



POSITION STATEMENT FROM THE
BOOKSELLERS ASSOCIATION IN RESPONSE
TO THE EUROPEAN COMMISSION'S
COMMUNICATION

A Digital Single Market Strategy for Europe

[SWD(2015) 100 final – 06/05/15]

*To: Ros Lynch, Copyright and IP Enforcement
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To: Ros Lynch, Copyright and IP Enforcement Director,
Intellectual Property Office

1 INTRODUCTION

1.1 The Booksellers Association of the United Kingdom & Ireland ["BA"] welcomes the opportunity to give its initial views on the European Commission's Communication concerning its proposals to develop a Digital Single Market Strategy for Europe.

1.2 The BA is pleased to learn that the focus is on so many areas that the Association has expressed concern over in recent representations both to the UK Government, to the European Commission ["EC"], and to MEPs – these being:

- That a Competition Sector Inquiry needs to be carried out into the UK book market, as one supplier is believed to be responsible for around¹:
 - 90% of all e-book sales
 - 70% of online physical book sales
- Possible changes to the Copyright legislation, which would seriously harm authors, publishers and booksellers – and eventually European creativity and cultural diversity (as we believe that current legislation already gives adequate public access for copyrighted material and protection to rightsholders in the digital world)
- The obstacles businesses are faced with when selling books across borders within the European Union ["EU"]
- Proprietary systems preventing consumers from being able to read any e-book on any device and therefore the inability to obtain e-books from any supplier
- VAT across borders
- The simplification required of Consumer Protection Rules
- The need to work towards fair taxation so that taxes are paid where profits are generated.

BA membership

1.3 The Booksellers Association is a trade association, based in London WC2, currently (as at 30th June 2015) with 828 bookselling businesses in membership (of which 803 are independent bookshops), accounting in total for 4,595 outlets.

1.4 BA members cover a diverse range of different bookselling businesses - specialist bookselling chains (e.g. Waterstones and Blackwells); independents; large High Street chains with mixed businesses (e.g. W H Smith); supermarkets (e.g. Tesco, Asda, Sainsbury and Morrisons); library and school suppliers; specialist internet booksellers; and the two national wholesalers (Bertrams and Gardners).

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

The BA

1.6 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. Finally, and most importantly, to represent their views.

1.7 The BA Council – the top policy body within the BA which represents the views of the membership – is very much concerned over how the Digital Single Market in the European Union might develop. How these areas will be progressed by the European Commission during the next few years will have an effect on virtually every single BA member.

¹ BA's submission to the Competition & Markets Authority on Competition & Public Interest Concerns in the UK Publishing & Bookselling Industry [November 2014]; BA's Formal Complaint to DG Competition [June 2015]

2 EXECUTIVE SUMMARY

2.1 We would like to put forward the following 9 comments for special consideration.

EXECUTIVE SUMMARY

1: DG Competition should look in particular at whether there is unhealthy domination in the EU book market and, if so, whether there has been an abuse of that dominant position, which has had a detrimental effect on competition

2: Publishers are already enabling libraries to lend e-books under licence, and want to continue to do so. The extension of Copyright exceptions to e-lending by public libraries would undermine the viability of the eco-system for the book. Any decision which would jeopardise the fragile ecosystem of the nascent e-book market would undermine the capacity of the book sector to keep on investing in innovative digital solutions, for the benefit of European readers and European Cultural diversity

3: Unrestrained e-book lending has the potential to harm jobs and growth in bookselling whilst not necessarily improving footfall for libraries. Rights holders should individually introduce financial models which generate a fair balance between commercial interests (bookshops, publishers and authors) who want to be rewarded for writing, publishing and selling the book, and libraries who loan for free

4: Decision makers at European and national level should be aware that businesses, and these include sometimes booksellers and publishers, take the decision not to sell to consumers in other member states for sound commercial reasons (e.g. the market is not large enough to justify the investment required to sell across borders; or the Return on Investment and profitability is too low) – and not because of any copyright restrictions

5: As EU countries have different demands for the same content, rights holders should not be compelled to exploit their works in a way which is not beneficial to them

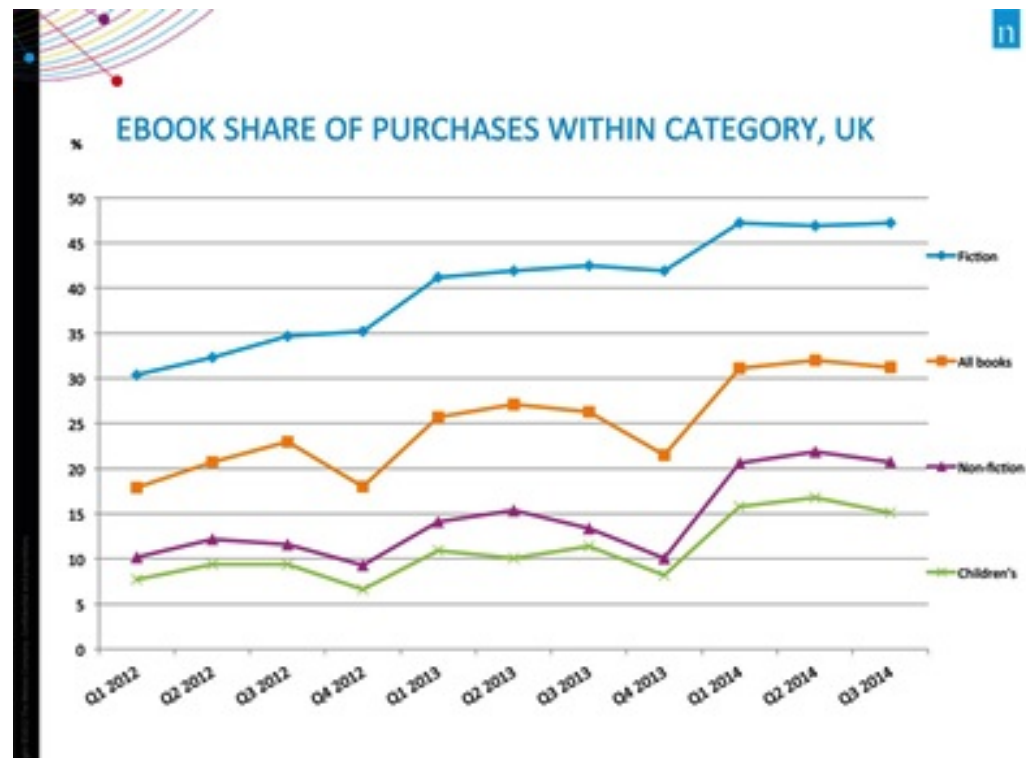
6: Proprietary systems should be ended. Interoperability should be introduced so that consumers can read any e-book on any device in order that e-content can be obtained from any supplier

7: E-books should be taxed for VAT purposes in individual member states at the same rate as that currently applying to printed books

3 THE DIGITAL MARKET IN THE UK

3.1 In the UK, 2014 figures² released by The Publishers Association indicated that the sales of e-books accounted for 17% of all total book sales.

3.2 The independent market research company, Nielsen, believes that e-reader sales and e-reader usage in the UK are now in decline³, a decline that is accelerating as, to a large extent, tablet and, to lesser extent, smartphone use for digital reading increases.



3.3 UK e-book sales have followed closely the pattern in the US (other European markets are different). In the US, e-book sales declined by 6%⁴ in 2014 over the previous year, from 240 million units to 223 million units. However, it is too early to ascertain if this is just a temporary blip.

3.4 Many in the book industry believe that e-book sales are stabilising, and even if the blip is temporary, will probably end up accounting for no more than 25% of the overall UK book market.

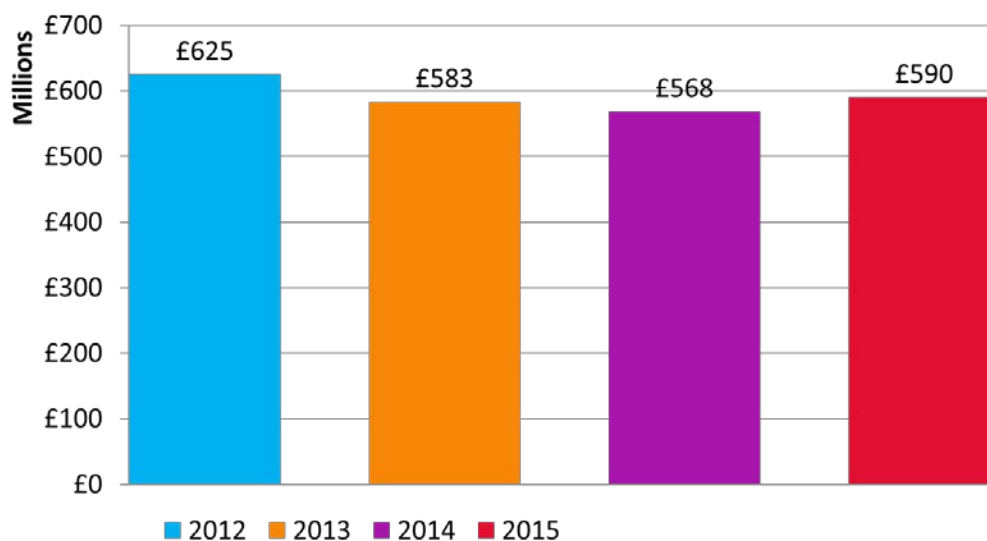
3.5 Indeed, there has been a revival in the sales of print books in the total consumer book market. Figures released by Nielsen show that for the first 26 weeks of 2015, print book sales have increased by 3.8%⁵ when compared to 2014 over the same period (please see the chart *overleaf*). After an initial move away to e-books, some consumers do seem to be coming back to the printed book.

² 2014 Statistics Yearbook (The Publishers Association)

³ Article by Jonathan Nowell, President of Nielsen Book, in Publishers Weekly/Book Brunch (April 2015)

⁴ *The Bookseller* magazine, 1st June 2015

⁵ Nielsen Book Total Consumer Market Book Data



Total consumer market – Sales of Print Books from 1st January to end of week 26

3.6 Many BA members sell e-readers and tablets, as the following table shows.

Company	E-Reader	Tablet	BA member stockists
Amazon	Kindle Kindle Paperwhite	Kindle Fire HD Kindle Fire HDX	Waterstones, Sainsburys, Tesco
Apple		iPad iPad Mini	Sainsburys, Tesco, Asda
Barnes & Noble	Nook Simple Touch Nook Glowlight	Nook HD Nook HD+	Blackwell, Foyles, Asda, Sainsburys
Google		Nexus 7 Nexus 10	Tesco, Asda
Kobo	Kobo Touch Kobo Mini Kobo Glo	Kobo Arc	Many independents in BA membership, WH Smith, Asda
Samsung		Samsung Galaxy	Sainsburys, Tesco, Asda
Sony	Sony PRS-T2	Sony Xperia	-
Others		GoTab Hudl	Gardners Tesco

BA members selling e-readers and tablets

3.7 Booksellers have wanted to show consumers that they are embracing the new technologies and, apart from the United States, the United Kingdom has the biggest e-book market (as a percentage of all book sales) than any other country in the world.

3.8 Nevertheless, in spite of their desire to enter new markets and develop new opportunities, physical booksellers have found it very difficult to sustain an e-book market.

- The margins on selling the e-reading hardware are wafer thin or non-existent, and specialist staff are required in the shop to help consumers with any technical problems they might have with the devices

- As a bookseller, you are competing on price against very large national electrical retailers like PC World/Currys and John Lewis
- Similarly, the margins offered by the platforms on e-book sales to booksellers are also extremely low when compared to printed books (although, admittedly, the cost bases are different)
- And, most importantly it has virtually been impossible to compete against Amazon, who completely dominate the marketplace.

3.9 Setting up an 'e-book platform' is prohibitively expensive for an individual bookseller, something which only the very large businesses can afford.

3.10 Because of this, almost all booksellers enter into an agreement with an outside platform to sell e-books to consumers. The main e-book platforms tend to be:

- Apple
- Gardner's Hive
- Google
- Kindle
- Kobo
- Nook
- The Booksellers Association's own IndieBook Shop, which contains over 400,000 e-book titles for consumers and BA members to download.



3.11 Booksellers tend to deal in e-books not because they believe they are making any money, but to offer a complete service in order to try and retain existing customers.

4 CARRYING OUT A COMPETITION SECTOR INQUIRY INTO THE E-COMMERCE SECTOR

DG Competition should look in particular at whether there is unhealthy domination in the EU book market and, if so, whether there has been an abuse of that dominant position, which has had a detrimental effect on competition.

4.1 Our experience in the UK shows that Amazon is believed to be responsible for around⁶:

- 90% of all e-book sales
- 70% of all online physical book sales.

4.2 Amazon's exponential growth in recent years is phenomenal. Amazon now sells more online than its top 12 competitors combined – and that includes US giant Walmart.

4.3 The UK is among Amazon's biggest markets. As a multinational company, it has had a competitive advantage over UK booksellers because it has been able to move sales and costs from country to country:

- Until 1st May 2015, Amazon maintained that when selling to UK consumers the sale was not made in this country but originated from Luxembourg, which had a much preferred tax regime for businesses than the UK: this enabled Amazon to pay an extremely low level of Corporation Tax on their profits
- Until 1st January 2015 when the European Commission plugged the loophole, Amazon were able to sell e-books to UK consumers from Luxembourg at 3.0% VAT; while booksellers situated in the UK had to supply at 20.0% VAT
- Furthermore, Amazon has a proprietary system protecting their Kindle hardware and content, whereby consumers have found that after purchasing dedicated e-book readers that they were, in effect, locked into an ecosystem to obtain e-books only from Amazon in the future and not from other booksellers.

⁶ BA's submission to the Competition & Markets Authority on Competition & Public Interest Concerns in the UK Publishing & Bookselling Industry [November 2014]; BA's Formal Complaint to DG Competition [June 2015]

4.4 Small wonder that with these very significant competitive advantages, Amazon have been able to maintain a stranglehold on the UK's book market.

4.5 Unable to compete against Amazon, many independent bookshops have been forced out of business. The BA now has a third fewer independent bookshops in membership than it did nine years ago..... and the main reason given is the power of Amazon.

4.6 From data submitted to the UK's Competition & Markets Authority in November 2014:

- 64% of UK booksellers and 77% of publishers believe that Amazon are the sole cause of the print book market being unbalanced
- 92% of booksellers believe that Amazon is the sole cause of competition in the e-book market to be unbalanced
- 93% of booksellers believed that Amazon in the last few years had sold print books below the wholesale cost.

4.7 Many booksellers find that they have little option other than to use Amazon's Marketplace, if they wish to reach a large number of consumers. Over 40% of booksellers responding to the BA's survey said they had sold books on Amazon Marketplace.

4.8 But by having to use Marketplace, booksellers are helping to make Amazon even stronger. Marketplace gives Amazon access to data on, say, pricing and consumer behaviour which is not available to Marketplace sellers or competitors, plus Amazon control the catalogue and merchandising (often charged out to publishers), which subsequently controls access to books. This dominance within channel pivots upon control of access to customers, something which is unique.

- 11.5% of booksellers said they had been prevented by Amazon from offering to consumers on Marketplace a deal that is lower than theirs
- 10.8% of booksellers said Amazon had tried to impose on them what price the bookseller should charge consumers when the book was sold on Marketplace
- 11.2% of booksellers said they had contracts with Amazon which specified no expiry date, thus enabling the internet retailer to change the terms whenever they liked
- Tellingly, 63% of booksellers said that Amazon's strategies and/or practices were considered to be affecting adversely the bookseller's ability to compete in the market.

4.9 The BA also surveyed publishers:

- 42% said that in the last two years Amazon had attempted to prevent the publisher from offering a better deal to anyone other than Amazon
- 25.5% said that they had been asked by Amazon to restrict discounting in other channels below the Amazon price
- 6.8% had said they had been asked to give exclusive distribution rights to Amazon
- 4.6% said they had been asked by Amazon to ring fence stock for Amazon, without receiving a guaranteed order
- 39% were told by Amazon that the internet retailer would use its own Print-on-Demand facilities to supply its own copies of a title if the publisher had reported the book as out of stock
- 20.5% said they had contracts with Amazon which specified no expiry date, enabling the internet retailer to change the terms whenever it liked
- 12.8% of publishers said that Amazon had discouraged customers from buying new and forthcoming titles by making it impossible for consumers to order or pre-order
- 39% of publishers said that Amazon had used, or threatened to use, tactics that the publisher disapproved of.

4.10 The BA, therefore, very much approves of the EC's decision to ask DG Competition to investigate Europe's online retail environment to check for distortions in competition, and to determine whether any of these perceptions and allegations have any substance to them.

4.11 The BA looks forward to contributing to the Inquiry and the publication of the final report in early 2017.

5 E-BOOK LENDING

Publishers are already enabling libraries to lend e-books under licence, and want to continue to do so. Unrestrained e-book lending has the potential to harm jobs and growth in bookselling whilst not necessarily improving footfall for libraries. Rights holders should individually introduce financial models which generate a fair balance between commercial interests (bookshops, publishers and authors) who want to be rewarded for writing, publishing and selling the book, and libraries who loan for free

5.1 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:

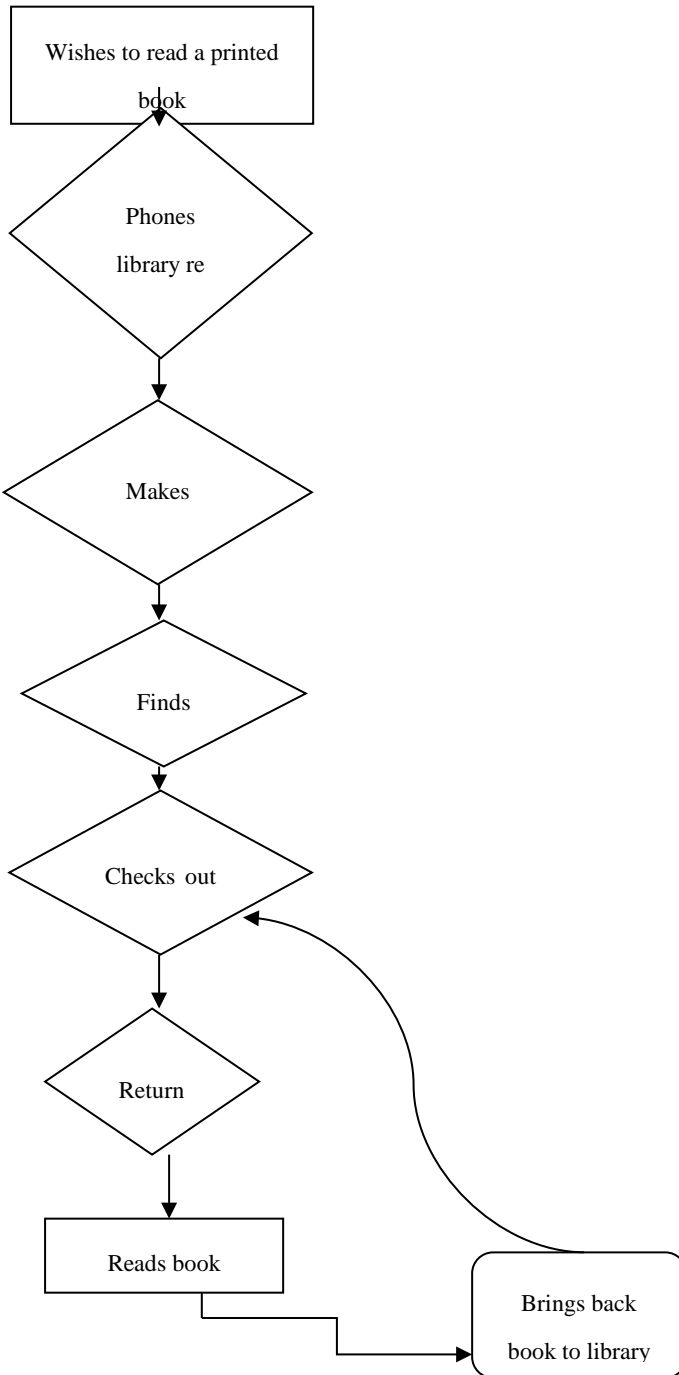
- Obtain the book/e-book from the publisher, or digital aggregator
- Promote the book in their premises or on a website
- Offer it for sale or loan
- Obtain customer information
- Log the sale/loan
- Sell or loan the book.

5.2 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 electronic file has the potential to be copied and loaned out many times.

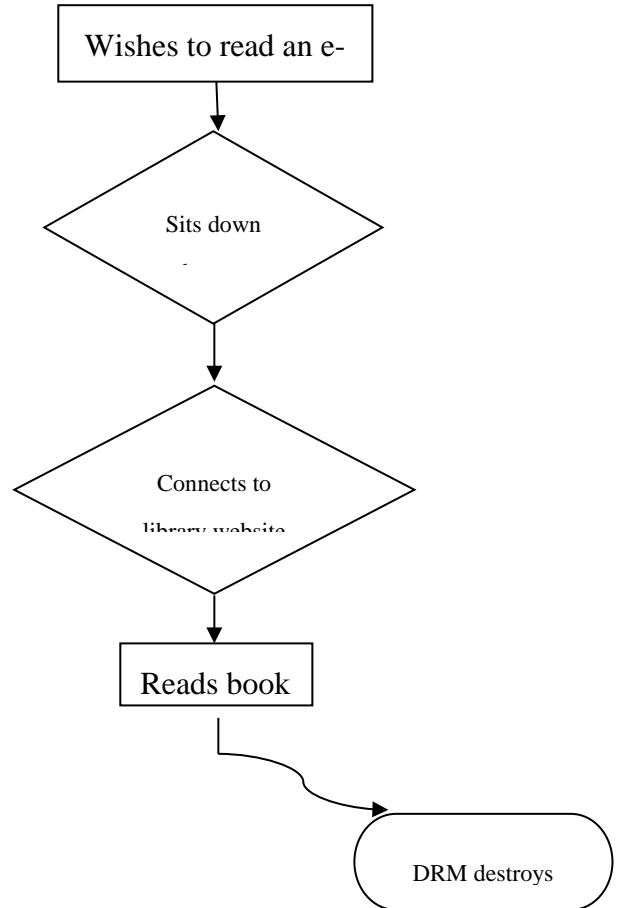
5.3 The difference between a bookshop and a library is that the commercial bookseller has to cover costs from the gross margin obtained from the sale, and the business has to stand on its own two feet economically, without financial support from the public sector. The library, on the other hand, is funded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

5.4 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 following flow chart:

Borrowing a printed book



Borrowing an e-book



5.5 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 seem to be, in fact, heavy book buyers.

5.6 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 Cox⁷ 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”.

5.7 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 denied⁸”.

5.8 But as Richard Mollet, Chief Executive of The Publishers Association, said at the House of Commons on 24th October⁹: “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.

5.9 Independent research commissioned from MTM jointly by The Publishers Association and The Society of Chief Librarians to review 12-month e-book lending trials in four library authorities and published in June 2015 has revealed findings that cause booksellers considerable disquiet.

5.10 The findings reveal in many instances that the sales of books in bookshops will be harmed by remote (and free) e-book lending offered by public libraries, and there are downsides too for the latter.

Potential Negative Impact on Physical Bookshops

- Remote e-book borrowers expected to buy fewer digital or print books and 45% of remote e-book borrowers reported that their purchases of new printed books had decreased
- 39% of borrowers said they were somewhat/much less unlikely to visit a bookshop on the high street if they were using the e-book remote borrowing service
- E-book borrowers are disinclined to go on and purchase something they have received for free - almost no-one bought books through the *I want to Buy* button on the library website (between 0.11% and 0.53% of total e-book downloads)
- When an e-book was not available to borrow, remote-borrowers were more likely to borrow another title than to purchase the same book; and
- The demographic of most e-borrowers is closely matched to the key target market of many bookshops – 68% of e-borrowers were over the age of 45 (whereas the same age group represents just 47% of library users generally).

Lack of Benefit to Libraries and their Customers

- Remote e-book lending wasn’t really bringing new users to the libraries – only 1% to 4%
- Remote e-book borrowers were actually less likely to visit their physical public library so that net library footfall could drop as a result of e-book lending services being introduced; and

⁷ President of the Society of Chief Librarians.

⁸ Maureen Sullivan’s letter on 24/09/12 to the American Publishers Association.

⁹ E-book Summit, called by Justin Tomlinson MP.

- Librarians might dedicate 25% of their book budget to e-books in the future (notwithstanding that e-lending accounts for 5% of loans), thus reducing the budget for physical books and exacerbating the potential negative impact on sales at bookshops.

5.11 The e-book borrowers are those consumers that a bookshop would normally target. So it would seem that convenience has been extended to working-aged people with high disposable incomes – the booksellers’ target market – and therefore makes them less likely to buy books.

5.12 Librarians and others want the rules that currently govern the loaning of print books to apply to e-books as well. In order for such an extension to be possible, it would first be necessary for an exception to be made to the Communication to the Public Right, as set out in the Copyright Directive, and which would be applicable to remote e-lending. Such an extension would subsequently require an amendment to primary legislation.

5.13 With print books, once a library has purchased a print book, it then has the right to loan out that book as many times as it wants without restrictions.

5.14 If these same exhaustion rights were extended to e-books, then a library would theoretically be able to loan out an e-book without any controls. That could greatly upset the current balance that exists between bookshops and libraries with e-book lending.

5.15 Furthermore, extending the exhaustion or rights to digital products would create a second-hand commercial market indistinguishable from the first-hand market. This is an extremely important point. Publishers bringing out new e-books found find their sales decimated. Digital copies are identical, can be numerous to a near infinite degree and remain pristine. Totally different to the attributes of a physical book being lent by a library.

5.16 Authors, publishers and booksellers have been very proactive in addressing the digital challenge and are keen to propose innovative solutions to allow European citizens to read what they want, when they want, and in the format they want.

5.17 The book sector is keen to contribute to the ambitious efforts of the European Commission to face the issues hindering the implementation of digital services, as announced in its recent Digital Single Market Communication.

5.18 The e-book market is a very nascent one, requiring huge investments by booksellers and publishers, and characterized by low margins and an uncertain return on investment.

5.19 New e-book subscription services, such as Kindle Unlimited, Oyster and Scribd, are not yet proven. Any legislative change should be undertaken in the face of clear, robust evidence of market failure.

5.20 The book sector is an eco-system a chain of interdependencies where all constituent parts – authors, publishers, booksellers and librarians – are dependent on each other, and where major and radical changes will always effect every member.

6 COPYRIGHT LAW

The extension of Copyright exceptions to e-lending would undermine the viability of the eco-system for the book. Any decision which would jeopardise the fragile ecosystem of the nascent e-book market would undermine the capacity of the book sector to keep on investing in innovative digital solutions, for the benefit of European readers and European Cultural diversity.

6.1 The BA believes that copyright is the cornerstone of the book industry. Without adequate protection to ensure creativity, investment and expertise are adequately rewarded, fewer authors would publish, and fewer books of quality would be available to consumers.

Authors, writers (and musicians and artists) must be paid for their creativity, or have a say over how their works are used.

6.2 Copyrighted works have an intrinsic value. A reliance on free models based solely on advertising income is not in the long term interests of creators or the public.

6.3 The public should have free online access to public domain and orphan works but not commercially available titles unless the rights holders have given their explicit permission.

6.4 Government and rights holders should collectively promote the value of copyright through a public education programme. [The BA very much hopes that the Creative Content UK programme will help to raise consumer awareness.]

6.5 Governments should devise and enforce effective laws to stamp out piracy of copyrighted works, involving all stakeholders including rights holders, booksellers, libraries, Internet Service Providers (ISPs) and all other intermediaries.

6.6 Copyright is not a restriction on the Digital Single Market; it is, in fact, playing a crucial role facilitating it. Copyright works to the equal benefit of start-ups and existing companies, be they SMEs or international corporations. It is equally advantageous for consumers, in ensuring they have access to a continuing supply of a wide-range of quality content, and for creators by ensuring they, and the companies which invest in and support them, are appropriately rewarded.

6.7 Europe must have a copyright framework which continues to support cultural diversity and the long-term interests of Europe's consumers. Any proposed changes should be subject to assessment and be evidence based.

6.8 Publishing and reading perpetuate European languages and cultural norms and stimulates other creative industries such as drama, television and film.

6.9 The EC seems to be pressing for pan-EU territorial rights, as opposed to publishers taking the view that in order to produce the best return for themselves and their authors' books should sometimes be restricted for commercial reasons from a particular edition being sold in specific member states.

6.10 UK publishers already license rights from authors on a pan-European basis and for a single language translation, the EU is treated as one territory.

6.11 Imposing EU territorial rights could:

- Lose the creators' ability to manage their works
- Mean that consumers will, in many cases, find the price of the content rises to that in the highest demand territory (or, conversely impact on local content providers who may well find themselves being undercut where content prices instead fall to the level of the lowest demand territory).

6.12 Thus the cultural diversity of Europe gets blanketed over by those players and platforms large enough to have the capacity to supply 28 markets simultaneously.

6.13 We believe that the European Commission should be concentrating its efforts on supporting existing copyrighted content through enforcement, as not all Member States have developed a robust response to the activities of pirates acting within their borders.

7 CROSS-BORDER TRANSACTIONS BETWEEN MEMBER STATES

Decision makers at European and national level should be aware that businesses, and these include sometimes booksellers and publishers, take the decision not to sell to consumers in other member states for sound commercial reasons (e.g. the market is not large enough to justify the investment required to sell across borders; or the Return on Investment and Profitability is too low) – and not because of any copyright restrictions

7.1 The EC has raised its concern over booksellers in one member state not being able to obtain e-books easily from another.

7.2 In many cases, there are good *commercial* reasons which influence a bookseller not to proceed with an order. These barriers include the following:

- The bookseller has to be convinced in the first place that there is a market in this other country, because systems, processes and procedures do have to be set up when accepting payment and sending books across EU frontiers
- If there is a market, does the bookseller want to be in it? Time and resources are limited in bookshops; might there be another area of activity which is more profitable?
- Has the overseas country a robust 3G or superfast broadband connection, to allow the quick downloading of files/data?
- Has the bookseller any experience of dealing in this market?
- Has the bookseller directly – or indirectly through a platform – the ability to handle commercial transactions with that member state?
- Has the bookseller staff who can communicate, if necessary, in the purchaser's language?
- Is the bookseller satisfied that the money requested will be paid?
- Will the costs be reasonable, leading to a reasonable return, especially if there are foreign exchange costs?
- Does the bookseller want to handle the complexities of dealing with VAT, especially when you have to find out:
 - The consumer's country of residence
 - Know the VAT rate for e-books applicable in that country
 - The MOSS arrangements, if you intend to deal with consumers in a number of different member states?
- Are there any laws in the overseas country which might have a bearing on the transaction?

7.3 It does seem sensible and pragmatic for the European Commission to allow sellers to rely on their national laws when selling across borders.

7.4 But the bookseller would still need to know if the publisher has imposed any individual territorial restrictions that stipulate that a specific title should not be sold by the bookseller in one or more member states.

8 INTEROPERABILITY

Proprietary systems should be ended. Interoperability should be introduced so that consumers can read any e-book on any device in order that e-content can be obtained from any supplier

8.1 The Kindle e-book ecosystem is a closed one. Kindle content is not transferable to non-Kindle apps. E-books bought via Kindle can only be bought from the Amazon store. Non Kindle/Amazon e-books cannot be read on a Kindle. Kindle e-books can be read on a variety of devices via the Kindle reading app, but the e-books still have to be bought from Amazon.

8.2 The reason that Amazon's e-books are not readable on every digital device is because Amazon chooses not to support the EPUB standard that was developed by the open

e-book forum, International Digital Publishing Forum (IDPF). EPUB 3 in particular was approved as an official IDPF standard in October 2011, and in March 2013, the International Publishing Association (IPA) recognised EPUB 3 as the preferred standard format and recommended that publishers should use this standard for e-books.

8.3 Amazon uses an e-book format called KF8. These files are generated by a proprietary converter which accepts EPUB files as input. However, Amazon introduced proprietary extensions and modifications making the two standards EPUB and KF8 incompatible. The Amazon world accepts EPUB files as input but does not allow users to export or transfer e-books to other ecosystems. That is why the Kindle readers, as well as the Kindle reading software apps, only display e-books bought in the Amazon e-book store, and Amazon's Kindle store delivers content only to Amazon reading devices and software. This makes Amazon's ecosystem closed as it allows no free exchange of books.

8.4 Besides incompatible formats, Amazon uses proprietary DRM measures to prohibit the free exchange of e-books between different ecosystems and to protect their own ecosystem. For interoperability, the different ecosystems must allow users to import and export e-books while still enforcing the DRM restrictions.

8.5 From a technical perspective this is possible; however, Amazon need only accept books that are sold outside its ecosystem and enforce usage restrictions that have been defined by a different ecosystem.

8.6 From the business perspective of Amazon, this is not attractive. Instead, Amazon uses incompatible DRM schemes to prohibit the free exchange of e-books and to bind users to its own ecosystem.

8.7 Non-interoperable e-book formats cause various problems for customers as the making available and reading of e-books becomes ecosystem-specific. For example, e-books that are provided by Amazon can only be read and used on Amazon devices (and reading apps); reading an e-book from Apple's iBookstore on Amazon's Kindle reader is impossible due to the non-interoperability of the formats.

8.8 The transfer of e-books from one ecosystem into another is not possible (or, at least, requires illegal measures) for customers. Therefore, buying books in different ecosystems and viewing them with the same reader becomes impossible. The existence of closed ecosystems in the e-book market also causes problems for local bookstores and other online retailers which deliver e-books using interoperable formats.

8.9 Customers with Amazon's Kindle readers can only read e-books bought from the Amazon Kindle Store. Therefore, not only is there no free choice of online bookseller, but it is impossible to buy e-books at local bookstores or other online retailers as the Kindle reader can only process e-books in Amazon's KF8 format, which cannot be provided by the local bookseller or other online retailers.

8.10 In addition, the typical argument that Amazon runs to defend its closed ecosystem—the argument that these technological restrictions are required to protect intellectual property and secure the proper running of the e-reader system—has been put into doubt.

8.11 The need for operating a closed ecosystem was questioned in a study¹⁰ by the European and International Booksellers Federation, where it was concluded that there “*are no technical or functional reasons for Amazon and Apple to fence off their e-book worlds using proprietary e-book formats.*”

8.12 This is the result of research conducted by Professor Dr. Christoph Bläsi and Professor Dr. Franz Rothlauf of Johannes Gutenberg University Mainz (JGU) and handed over to Neelie Kroes, then EU Commissioner for the Digital Agenda, in Brussels.

¹⁰ Previously submitted to Ros Lynch at the IPO on 29th May 2015

8.13 It found that “*the EPUB 3 standard alone would not guarantee the complete interoperability of e-books for consumers. The digital rights management measures of the different publishing worlds would have to be synchronized. The study holds that this would be feasible, given the corresponding will of the parties concerned.*”

8.14 The BA Survey found that 96% of UK bookseller respondents believed that e-books should be readable on any device. Further, 97% of bookseller respondents believed that consumers should be able to buy their e-books from any supplier regardless of the device they wish to read on. As explained above, there is no technical or functional reason why this should not be so.

9 VAT AND E-BOOKS

E-books should be taxed for VAT purposes in individual member states at the same rate as that currently applying to printed books

9.1 We support the proposal from the EC President, Jean-Claude Juncker, to reduce VAT rates for digital books and newspapers in 2016 to bring them in line with print media. VAT should be technology-neutral.

9.2 E-books should be taxed for VAT purposes in individual member states at the same rate as that currently applying to printed books

9.3 The BA also supports the establishment of a VAT threshold at European level.

10 CONSUMER PROTECTION RULES

The EC should propose legislation to the Parliament and the Council aiming at harmonising as many of the Consumer Protection Rules as possible; but if this proves to be too difficult, the Rules applicable in the home market should apply.

10.1 We accept that there are many different national regulations in the 28 member states that apply to the selling of goods and services. This produces complexity and uncertainty – a barrier from selling on line across borders.

10.2 We hope, therefore, that the Commission may either be able to harmonise a number of the key rules.

10.3 But if this proves to be too difficult, to stipulate that the rules that apply in the bookseller’s home market should apply.

10.4 This would help to increase consumer choice, without affecting in any way the level of protection consumers are used to when they buy products in their national market.

11 CORPORATION TAX

Profits should be taxed in the location where the value of sales – including digital content such as e-books - is generated

11.1 The BA very much welcomes the EC’s plan to make changes to corporate taxation so that profits are taxed in the location where the value of sales – including e-books - is generated.

11.2 This move should do much to help prevent multinational companies from channelling revenues generated in one country through another country which has lower levels of taxation, such as Luxembourg, and should reduce major instances of tax avoidance.

12 SUMMARY

12.1 We believe an improved trading environment in the bookselling sector can be developed by the EC to increase Jobs and Growth if our 9 main points are built into future policy strategies.

12.2 But the biggest issue UK booksellers face in the digital market is having to compete with a US internet giant that is accountable for an estimated 90% of all e-book sales.

12.3 The setting up of competition enquiries into Amazon and the e-commerce sector are particularly welcomed.

13 CONCLUSION

13.1 The Booksellers Association would be pleased to give additional information, if required.

13.2 The development of a Digital Market Strategy is a very important initiative, and the BA wants to play its part in helping to develop the Strategy so that its members operate in a fairer trading environment and have a greater opportunity to compete.

Tim Godfray
Chief Executive
Booksellers Association
2nd July 2015