge that whatever model might be proposed by the Review Panel is not introduced unless the authors and publishers have given their prior approval, and that this is not given before the e-book model is carefully tested and its impact evaluated.

¹¹ Mike Shatzkin Blog (The Ideal Logical Co) on 22nd June 2012 – see

<http://www.idealog.com/blog/does-pew-study-prove-e-books-in-libraries-are-safe-for-publishers/>

¹² CILIP's Briefing on E-book Acquisition and Lending (August 2012).

¹³ Desmond Clarke, The Bookseller (October 2012).

¹⁴ Mentioned by Christopher Platt, Director of Collections, New York Public Library at House of Commons 24/10/12.

8 LIBRARIES TO LOAN AND NOT SELL

Recommendation 2: The Libraries' remit is to loan books so as to give (limited) access to copyright material to users while the user avoids the personal expense of having to buy the material outright. This applies to both the printed and electronic version of that material. To avoid distorting competition libraries should not be funded by the taxpayer to sell books and compete against commercial booksellers. Potential book buyers should be directed by public libraries to booksellers.

8.1 Libraries were initially set up at the end of the 19th Century to make books available to the less affluent members of society. They were clearly set up to loan books and not to sell books. *The Royal Charter* makes this clear.

8.2 Up until fairly recent times, there was a clear demarcation between booksellers and libraries. Booksellers were there to sell; libraries to loan. But financial cutbacks from local authorities have put huge pressures on library managers to find new revenue streams.

8.3 One of these is for libraries to sell books. Booksellers have been relatively relaxed about libraries disposing of old stock for money etc, but once libraries start selling books in a serious way, they become undeniable competitors to the private sector and we believe they should lose their privileged status in being funded by the state and receiving other fiscal benefits. Competition in the sale of books or e-books is being distorted, with detrimental effects on the economy.

8.4 In view of our position, we would like to see browsers that go into library websites and end up wanting to buy a book to be directed to a bookseller to make the purchase.

8.5 The BA has developed a *Find Your Local Bookshop button*¹⁵ which libraries can place free of charge on their consumer-facing websites. A click-of-the-mouse on the button links the browser through to the BA's searchable database of members (as explained in 1.5, these range from single independents in market towns, to campus bookstores, through to children's and Christian specialists, to large national bookshop chains and supermarkets).



The BA's Find Your Local Bookshop Button for Library websites

¹⁵ The button can be downloaded free by libraries from <http://www.booksellers.org.uk/campaigns/keepbooksonthehighstreet> and when used in conjunction with <http://www.booksellers.org.uk/bookshopsearch.aspx> - library browsers will be taken to our bookshop search page.

8.6 The functionality gives consumers the choice of obtaining the book from nearly 4,000 outlets. Browsers can search by name of bookshop, or postcode, or town – either for all BA members, chain & independent members, or just independent bookshops. As well as address and contact details, there's a description of the shop, links to Google Maps, and links to Google Streetview. It is very easy for librarians to embed this button on their library websites.

8.7 OverDrive have developed a Buy Button with a number of public libraries in the United States, which directs browsers to Affiliate Booksellers. The library receives a commission on each book sold, which seems to be a reasonable arrangement.

8.8 Libraries were set up initially to help the disadvantaged – those who could not afford to buy books. Now, by directing resource away from the printed book to those with e-readers, it seems as if libraries are aiming at the advantaged. The poorer members of our society can't afford e-readers.

8.9 We hope the Review Panel will support our position that libraries are there to loan – not to sell – and that individuals who want to purchase books should be directed by the library to the bookseller. Moreover, that encouragement will be given to libraries to use our *Find Your Local Bookshop* button.

9 PRIOR PERMISSION FROM THE RIGHTSHOLDERS

Recommendation 3: Copyright – libraries should only be able to loan out an e-book if the rightsholder(s) has/have given prior permission.

9.1 We do believe it important that it should be universally recognised that authors have the copyright of their works and that they licence publishers to exploit their copyright under contract.

9.2 The lending of e-books is affected by Copyright legislation, whereby the rightsholder – usually the author – has to give prior consent if an e-book is lent or rented within – or outside – the library premises.

9.3 As we understand the legislation, the lending of e-books by libraries either constitutes “lending” if downloaded within the library premises, or “communicated to the public” if downloaded from outside the library premises. Both are copyright acts which require permission from the copyright owner. There are some circumstances in law where the need for specific consent can be overridden but this would have to pass the three step test.

- in certain special cases
- that do not conflict with a normal exploitation of the work and
- do not unreasonably prejudice the legitimate interests of the author.

9.4 Library lending would be far too wide to pass the test as it could clearly be shown to conflict with the normal exploitation of the work (by threatening book sales) and would prejudice the legitimate interests of the author since the author would not be remunerated.

9.5 The Society of Authors has said that e-lending could cheapen the perception of books, and said authors should be asked for their consent before being placed in such a scheme by their publisher. "*Publishers should not permit e-lending without an author's consent. It is the author's work and they should decide what is done with it*"¹⁶.

9.6 Maintaining an author's copyright is of critical importance. Future frameworks might be developed to help with the loaning of e-books, but we do take the view that whatever the framework might be, libraries should only be able to loan out a particular work if they have the rightsholder's prior permission.

¹⁶ Kate Pool, Deputy General Secretary of the Society of Authors.

10 BORROWERS PAYING A FEE TO LOAN AN E-BOOK

Recommendation 4: Professional lenders (i.e. libraries) should be required to pay a charge for lending an e-book (with concessions, of course, for disadvantaged borrowers).

10.1 If e-book lending becomes the dominant method of access to copyright material, then it will have to provide the basis upon which the production and distribution chain generates the returns needed to be sustainable. This means that user of material will have to pay for that use, either through paying tax and the government funding this process, or by paying a fee for borrowing an e-book, at least from professional lenders (ie libraries).

10.2 Government funding under these circumstances would produce many other problems and, at least at present, is unrealistic. Hence borrowers should be charged a fee that reflects the limited access they have to the material, compared with outright purchase.

10.3 Libraries currently charge to loan out CDs, DVD, and audiobooks. Charges are also increasingly being made for internet access. Charging for borrowing e-books would not create an exception and would produce some much needed revenue for the library. We are in favour of libraries charging for e-book loans – either by way of a straight charge per loan, or by means of some scale.

11 PUBLISHERS' ADOPTION OF WINDOWS

Recommendation 5: Publishers should individually consider imposing a 'window' on new titles whereby libraries are licenced to loan an e-book only after a period decided by the publisher has elapsed from the trade publication date.

11.1 In order to sustain the production and distribution process, sufficient revenue needs to be generated from users to cover the costs of these processes. As we have intimated on a number of occasions in this submission, booksellers feel that unlimited and free e-book lending will tip the scales too far in one direction, which could potentially undermine the whole structure of the production of both physical and e-books. One way of redressing the balance would be for publishers to impose a window on new titles, whereby the licence would prevent the loan of the e-book until a certain time has elapsed from the trade publication date. This period would be determined by the publisher.

11.2 We understand that in America, Penguin US has conducted a trial whereby on new titles booksellers are given a six month period of exclusivity.

11.3 We realise that in the UK competition law prevents two or publishers agreeing a common set of terms and conditions, and so every UK publisher will have to impose their own conditions. But it does seem to the BA that a practical move like this would produce a fairer trading environment for the frontlist.

11.4 Although the above approach would create opportunities to increase revenues generated from new books, there is still the concern of the backlist¹⁷. If one title from a backlist author is requested by a borrower but is not available, the browser may still be quite happy to borrow another e-book by the same author. And while reading an e-book that has been lent, the consumer has no inclination to buy.

¹⁷ Backlist = titles over 18 months old.

11.5 Publishers will be less willing to keep titles in print if they are easily available for e-lending. This could have a considerable effect on authors' earnings – especially the less well known, less commercially successful authors.

11.6 As a result, adoption of windows of this sort will not be sufficient on their own to ensure sustainability. Charges for e-book borrowing will also be necessary (see above).

12 ANTI-PIRACY MEASURES

Recommendation 6: Publishers should be supported in any initiatives they deem appropriate to prevent the illegal copying of e-books.

12.1 Peter Mandelson, when he was European Trade Commissioner, said that in the music industry 19 out of every 20 music tracks downloaded were illegal copies.

12.2 In the book trade, virtually no Digital Rights Management ["DRM"] system is able to prevent a determined hacker from breaking the encryption and accessing and copying content. There are websites around that give advice to the pirates.

12.3 There are differences between the book trade and the music trade, so luckily our level of illegal file sharing and piracy is much lower – somewhere in the region of 10%.

12.4 Nevertheless, a loss of sales in the region of 10% is significant in any business.

12.5 We very much support The Publishers Association and the Society of Authors in all the initiatives they are taking to support Copyright. It is the cornerstone of our industry.

12.6 Extensive e-book lending by libraries has the potential to increase illegal copying of files. If authors and publishers suffer because of this, booksellers do so too. Publishers should be strongly supported in any steps they take to prevent the illegal copying of digital files while in the hands of the borrower.

13 PLR TO COVER E-BOOKS

Recommendation 7: Public Lending Right should cover e-books and Section 43 of the Digital Economy Act should be introduced as soon as possible.

13.1 At present, authors receive a PLR payment of £0.06 when a printed book is loaned but absolutely nothing on e-books.

13.2 We strongly believe that authors should be entitled to Public Lending Right ["PLR"] earnings on e-books. As the Chairman of the Society of Authors has said: *"We have earned it. It's not a benefit, it's a right. I would expect to be paid. There is no difference between e-books and print books – it is all work, produced for people to read ... It seems very obvious to me [that an e-book] is just another version of a title, in the same way that a paperback is"*.

13.3 Section 43 of the Digital Economy Act 2010 extends PLR to audiobooks and e-books "lent out" from library premises for a limited time, but these payments have never been implemented. Authors are entitled to equitable remuneration. We urge the Review Panel to stress to the Government that s43 be brought into force as soon as possible, and that extra funds be made available to cover PLR payments for such lending and that authors should be remunerated for rentals outside the s43 definition.

13.4 The failure to implement these payments would seem to be a clear breach of the Directive.

14 PRIVATE/PUBLIC PARTNERSHIP

Recommendation 8: If a National E-book Lending Library is set up, consideration should be given to establishing a Private/Public Partnership.

14.1 The library itself may be financed by the public sector, but it could not function without the support of a great many entities in the private sector – these include systems' suppliers, library suppliers and booksellers, publishers and authors¹⁸.

14.2 Although bookshops support libraries, and vice versa, it cannot be denied that tensions have increased between the private and public sectors. Although booksellers and librarians both have a common aim in promoting and encouraging reading, librarians want as much material as possible to be available without charge, and the commercial sector wants to maximise revenue wherever possible.

14.3 As we have said in section 6, we cannot envisage in the e-book world of the future, say, each of the library authorities supporting its own e-lending website and offering a similar range of titles to the other authorities. Such duplication in times of austerity cannot surely be sustained?

14.4 Therefore, it makes sense to have one National e-Book Lending Library, to cover the country. And being candid, the likely candidate would seem to be The British Library.

14.5 The British Library would have considerable influence in the marketplace. Unless the distinction between borrowing and purchase is maintained, and (for the reasons outlined above) borrowing e-books is (at least for most users) not free, booksellers might well feel that the British Library was competing against them and obtaining taxpayers money to do so.

14.6 In order to try and break down the barriers, it would be really interesting to see if some sort of Private/Public Partnership might be devised, so that booksellers were brought into the supply chain. We have given no thought as to how this might work, but would be delighted to do so if the Review Panel members believe it would be useful to look at this further.

15 ENSURING THE SURVIVAL OF BRICKS & MORTAR LIBRARIES

Recommendation 9: Any National E-book Lending Library arrangements should not end up undermining bricks & mortar libraries.

15.1 The worry here is that if there is a National Library Lending ["NLL"] website lending e-books to individuals, a relationship is then established between the NLL and the borrower.

15.2 If the borrower is able to download an e-book direct from the NLL, then there is no need for that individual to visit a bricks and mortar library.

15.3 But if that happens, then visits to the library in the high street will fall. Library premises are expensive institutions to maintain in these times of austerity. Librarians could well find that by pressing for more e-book adoption, they are voting themselves out of a job. We believe that society would be much the poorer if there were fewer libraries and librarians.

15.4 We are mindful of Justin Tomlinson's comment¹⁹ that in order to prevent library footfall decreasing and libraries closing, that an arrangement should be introduced whereby consumers have to physically go into their public library in order to loan an e-book. He/she would punch his/her library membership number into a special terminal and the borrower would be patched through to the National E-book Lending Library website. There is much to commend such an approach. However, we would guess that consumers would not be too enthused.

¹⁸ The Good Library Blog, 20th October 2012.

¹⁹ Justin Tomlinson in House of Commons adjournment debate on Future of e-books, publishing and libraries 17th July 2012.

15.5 Remote lending would seem to undermine the libraries themselves. We hope that the Review Panel will not make any recommendations that will undermine the physical library in the community.

PART C: CONCLUSION

16 SUMMARY

16.1 The heart of our concern is, quite simply, that an e-book lending framework could be introduced which adversely affects the viability of the whole production process from authors to distributors to retailers. Were this to happen, consumers would find that their access to new material was severely restricted, whether by way of loan or purchase, because new production would be put at risk. Part of that disruption, should it occur, would negatively impact the bookseller, which would in turn deprive communities of a valuable asset in terms of how users Discover books and reading. Further detriment to consumers would follow.

16.2 We urge that no measures are introduced until the Review Panel has satisfied itself that what we fear will happen is proven not to be the case. And to give us this peace of mind, the rightsholders should also be satisfied that our fears can be allayed. In order to give us this assurance, there has to be thorough testing of what is proposed and an impact assessment made before any implementation.

17 CONCLUSION

17.1 Digital developments in the book trade are being determined to a considerable extent by companies who are not perceived as core booksellers (Amazon – logistics company; Google – search engine; Apple – hardware manufacturer). By the time the Review Panel gives its report, it is likely we will learn of yet another digital development which has the potential to be a game-changer for the book industry. Developments are moving so quickly.

17.2 We want the library service to flourish. And we want bookshops also to flourish. And we want publishers, authors and agents to obtain their just return on their investment. So our hope is that the Review Panel will come up with measures which will be acceptable to all the key parties. This is, of course, a difficult balancing act.

17.3 The BA is committed to working constructively with the Review Panel to try and bring this about. And it is hoped that our submission will give the panel useful matters to consider.

17.4 We look forward especially to learning of the Panel's reaction to our nine recommendations (see page 5).

Tim Godfray
Chief Executive
Booksellers Association
5th November 2012

APPENDICES

Appendix A: the rise of the e-book

Sales of e-books

A.1 Consumers have taken to e-books and are determining a fast pace of change. In 2011, sales of e-books in the UK book trade amounted to £256m and increased by 63%²⁰ over the previous year. Comparing the first six months of this year against the same period in 2011, e-book sales increased yet more, by 89%²¹. E-book sales now account for around 11%²² of total book sales in the UK.

A.2 Library loans are dominated by fiction - 42% of all loans are fiction, while 36% relate to children's, teenage and educational books²³. Sales of digital fiction increased by a staggering 188%²⁴ during the first half of this year when compared to 2011; and sales of general digital consumer titles (fiction, non-fiction and children's titles) increased by 180%.

A.3 In September 2012, two fifths of UK adults (40%²⁵) said they were likely to buy an e-book in the next six months.

Free e-books

A.4 Very many of the books out of copyright (e.g. classics) previously sold by booksellers in print format can now be downloaded free by consumers. Project Gutenberg²⁶, for instance, offers over 40,000 free e-books and consumers can download or read online free epub or Kindle editions of their books. Many of the Gutenberg titles can be accessed via library websites and many other e-book platforms offer out of copyright titles for free.

e-books in libraries

A.5 CIPFA does not yet collect data on e-book lending in the UK. But we know that at present, the number of books lent in e-book format is very small. In America, the Chicago Public Library estimate e-book lending accounts for around 3.2%; and the New York Public Library around 2.0%. In the UK, the average figure is believed to be around 1.0%. The existing small base makes it very difficult to assess properly the impact of lending on purchasing.

- A.6 Take up by consumers has been at these low levels because:
- Many members of the public have not been aware that the libraries offers an e-book lending service (this is certainly the case in America)²⁷
 - The bigger trade publishers have been generally reluctant to give the libraries the range of titles that they want, because of fears that their trade sales will be harmed, thus adversely affecting themselves and their authors
 - Publishers are concerned that the ground rules might be changed at a later date (e.g. unlimited usage; free inter-library lending; liberalisation of library membership rules)
 - Libraries have not found it always easy to keep pace with technology
 - Very low price offers by some of the internet bookselling companies make borrowing a less attractive option
 - 62%²⁸ of UK adults had not downloaded an e-book (either paid for or free).

²⁰ Source: The Publishers Association.

²¹ Source: The Publishers Association.

²² Source: The Publishers Association.

²³ Source: PLR records.

²⁴ Source: The Publishers Association.

²⁵ Source: Global e-book Monitor, Bowker Market Research.

²⁶ www.gutenberg.org

²⁷ Pews Internet & American Life Project.

²⁸ Source: Global e-book Monitor, Bowker Market Research.

E-readers

A.7 Around a third²⁹ of people in the UK own an e-reader, with a further 15% planning to buy one in the next six months. Amazon's Kindle currently dominates the UK's device market, but prominent bookselling activity this autumn will see other models like The Nook and Kobo's Glo heavily promoted to consumers.

Online bookselling market domination in the UK

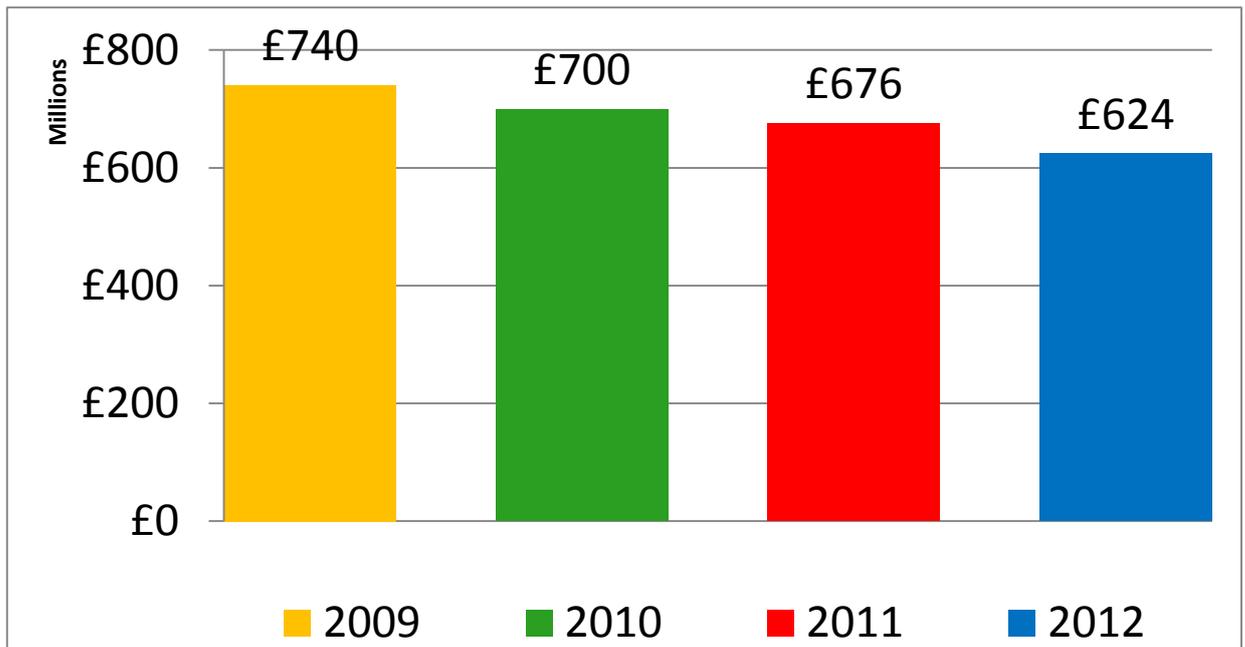
A.8 The Office of Fair Trading in July 2011 estimated that Amazon was responsible for over 70% of all sales in the online bookselling sector. According to BML's *Books & Consumer Survey*, in the first half of 2012, Amazon accounted for 80%³⁰ of online book purchases (including both printed and e-books).

A.9 In September 2012, 74% of UK e-book buyers said they bought their e-books most often from Amazon, compared to 59% of e-book buyers in the US, 52% of those in New Zealand, and 28% of those in Canada³¹.

Sales of print books

A.10 In 2011, sales of print books amounted to £2,954m³². Public libraries' book buying has fallen from about 12% of publishers' sales to now around 5%³³.

A.11 Sales of print books in the Total Consumer Market fell by minus 7.6%³⁴ after the first 26 weeks of this year when compared to the same period in 2011, as the graph *below* shows. Over the last four years, there has been a steady decline each year in the sales of printed books for the consumer market.



*Print Book Sales in the Consumer Book Market for the first 26 weeks of each year*³⁵

²⁹ Source: Media law firm Wiggin.

³⁰ Source: Books & Consumers, Bowker Market Research.

³¹ Source: Global e-Book Monitor, Bowker Market Research.

³² Source: The Publishers Association.

³³ Source: Good Library Blog [20/10/12].

³⁴ Source: Nielsen BookScan TCM data.

³⁵ Source: Nielsen BookScan.

Booksellers

A.12 Booksellers have been faced with three main strategic changes:

- Consumers migrating from the high street to online
- A decline in many of our high streets, as highlighted by Mary Portas in her report for the Government³⁶
- The pressure on the printed book in consumer and academic markets brought about by the arrival of the e-book, and access to content in electronic databases.

A.13 Bricks & mortar booksellers have had to adapt fast, and adapt they have, focusing on areas which the internet booksellers find difficult to match. High street booksellers have developed a wide range of strategies, including:

- Personal advice and recommendation (matching up the customer with the right book)
- Organising events (authors talking to customers)
- Running book groups
- Going into schools
- Becoming a central part of the community
- Offering personalised service (special orders and deliveries etc)
- Developing specialisations
- Building attractive websites to promote the shop and selected titles
- Selling e-readers and e-books by giving personal advice while handselling.

A.14 The number of booksellers in BA membership has fallen over recent years, as the table *below* indicates:

<u>Date</u>	<u>Total outlets</u>	<u>Independents</u>
	<u>in BA</u>	<u>(1-5 outlets)</u>
	<u>membership</u>	
27 June 2007	4397	1413
27 June 2008	4061	1390
27 June 2009	3901	1289
27 June 2010	3794	1196
27 June 2011	3683	1099
27 June 2012	3618	1056

No of outlets in BA membership³⁷

A.15 Yet it would be wrong to assume it is all doom and gloom among the bookselling community. We know there will be challenges, but we are ready to face them. We believe we have an important role to play in encouraging reading and book ownership and it would be detrimental to the public interest if bookshops were forced to close, leaving consumers with only one or two dominant book suppliers in the marketplace.

A.16 Bookshops are needed. 72% of those buying e-books said that they bought new books from Bricks & Mortar booksellers in the previous 12 months; 39% of e-book buyers had bought a book in a physical shop the previous month; and 25% had discovered at least one of the books that they bought in the previous month in a physical shop³⁸.

³⁶ <http://www.bis.gov.uk/highstreet>

³⁷ Source: The Booksellers Association.

³⁸ Source: Books & Consumers, Bowker Market Research.

A.17 We believe that booksellers are not going to wither and die. There is an acceptance that bookshops are the best place for 'Discovering a Book' and that we need a diverse and competitive marketplace. But booksellers in high streets and campuses are walking on thin ice at the moment and need the support of book buyers, publishers, authors and libraries to ensure their survival.

A.18 Neither do we think the printed book is going to die. Print books still represent 83%³⁹ of the publishers' revenue. 90%⁴⁰ of trade houses said e-books will be sold along with print in the future with only 10% expecting digital to replace print books. 88%⁴¹ of those who read an e-book in the past year also reported reading a printed book, and overall 72% of adults reported reading a print book in the last year.

A.19 In the first half of 2012, 68% of books bought by e-reader owners, and 87% bought by tablet owners, were printed books⁴².

Hybrid market booksellers

A.20 So booksellers are promoting themselves as multichannel booksellers. A book is a book is a book, whether it be a hardback, a paperback, an audiobook, or an e-book.

A.21 In the same way, we believe that libraries will be required by their members to provide them with book content in a whole variety of formats – hardback, paperback, audiobook, or e-book. Consumers want to read e-books, and we believe it would be unrealistic for anyone to suggest that libraries should not loan e-books.

Summary

A.22 So where is this leading us? Our contention is that all the trade indicators indicate that not only are e-books here to stay, but that they will have a *substantial* effect on our market. Some pundits have suggested that by 2020 e-books will represent 50% of total sales. We are not sure that the figure will be this high. In the US there has been a noticeable slowdown in take up ('only' a 37%⁴³ increase in April 2012 over April 2011). Whatever the figure might end up being, it will be undoubtedly be significant.

A.23 And if our trade experience is anything to go by, e-book lending by libraries will have the potential also to be significant, especially if e-borrowing is made so easy.

³⁹ Source: The Publishers Association.

⁴⁰ Source: Aptara.

⁴¹ Source: Pew Research Centre.

⁴² Source: Books & Consumers, Bowker Market Research.

⁴³ Source: Michael Cader, Blog - *Publishers Lunch*.

25th November 2011

Dear Ed,

E-BOOKS AND PUBLIC LIBRARIES

I know you are currently considering the views of the publishers and the librarians about e-book lending. Our members will be affected by whatever outcome evolves from the various discussions, so I hope you will factor our views into your deliberations.

We very much support the position of The Publishers Association in this matter. Late last year, the PA set out its position on e-book lending in libraries. Richard Mollet, Chief Executive of The Publishers Association said:

“Ultimately, the activities of selling and lending have to be able to co-exist with neither unduly harming the other. If e-book lending were untrammelled it would pose an extremely potent threat to the retail market which in the long-term would undermine the ability of authors, and the companies which invest in them, to see a reward for their creativity. This would be hugely a negative outcome for everyone, including libraries and their communities.”

The BA very much believes in the importance of public libraries. But libraries have to recognise that if e-book lending were without controls, it would pose an extremely potent threat to the retail market, to publishers and authors. As you may know, we had instances a while ago of public libraries offering to loan e-books 24/7 to anyone without any controls. Apparently some borrowers were as far away as China!

If bookshops are substantially undermined by e-book lending without fair controls, then they may well go out of business, which will not be in the interests of the libraries and communities they serve. Also, there is a real danger of e-books lent by libraries being copied illegally, as it seems experienced pirates are able to get round the DRM protection.

In our view, e-books should be treated simply as a different book format and be subject to restrictions in the same way as printed books. We are not against libraries being able to loan e-books. But we want this to happen in such a way that the sales in bookshops are not substantially undermined.

As far as e-books are concerned, the BA's position is as follows:

- We believe that access to e-books should only be permitted to permanent residents who hold a library membership card. (However, we realise that libraries may also offer access to regular users who may commute into their area – as many do in London.)
- We do not believe that temporary membership should be granted by libraries for visitors.
- We take the view that provided membership is only permitted to permanent residents who hold a library membership card, that remote access to the library's website is acceptable.
- Libraries should only be able to lend e-books for a pre-determined period to a borrower on a one book/one user basis, as happens now with physical books - the technology already exists.
- We believe that libraries should impose a charge when downloading or providing access to an e-book (as is usually the case with DVDs and audiobooks at present).

- Monies collected by the library could then be ring-fenced and used to increase the book fund.

The BA has publicly supported recent efforts to stop the closure of public libraries. We understand that over £1,000m of public money goes to fund the library service annually, yet only just over £90m goes towards the book fund. We believe the percentage spent on books by libraries (as a percentage of the total funding) has to be increased.

We do hope you and your DCMS colleagues will take our views into consideration.

With best wishes,
Yours sincerely

Tim Godfray
BA Chief Executive

e-mail: tim.godfray@booksellers.org.uk