

Press release
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FEP's reaction to the case C174|15 of the CJEU

The **Federation of European Publishers** takes note of the ruling of the European Court of Justice in the case C-174/15. In Europe, as generally elsewhere in the world, e-books are still a nascent market. They represent 18% of the revenues in the UK, by far the most developed market for e-books, some 4.5% of the trade book market in Germany, 5% in Italy, etc.

Publishers have been working with libraries to develop e-lending opportunities and with booksellers to ensure that a balanced market can be sustained¹.

Revenues from sales of physical books and e-books to the market are still the main way the sector is financed, and authors are remunerated. Early experiments of e-lending in the Nordic countries (Denmark and Sweden) and in the Netherlands² have shown that different e-lending models can have a significant impact on the commercial market. Very simply, it is difficult to compete in a market in which virtually the identical product is available for free.

E-books offered for free by libraries might have a particularly heavy impact on smaller language areas, such as Lithuania, Latvia, Slovenia, Romania and others where the national book markets are limited due to small population and multilingual societies, and where currently, the e-book market doesn't even constitute 1% of the book market.

Hence, the decision of the CJEU comes as a shock for the book publishing community. Today's assessment runs counter to the letter and spirit of the Public Lending Right Directive and the Infosoc Directive. Both Directives prescribe the need to distinguish clearly between physical and electronic goods and services and to treat them differently.

The reasons for this distinction are evident. "Lending" an e-book is very different from lending a printed book since digital "lending" in fact means copying. One digital copy can for example potentially be "borrowed" by an indefinite number of users, whereas a physical copy can only be borrowed and read by one person at a time, and is subject to a degree of deterioration.

The experience of borrowing an e-book resembles the experience of buying an e-book to a much larger extent than is the case with printed books. It is the role and responsibility of publishers to develop e-lending models in collaboration with libraries that ensure that the incentive for consumers to buy e-books persists, in order for European publishers and retailers to remain in a position to invest in new

¹ For print books, it is estimated that the turnover of publishers of trade books (those lent in public libraries) result for 4% from the acquisitions of public institutions and 96% from individual sales to consumers/readers.

² The latest statistics pointed out that digital e-lending schemes (mainly via the Royal Library) have grown significantly compared to sales: <http://www.cb.nl/wp-content/uploads/2016/10/E-bookbarometer-Q3-2016-NL.pdf>



innovative e-book platforms and third companies' solutions for the distribution/making available of e-books, to the benefit of authors and consumers. Booksellers are playing a key role in the promotion of cultural diversity.

Certain conditions are needed to ensure that the lending experience is replicated as closely as possible. The book's safe return needs to be assured, as does the important condition that only one copy acquired by the library may be "lent" out at any one time. Our initial assessment of the CJEU judgement is that these conditions are fundamental to this case. Additionally, technical measures are required to facilitate remote access and prevent any copying of the borrowed book, to safeguard and manage the digital rights of publishers and authors.

FEP will be working with the European institutions to see how we can ensure that these important conditions are adhered to in order to ensure that the negative impact of this decision is not exacerbated, jeopardising the European publishers' capacity to continue to contribute to publishing diverse and high-quality books.

The **International Publishers Association**, speaking on behalf of 64 publishers associations in 59 countries, fully supports the FEP's position in the e-lending judgement. All efforts must be made to ensure adequate technological protection measures are in place to safeguard publishers against the potential harm of an eroded e-book market due to unjustified e-lending practices. The IPA continues to be concerned about EU precedents and their potential impacts on international copyright law."

FEP represents 28 national associations of publishers of books and learned journals in the European Union and the Economic Area. It is therefore the voice of European publishers, a leading cultural industry with a turnover of 22 to 24 billion euros and a production of half a million new books per year.

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