

## The Thinkpiece ‘Libraries, eLending, and the Future of Public Access to Digital Content’

In May 2012 IFLA released a [Background Paper on eLending](#) which discussed the situation facing public libraries seeking to lend eBooks to their users. The paper discussed the challenges facing libraries as a result of an increase in access to eReading devices among library users and a corresponding enthusiasm for access to digital reading content. In particular it highlighted a damaging lack of access to popular eBook titles due to publisher restrictions on their license or sale to libraries and cautioned of broad negative societal implications if digital content is withheld from library collections.

The paper recognised that the situation was still emerging, with growth occurring predominantly in North American, European and some Asian markets, likely followed in other regions of the world. It also noted that more research needed to take place with regards to core library principles in the context of digital library collections, especially for downloadable trade eBooks.

In October 2012 IFLA therefore commissioned an independent consultant, [Civic Agenda](#), to prepare a ‘thinkpiece’ to inform discussion at a [meeting of experts](#) from the library and publishing sector. This meeting took place over three days at IFLA Headquarters in The Hague in November 2012. The thinkpiece was the starting point for discussions on desirable characteristics for public access models for library digital content, library user expectations’ regarding eBooks, and the relationship between libraries and publishers in the eBook age. During the meeting participants focused on the role of copyright, licensing and legislation in access to digital content like eBooks, as well as reviewing advocacy campaigns and the potential for IFLA as an advocate for library access to eBooks.

The [IFLA Principles for Library eLending](#) are the outcome of the meeting, and the contribution of the experts in The Hague was crucial to their drafting. The ‘thinkpiece’ was commissioned to spark debate and its content, along with a detailed appendix assessing the characteristics of existing models of eBook provision, provided useful background material ahead of the meeting and a reference point during discussion . The ‘thinkpiece’ is a standalone document, and is not IFLA policy. It is made available here so that colleagues can reflect on its content and engage in discussions on the subject of eBooks in the context that best suits them.

# Libraries, e-Lending and the Future of Public Access to Digital Content

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# Libraries, e-Lending and the Future of Public Access to Digital Content

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*“The only really necessary people in the publishing process now are the writer and reader. Everyone who stands between those two has both risk and opportunity.”<sup>1</sup>*

Amazon Executive, Russell Grandinetti in an interview with the New York Times, November 2011

## 1 Introduction

Owing to the maturity of the e-book market in Europe and North America, this paper necessarily depends upon numerous examples which are drawn from those territories. In a document of this length it was judged that a focus on the most topical and recent examples was more strategically viable than attempting to cover the full spectrum of all international activity. In addition, for the same reasons, this paper concentrates on access to digital content within the context of trade publishing as opposed to scholarly publishing where digital distribution through libraries is the norm.

### 1.1 A brief history of public access

For the majority of human history access to information, knowledge and the products of culture and learning have been the unique preserve of a select few. This of course is partly explained by the fact that, until the expansion of public education programmes and the arrival of mass popular literacy over the last two centuries in Europe and America, only a small portion of society learned how to read and write. In addition, until the invention of the Gutenberg printing press in the last half of the 15<sup>th</sup> century, manuscripts and books were individually handwritten and bound which made them both expensive and rare commodities – out of reach to all but the highest, wealthiest and most educated echelons of society.

In the aftermath of moveable mechanised type printing book production in Europe increased to 20 million copies by the end of the 15<sup>th</sup> century to nearly 1 billion copies at the close of the 18<sup>th</sup> century.<sup>2</sup> In conjunction with the arrival of industrial steam powered printing and sharp increases in public literacy, these developments effectively ushered in a new era of mass communication and dissolved the monopoly of the literate elite in favour of a newly educated and empowered middle class. This democratisation of knowledge and information also radically increased the profitability of authorship which eventually fostered the development of copyright regimes to protect the commercial incentives of content creators.

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<sup>1</sup> <http://www.nytimes.com/2011/10/17/technology/amazon-rewrites-the-rules-of-book-publishing.html>

<sup>2</sup> Buringh, Eltjo; van Zanden, Jan Luiten (2009), "Charting the "Rise of the West": Manuscripts and Printed Books in Europe, A Long-Term Perspective from the Sixth through Eighteenth Centuries", *The Journal of Economic History* 69 (2): 409–445

These advances in book production and distribution, combined with rapid population growth, the industrial revolution and an educated middle class laid the foundations for the arrival of the public library in the late 19<sup>th</sup> century as a publically funded institution for the provision of universal public access to the products of human culture and learning. The subsequent advent of mass produced low cost paperback books in the mid-20<sup>th</sup> century further contributed to both the rising profitability of book writing and production, as well as widening access to books beyond the leather-bound volumes on middle class bookshelves by thrusting them into the hands of the working class. Paperbacks made books more affordable for consumers, whilst allowing library budgets to stretch even further in acquiring a broader range of content to lend to those without sufficient funds. In the last two decades of the 20<sup>th</sup> century, library collections expanded further to accommodate additional content formats including video tapes, CD's and DVDs.

## **1.2 The dawn of digital**

The arrival of the internet age and the exponential proliferation of digital content have unleashed a new and exciting phase in the democratisation of information, ideas, and knowledge – arguably at least as potent and transformative as any other event in recorded history. However, despite the myriad of innovative social and economic benefits attached to widespread digital distribution and access to information and content, there are disturbing signs that in the realm of free public access the clock is potentially going into reverse in certain areas. Across the fields of music, film and publishing, rights holders are struggling to adapt antiquated analogue business models whilst simultaneously rushing to stem the rising tide of online piracy and illegal distribution of copyrighted digital content facilitated by new technology and networks.

These perceived dangers have generated a broad range of different commercial responses. Digital access licences have generally replaced digital content ownership and licencing terms and conditions increasingly transcend copyright exceptions and limitations. In addition while some publishers/rights holder simply refuse to offer digital content to libraries, others have adopted a wide range of licencing restrictions which render previous library lending models and acquisition/collection development policies difficult or impossible to implement.

This creates a serious challenge. Content creators and rights holders need and deserve viable business models to distribute and monetize their content – but this should not and need not be at the expense of the wholesale erosion of the library model for free public access to information, knowledge and culture which has served, enriched and empowered communities for the last two hundred years. If large portions of publically desirable digital content become ring fenced behind digital pay-walls, accessible only to those with the latest devices, broadband access, credit cards and a certain measure of financial solvency – the new digital environment may begin to acquire a certain pre-Gutenberg flavour.

## **1.3 Values and principles of librarianship in a digital world**

This in turn begs the question: what do we lose if the traditional library role disappears? What principles and values of public service and access will be relinquished as a consequence? To answer

this question it is helpful to reflect upon Gorman's eight principles of librarianship set out in his 2000 publication "*Our Enduring Values: Librarianship in the 21<sup>st</sup> Century*"<sup>3</sup>:

1. **Stewardship** – playing a role in the preservation of the human record for future generations
2. **Service** – the duty to serve the needs of individuals, communities and societies
3. **Intellectual Freedom** – to protect and uphold the free expression of thought
4. **Privacy** – the freedom to access whatever materials an individual wishes without the knowledge or interference of others
5. **Rationalism** – an underpinning of the enlightenment tradition of rational thought
6. **Commitment to literacy and learning** – both in the support of reading as an essential skill for lifelong learning, and in support of the expanded understanding that accompanies "true literacy"
7. **Equity of access** – bridging the digital divide and providing equity of access to compensate for societal inequality
8. **Democracy** – ensuring a well-informed electorate is essential to promoting education and maintaining an effective democracy

All eight principles are useful in understanding the traditional role and value of libraries, but in the context of digital content seven of these principles have a particularly powerful resonance:

- The duty of librarians to serve the needs of individuals, communities and societies (**Service**); with the commitment to mitigate both the digital divide and social inequality (**Equity of access**);
- through the provision of free community access to knowledge, information and cultural resources without the knowledge or interference of others (**Privacy**) is pivotal to maintaining the integrity and value of the library public access model within the new digital arena.

Furthermore:

- the library mission to engage and socialise each new generation with an understanding and appreciation of the value of the written word, reading and learning (**Commitment to literacy and learning**);
- in conjunction with the importance of delivering a well-informed and educated electorate (**Democracy**);
- Is essential to preserving independence of thought (**intellectual freedom**) alongside freedom of public access to the broadest possible range of cultural, recreational or educational digital content.

Finally, although **Stewardship** primarily refers to the preservation of cultural content for future generations, which is primarily the work of academic or national libraries, this principle can perhaps be extended to encompass the need for libraries to non-commercially reproduce/format shift digital

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<sup>3</sup> Gorman, M. (2000). "*Our Enduring Values: Librarianship in the 21st Century*". ALA Editions

content in order to preserve access for library users in the event of damage to the original files, withdrawal of the title by the rights holder, or removal from a digital distribution data base.

The problem is that Public libraries are painfully vulnerable in the new intellectual property environment. In the period from the Eighteenth to the Twentieth Century, intellectual property laws balanced a concept of the public good (exposing knowledge to the widest possible body of users) with protection for rewards to content creators (authors) and, increasingly, their representatives (rights holders). Libraries benefitted from privileges that were in fact incidental to the main thrust of the legal regime. The shift from a book (first sale only) copyright environment to a contract/license for digital documents environment has effectively opened a debate that has largely been dormant for 300 years. The question emerges - if rights holders are already practising an equivalent of lending digital content direct to users under rigorously defined licensing conditions (for a fee), why should they tolerate libraries intervening to lend free (with public subsidy) to what seem like the same users?

The main substance of this report will be the developing models of access that are being worked out by with rights holding organisations and online vendors, looked at in terms of enduring library values. With that in mind it is worth trying to dispel illusions based on the quasi-comfortable relationships between the book trades/knowledge industries and libraries that have existed until recently. If the logical evolution of current business practices embraced by knowledge entrepreneurs with products to sell points inexorably towards cutting libraries out of their models, they are unlikely to hesitate to follow this course because of any considerations of sentiment.

Indeed it should be remembered that there is a strain of hostility partially directed towards libraries that emerges from time to time, as at the Westminster Media Forum on 24th May 2012 from the Chief Executive of the Publishers Association. He spoke of a need to “ensure the sustained right of authors and writers to earn a living from their work and not be told by those who wish to take it without paying that it is their fundamental right to do so” and accused opponents of having “the temerity to appropriate the language of freedom of expression as a cloak for their tawdry theft”. (Williams, 2012) At the very least this is a reality check for anyone optimistic about a future for libraries in which their established mission to lend printed books can be continued through the lending of digital content in some comparable manner.

## **2 Exploration of desirable characteristics for public access models for library digital content**

The current models which provide access to digital content to libraries have for the most part been designed to support, safeguard and reflect the commercial interests of publishers, online retailers and rights holders. Whilst this approach is perhaps an understandable response to concerns surrounding the transition from the predictable analogue world of physical content into an unpredictable and rapidly evolving market for digital content – it could be argued that we have now reached a point where the public interest should also be factored into the equation.

The starting point for this paper is to consider what a public access model for digital content might look like if it was designed from the point of view of upholding and maintaining the values of public

service and universal access to information, knowledge and cultural works that libraries were able to satisfy within the context of analogue content (physical books, magazines and journals) as set out in Gorman's eight principles of librarianship. On that basis, this section explores the kind of characteristics a suitable public access model for library digital content might have.

## 2.1 Negotiable access to all digital content:

*Library Principles served: Service, Intellectual Freedom, Equity of Access*

Note that this does not mean "free access" or "unrestricted access". It means that the access model should not operate in such a way that excludes libraries from offering certain content by design or default. We should remember that in the old world of physical books all libraries still had to operate within certain budget constraints – so even if libraries had the opportunity in theory to purchase all titles does not mean that they did. Similarly, in the context of digital content, offering libraries the opportunity to purchase all e-books would not mean that every library in the world would stock the entire selection of electronically published material.

What it does mean however is that all digital content should be made available for libraries to purchase within a pricing structure that is neither punitive nor prohibitive, but simply bears appropriate relevance to the variances in public demand for that content (and that this link is maintained over the lifecycle of this content). For example, whilst this model would prevent publishers embargoing the sale of front list titles to libraries – it would not prevent them charging a premium price for libraries during that initial spike of consumer popularity which typically generates the largest number of sales. As that initial burst of profitability recedes, the purchase price for libraries should be adjusted accordingly.

Similarly, for backlist titles a discounted price should be offered for library purchase which accurately reflects the current consumer value of that content. A further discount should be offered for older titles many of which may be out of print or of minimal profitability.

## 2.2 Libraries determine their own acquisitions policy

*Library principles served: Service, Intellectual Freedom, Equity of Access*

This pricing structure should allow libraries to select an appropriate portfolio of digital content to offer to library users. In the past no library offered infinite space for the accommodation of all physical books. In the present – while the amount of digital content a library could provide to its users is no longer subject to such physical limits – library budgets remain decidedly finite in scope. In the past libraries would always have to weigh up whether to invest in multiple copies of the latest salacious page-turner/high octane spy novel (which might rapidly decline in popularity within a relatively short space of time) or to finance the purchase of the latest and most authoritative edition on Mesopotamian architecture (which is likely to see moderate, if sustained usage, over a number of years by enthusiasts).

The point here is that in determining whether this composite of publically available digital content includes front list crime thrillers, backlist cooking manuals or recently compiled compendiums of romantic poetry should be the decision of libraries – not third parties, distributors, online retailers or

publishers. Libraries will not have the financial resources (under any access model) to purchase everything – but they alone should decide what they do purchase in the support of their mandate to provide public access to information, knowledge and cultural resources.

### 2.3 Ownership and enduring rights at a fair price

*Library principles served: Service, Equity of Access, Stewardship*

It is clear that an access model for digital content which offers the option of affordable ownership/enduring rights to content – as opposed to a kaleidoscope of different licencing regimes with varying accessibility restrictions in terms of platform shifting, number of simultaneous users and number of loans – would support libraries in providing a consistent and predictable service to their patrons. Indeed one of the potential downsides in connection with licenced (as opposed to owned) digital content was illustrated by recent media reports<sup>4</sup> of a Norwegian IT consultant, Linn Nygaard, who discovered that her Kindle account had been cancelled and all her e-books deleted. It appears this occurred because she bought her Kindle while visiting the UK and then attempted to use it to purchase Amazon e-books when she returned home to Norway. Happily, within 24 hours Amazon reinstated Ms Nygaard’s Kindle account along with all purchased content, but the case certainly serves to emphasise that licences can potentially be revoked at the licensor’s discretion – unlike content which is actually owned.

It is therefore important to note the distinction (and the significant potential for confusion) between purchasing digital content and purchasing a licence to access digital content. The Amazon Kindle Store Terms of Use are helpfully precise in this regard:

“Kindle Content is licensed, not sold, to you by the Content Provider. The Content Provider may include additional terms for use within its Kindle Content. Those terms will also apply, but this Agreement will govern in the event of a conflict.”<sup>5</sup>

That said - it is perhaps less clear to consumers when they click on the “buy now” button on a commercial website that this really means “buy licence for restricted personal access”. This confusion extends to the approach adopted by some publishers<sup>6</sup> when purchasing options described as offering ownership of digital content to libraries are in reality more akin to licencing agreements. Indeed, just because some licencing arrangements appear to offer enduring rights to access content, these do not necessarily constitute ownership in the traditional sense, given that those licences could theoretically be revoked and will usually include restrictions on non-commercial reproduction and format shifting.

Finally, for ownership or enduring rights options to be attractive to libraries they would need to be priced at a level which bears relevance to the value of individual titles, whilst not being so prohibitively expensive as to limit the capacity of libraries to fund public access to a broad range of

<sup>4</sup> <http://www.digitaljournal.com/article/335484>

<sup>5</sup>

[http://www.amazon.com/gp/help/customer/display.html/ref=hp\\_200699130\\_storeTOU1?nodeId=201014950](http://www.amazon.com/gp/help/customer/display.html/ref=hp_200699130_storeTOU1?nodeId=201014950)

<sup>6</sup> <http://www.techdirt.com/articles/20121023/23465120806/turns-out-when-random-house-said-libraries-own-their-ebooks-it-meant-no-they-dont-own-them.shtml>

digital content. What constitutes real “ownership” also has implications in connection with the next characteristic below.

## 2.4 Licences and terms of access should not override exceptions and limitations to copyright

*Library principles served: Service, Equity of Access, Stewardship*

In the past when a library or individual purchased a physical book that transaction effectively severed the link with the rights holder or publisher of that content. This “first-sale doctrine” or “exhaustion” principle meant that rights holder forfeited the right to control subsequent lending or re-sale of a book.<sup>7</sup> Therefore, once money had changed hands, the new owner was free to re-sell the book, set it on fire, or scribble over the author’s portrait picture on the back sleeve with green felt tip. Even reproducing sections of the book (as long as that didn’t involve bulk photocopying and mass distribution of the contents) was acceptable according to copyright law in most countries based on “fair use” or “fair dealing” provisions.

In the context of digital content the “first-sale doctrine” no longer applies. Instead users acquire a licence to access that content which is no longer subject to exceptions or limitations under copyright. Indeed rights holders are now able to adjust and tailor their digital content licences with little concern for the underlying principles of copyright law, an issue highlighted by Ian Hargreaves in his 2011 report for the UK Government “*Digital Opportunity: A Review of Intellectual Property and Growth*”:

“A recent study analysed 100 contracts offered to the British Library and found numerous examples of the diversity of contracts and licences, as well as demonstrating that contracts and licences often override the exceptions and limitations allowed in copyright law. This imbalance must be addressed, as licences should never substitute for legislation on core matters such as exceptions and limitations. The licensing framework now underpins much of the content online and contracts rather than copyright dictate how content can be used. Legislation must be amended to ensure that contracts are prevented from overriding copyright exceptions.”<sup>8</sup>

Under the old system of exceptions and limitations to copyright (where physical books were a product not a service) libraries were lawfully permitted to reproduce and shift content to different formats for private, research or preservation purposes. This is no longer the case in the context of digital content where the terms of the licence agreement are king. This presents a number of issues, particularly in terms of what constitutes real ownership or enduring rights. If a publisher suddenly withdraws certain titles from a library distributor’s data base – or that distributor files for bankruptcy and ceases trading – without the right to make copies for preservation purposes, what level of ownership or enduring rights do libraries actually have?

## 2.5 Standardised, flexible, affordable and dependable licences

*Library principles served: Service, Equity of Access, Stewardship*

<sup>7</sup> <http://db.dk/files/dbf.dk/E%E2%80%90publishing%20and%20the%20challenge%20for%20libraries%20-%20discussion%20paper.pdf>

<sup>8</sup> <http://www.ipo.gov.uk/ipreview-finalreport.pdf> page 59

The previous two sections emphasise the downsides associated with the licence model in terms of providing public access to digital content. However, it is arguable that licences could present a number of benefits for libraries if the system was implemented with a number of significant alterations:

- If negotiable access to all titles (either within aggregated databases or on a title by title basis) was provided by publishers one of the key conflicts between licence restrictions and the provision of public access to digital content would be resolved
- If copyright exceptions and limitations were recognised within licences to allow non-commercial reproduction and format shifting for preservation purposes this would make those licences more dependable as libraries could keep back-up copies of all licenced digital content. This would ensure that libraries could continue to provide consistent access for library users to that licenced content even if titles were subsequently withdrawn by the publisher or a key distributor/aggregator ceased trading suddenly.
- If restrictions on simultaneous use, number of loans or licence duration were used to offer libraries a range of lower priced licencing options suitable to their size/budget.
- If these licencing options were harmonised into a predictable menu of standardised and transparent alternatives which could enable libraries to make rational acquisition choices.
- If licencing options included a one-off discounted “micro sale”<sup>9</sup> or temporary rental feature for specific titles requested by library patrons, this system could potentially replace the existing Inter-Library Loan arrangements for physical books.

Therefore, in the absence of (or perhaps in combination with) an ownership/enduring rights option, and in conjunction with licences recognising all or certain copyright exceptions and limitations (e.g. non-commercial reproduction and format migration) a licenced access model could also deliver benefits to libraries if implemented differently.

## 2.6 E-Lending model upholds the privacy of library users

*Library principles served: Service, Intellectual Freedom, Privacy*

An essential part of the process towards providing a trusted, reliable and integrated experience for users accessing digital content through libraries requires that the library remains the primary custodian of those interactions – right up until the point where a library user clicks on the “buy now” or “download now” button. The library OPAC or a navigation layer coordinated across a network of libraries should be able to deliver catalogue searches which seamlessly encompass that library’s physical collection, as well as the e-books licenced to that library via multiple distributors – WITHOUT leaving the library’s online platform. Once a search of a library’s licenced catalogue has failed to deliver the desired result, the system could shift the user to an internet based title availability listing. Ideally this second internet based search would allow users to register interest in

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<sup>9</sup> <http://lj.libraryjournal.com/2012/10/opinion/peer-to-peer-review/to-share-or-not-to-share-peer-to-peer-review/>

e-books which are not currently licenced to that library which could help librarians periodically to adjust the composition of their licenced content to more accurately correspond to user demand.

Anonymised data on user searches could potentially be passed on to third party distributors, but commercial entities should not gather personal data via embedded engines, links or forms within the library online ecosystem. This approach is essential to safeguarding the library's traditional role of providing public access to information, knowledge and culture without infringing upon the privacy of library users. This does not mean that this same library ecosystem cannot include links to purchase e-books from distributors when the number of licenced library loans or simultaneous users has been exceeded – along with features to browse the back catalogues of authors or titles for which the library does not currently hold a licence which supports lending – but the demarcation between the online library environment and the commercial vendor website needs to be clear and unambiguous.

Libraries should not seek to actively discourage library users from “stepping through the looking glass” into commercial online platforms which offer them paid access to additional digital content – but library users need to be aware that by doing so they willingly to choose to share any personal data or searches they conduct with those commercial entities – in contrast to their activity within the library online platform. The decision to do so should be a conscious choice by the library user, rather than an unconscious consequence of ambiguously bundled hybrid platforms.

## **2.7 Interoperability across platforms, applications, devices and catalogues**

*Library principles served: Service, Equity of Access*

Of course, to support this level of integration (or more accurately - demarcated symbiosis) between distributor/publisher/retail catalogues and integrated library systems and online public access catalogues requires unprecedented levels of interoperability. It also involves ensuring interoperability across multiple distribution platforms, applications and e-reader devices. Particularly in the device context, manufacturers should seek to compete with each other on the basis of rival device specification (size of screen, additional features, processing speed, memory size, intuitive user interface...etc) rather than seeking to extract rent from consumers trapped in electronic walled gardens based on proprietary content formats. Digital content made available to libraries should be accessible to their users regardless of the specific device the library/user have chosen to invest in.

## **3 Survey of range of current models and the resonances/conflicts with library principles and values**

This section is based on a matrix which can be found as an appendix to this paper. The matrix seeks to evaluate a range of different digital content access models by category against a series of benchmarks. These benchmarks have been designed to reflect what core library principles and values might mean in practical terms within the context of access to digital content with a view to upholding the traditional role of libraries as providers of public access to information, knowledge and cultural resources. They are broadly aligned with the key characteristics for suitable public access to library digital content explored in the previous section.

To facilitate comparison a traffic light system has been applied to the matrix to allow users to acquire a quick visual snapshot of how each model fares against the benchmarks without having to read all the specific content within each cell:

- **green** dot signifies support for public access/library principles.
- **amber** dot signifies elements of support or partial support for public access/library principles.
- **red** dot signifies a lack of support and/or conflict with public access and library principles.

### 3.1 Traditional Big Six Publishers (Big Five as of 2013?)

**Note:** on the 29<sup>th</sup> of October Bertelsmann and Pearson, the respective owners of Random House and Penguin announced plans to merge their publishing arms in 2013.<sup>10</sup> However, given that the merger has yet to be implemented, the current snapshot of e-lending models and pilot programmes within the Matrix Appendix remains accurate at the time of writing this paper. What is less clear is how the newly consolidated Random House/Penguin operation will amalgamate their existing e-lending operations.

This category assesses the current landscape in terms of the initiatives being undertaken by the 'Big Six Publishers' which contribute toward the goal of increased public access to e-books. With publishers wary of the impact that e-lending can have on their commercial interests, this category enables comparisons to be made between publishers as to the extent of their involvement within public access activities which supports libraries in their role as facilitators of inclusive community access to information, knowledge and cultural resources.

In terms of findings, the most prominent issues to arise within this category relate not only to the varying level of engagement that the Big Six publishers adopt in relation to public access initiatives in general, but also how price and licensing agreements are used as defensive mechanisms, forcing libraries into paying a premium in order to lend e-books. It should be noted that many of these public access initiatives are currently confined to libraries in the United States, with Penguin's e-lending pilot confined to only two urban public libraries within a single metropolitan area.

The only publisher to systematically refuse to engage with public access initiatives is Simon and Schuster. All of the other publishers have sought to provide libraries with an avenue through which content can be acquired, although it must be added that each have significant caveats. For example, within the last year Hachette and Random House have significantly hiked the prices that libraries eventually have to pay for e-books, in some cases by as much as 300%.<sup>11</sup> Spontaneous price hikes must also be situated within a broader concern surrounding the permanency of the public access initiatives which are currently in operation. Alongside the substantial price rises, Hachette currently only run a pilot e-lending project, and the latter is also true of Penguin and Macmillan. Libraries are therefore left in a position of perennial uncertainty in relation to the acquisition of e-books. Sudden price increases place strain on library budgets, whilst the fact that many of these projects are pilots

<sup>10</sup> <http://www.guardian.co.uk/business/2012/oct/29/penguin-random-house-merger-bertelsmann>

<sup>11</sup> <http://www.thedigitalshift.com/2012/03/ebooks/librarians-feel-sticker-shock-as-price-for-random-house-ebooks-rise-as-much-as-300-percent/>

creates uncertainty as to whether continued access to a publisher's e-books will remain available beyond the short-term.

Penguin and Harper Collins have taken alternative approaches, revolving around licensing arrangements, to mitigate the supposed risk associated with e-lending. Penguin currently operates a six month embargo system on front list titles being made available to in the two American libraries<sup>12</sup> participating in its pilot, whilst Harper Collins has imposed a twenty six loan limit on all of its e-book titles, after which libraries will have to pay to renew their licenses for the titles in question. Both of these projects pose risks to the public library vision, although this time the focus is not exclusively around the issue of price. An embargo system effectively destroys the conceptual understanding of the library as an institution capable of providing the local community with access to content of it, or its users choosing, whilst a predetermined loaning arrangement ensures that the library never actually owns a copy of an e-book and is therefore continually at the mercy of publishers who could at any stage remove an e-book from circulation.

From the perspective of the matrix, full availability of all titles earned a "green" classification, whereas the operation of an embargo model secured an "amber" classification – in recognition that the opportunity for late acquisition is clearly superior to no opportunity for acquisition.

### 3.2 Online retailers and publishers

Online retailers are defined as organisations which sell content through a specific channel to paying customers. The specific category has been inserted within the Matrix in order to identify whether any of the largest online retailers, in conjunction with their sales activities, actually support the principle of public access to information when they act as publishers.

The evidence overwhelmingly indicates that the online retailers place little to no focus on making the titles they publish available, or indeed partially available, in support of e-lending. In September 2011 Amazon announced an agreement with Overdrive in order to ensure that public libraries utilising the Overdrive system in the USA can offer patrons the opportunity to download content to Kindle devices. However, from the outset there have been reports that not all library e-books purchased from Overdrive were supported by this initiative.<sup>13</sup> Other online retailers and device manufacturers support the use of library e-books on their devices, and sell content on a user purchase basis only.

Whilst the lack of engagement with public access initiatives is a worrying although hardly surprising characteristic of this particular category, there are a number of other underlying barriers – principally concerning licensing - that serve to further separate online retailers from the goals of public libraries. A purchase from an online retailer entitles the user to one licence for the particular title in question; it is not permitted to then subsequently lend that title out to any other individual. Combined with the issue of pricing, determined by the relationship an online retailer has with individual publishers, there are few positives to be taken from this category in relation to support for public access principles.

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<sup>12</sup> New York Public Library and Brooklyn Public Library

<sup>13</sup> [http://www.libraryjournal.com/lj/home/892118-264/amazon\\_and\\_overdrive\\_roll\\_out.html.csp](http://www.libraryjournal.com/lj/home/892118-264/amazon_and_overdrive_roll_out.html.csp)

### 3.3 Distributors/aggregators

Distributors seek to make large platforms containing popular online content available for libraries to purchase subscriptions toward. Core features associated with this category include libraries gaining access to online portals, which in some cases can be integrated into existing library lending systems, the ability to develop catalogues through patron driven acquisition models, as well as platforms catering for a variety of e-lending options.

The evidence presented in the matrix identifies the fact that whilst distributors may legitimately be seeking to make their entire catalogue of content available to public libraries, those organisations, including Overdrive and 3M, who manage platforms which seek to provide access to the latest content, can only do so based on their ability to maintain positive relationships with individual publishers. The price libraries pay for content through channels such as Overdrive is always subject to a degree of uncertainty, and no clearer is this evident than in relation to Random House's decision to increase the prices of all the content it makes available to public libraries regardless of distribution channel. It is noticeable that those platforms which sought to make specialised content available to public libraries generally fared better in terms of public access principles. Without the controlling influence of publishers, libraries, through systems such as MyiLibrary and Ebrary, can dictate the content they wish to make available to their patrons. However it should be noted that the reason publishers are not an issue for both of these systems relates to the fact they do not cater to general audiences but instead specialise in academic content only.

Distinctions also emerge between the different platforms based on the flexibility of e-loaning options. With the exception of EBSCO, those platforms catering for more specific content have the most generous loaning frameworks, including options for simultaneous loaning and varied lending periods.

In terms of supporting a public access vision there are positives to take from the Distributor category. Players within this category are making an active effort to provide public institutions with access, and indeed loaning flexibility, to the largest and most expansive collections as possible, consequently they should not be criticised for failing to provide libraries with price security, as in the case of Overdrive, because the root cause of that price rise stems with publishers. Indeed the general ability of libraries to purchase content based on smart data, control the content available and integrate platforms within existing library systems should all be viewed as generally positive features from the perspective of public access.

### 3.4 Self-publishing

The self-publishing category relates to activities undertaken by authors to distribute their work individually, therefore neglecting the need for a traditional publisher.

Both of the identified case studies within this category clearly exhibited positive characteristics in support of public access principles. Pottermore has indicated its willingness to work alongside Overdrive to ensure that libraries using the Overdrive platform can purchase access to the entire Harry Potter e-book series. Whilst the issue of pricing remains an issue from the perspective of libraries, Pottermore, like the traditional publishers remains free to alter the price of its products when it wishes, it is encouraging to note that the organisation is seeking to make arrangements for

the hugely popular Harry Potter titles to be made available within library e-book catalogues. From the perspective of public access principles, a library carrying Harry Potter e-books is likely to be viewed by patrons as being responsive to user demands and aligned to the latest trends.

Smashwords' commitment in making its authors' work available for libraries to purchase through the Library Direct platform is also encouraging. Upon purchasing subscription to the Library Direct platform libraries have access to a large collection of works, moreover they have the ability to utilise smart data from across Smashwords' distribution channels in order to identify which books are selling well, allowing informed purchase decisions to be made.

The evidence presented within this category points to established players understanding the fact that libraries act as important discovery vehicles through which both independent and established authors can gain exposure to potentially unlimited audiences. Indeed, library patrons who read quality works from independent authors are likely to act as marketers, spreading an author's name and stimulating demand for new titles with the resultant effect being that that particular author is likely to see an eventual boost in sales. Even for established authors, J. K Rowling included, libraries can act as effective outreach tools motivating patrons to engage with the author's work through other paying channels.

An altogether different model was unveiled in January 2012 when Apple launched iBooks Author, an application which enables textbook authors to create interactive teaching iBooks for the iPad. The software is free and the price of the titles it produces is capped at \$14.99 which on the surface appears to offer welcome competition for more expensive textbooks. However, the iBooks End User Licence Agreement<sup>14</sup> (EULA) casts this initiative in a slightly less positive light. The EULA requires that iBooks Author generated content can only be sold via the Apple iBookstore which takes a 30% cut. In addition, the terms of the EULA mean that Apple has exclusive and unlimited distribution rights to this content, so it can a) refuse to sell or distribute a particular iBook for any reason, and b) content created using iBooks Author is effectively subject to perpetual copyright.

In contrast, Amazon offers a range of self-publishing options. For authors looking for print distribution, the Create Space platform allows them to set the price of their titles with the option of paying \$25 for "expanded distribution"<sup>15</sup> which includes the Barnes & Noble Axis 360 distribution channel which makes titles available to libraries. However, if those same authors want to distribute their books electronically, they need to sign up for a Kindle Direct account which a) does not allow library purchase and instead integrates with the Kindle Lending Programme<sup>16</sup>; and b) offers a 35% royalty rate for titles sold at list price and a 70% royalty rate on titles priced at least 20% below list price.<sup>17</sup> The incentives are clearly designed to persuade authors to embrace a discount pricing model and then cross their fingers for a high volume of sales.

The example of self-published author Amanda Hocking<sup>18</sup> is also interesting in this context. After years attempting to spark the interest of publishers she had accumulated a total of 17 unpublished novels by April 2010. That month she decided to make her work available to Kindle readers via

<sup>14</sup> <http://mhpbooks.com/apple-announces-new-self-publishing-software-to-howls-of-outrage/>

<sup>15</sup> <https://www.createspace.com/Products/Book/ExpandedDistribution.jsp>

<sup>16</sup> <https://kdp.amazon.com/self-publishing/KDPSelect>

<sup>17</sup> [The list price in any sales channel for any digital or physical edition of the e-book](#)

<sup>18</sup> <http://www.guardian.co.uk/books/2012/jan/12/amanda-hocking-self-publishing>

Amazon and to Nook, Sony e-Reader and iBook users via Smashwords. By January 2012 Hocking had sold over 1.5 million copies netting her \$1.5 million dollars. Part of this success was fuelled by her decision in early 2011 to opt for Amazon's 70% royalty rate option and sell the first e-book in a series for 99 cents, with subsequent editions priced at \$2.99. Later in 2011 she capitalised on her commercial achievements by signing over the rights to future titles to St Martin's Press in the US and Pan Macmillan in the UK for \$2.1 million.

That Hocking initially achieved over a million sales without going near a literary agent, publisher, or marketing agent was incontrovertible evidence to many that self-published authors "can do it on their own". Others see her subsequent deal with a major publisher as further evidence that the market power and influence of the Big Six remain attractive for successful authors.

### **3.5 Profit Share purchase model**

Bilbary's profit sharing business model enables libraries to point patrons in the direction of the online bookstore and receive 50% of the profit from the sale of each e-book a patron purchases.

Whilst it is obvious that a library's e-book catalogue is always going to be restricted in scope due to a multitude of factors, chiefly among them budget constraints and the restrictions imposed by large publishers, Bilbary actually seeks to provide an avenue through which libraries can generate revenue and further expand their online catalogues. Libraries can place links to the Bilbary website within their own online lending systems suggesting that if a patron does not wish to wait for an e-book to become available for lending again or simply that the library does not stock a title by a particular author, then the patron should visit Bilbary to purchase the book in the knowledge that their purchase will also equip their library with the revenue through online collections can continually be improved.

Public access is supported indirectly based on the fact that Bilbary provides libraries with a source of revenue which can be used to maintain and expand online collections. Indeed, revenue raising activity is to be welcomed given the current e-book pricing landscape. Through this model libraries are given the chance to be increasingly responsive to patron demands, utilising the revenue gained to purchase content aligned to the latest trends and releases.

### **3.6 Library Initiatives**

Library initiatives are classified as those operations undertaken by libraries in order to control as much of the overall e-lending process, from the purchase of content right through to managing the e-lending process itself.

Within both the identified case studies the most prominent finding to emerge relates to the systematic attempt by two US-based library initiatives (Douglas County Libraries and Califa) to remove the need for participating libraries to have to deal with e-book vendors or publishers on an individual basis. Through strength in numbers both initiatives seek to obtain discounts from vendors on the price of e-content for members. Both of these schemes seek to remove the difficulty that an individual public library can have in terms of securing access to e-content at a reasonable price. As part of a larger group, libraries have greater bargaining power than they might have had

independently, with vendors therefore likely to agree to terms more conducive to libraries and their public access principles.

Indeed the bargaining power that is generated through the process of ‘clubbing together’ results in libraries actually being able to self-select the content they wish to incorporate within their online catalogues. Vendors are recognising that the libraries involved within these initiatives have effectively bypassed them, and that the only way now to gain access to the libraries is to offer a higher range of content at reduced prices.

### **3.7 Aggregators of access to non-copyright restricted content**

This category refers to initiatives being undertaken to unify access to previously disparate sources of online non-copyright material via specific individual platforms. The aim of these initiatives is to provide the user with an accessible and easy route to access as much non-copyright material as possible.

With the exception of Apple’s iBooks, each of the programmes profiled within this category has a core aim in ensuring that non-copyrighted material is digitized and made available for library communities to easily download and read. The focus is on providing libraries with the ability to grant patrons access to content which might not otherwise be available in e-book format (depending on whether the relevant publisher has decided to digitize that content). In general terms therefore, each of the programmes mentioned seek to provide libraries with another route, neglecting interaction with traditional publishers, in order to bolster their online catalogues.

However, it should be noted that these initiatives concentrate on providing access to out of copyright material. Whilst this content might be invaluable for specialist communities the applicability to mainstream library patrons is perhaps questionable. These models represent an important part of the public access ecosystem – but they do not represent a silver bullet solution given that the majority of desirable content for library users will still be under copyright. Whilst Google has digitized content protected under copyright law – providing users with a snippet view only – the fact remains that should libraries wish to purchase such content then they will have to pay the prices and abide by the loaning restrictions set out by the publishers.

Apple’s iBooks was the only profiled programme whose core purpose was not to make as much content as possible free to access. Only content associated with Project Gutenberg can be downloaded for free from the Apple platform itself. It is also perhaps worth noting that based on the traffic light assessment applied to the matrix the Internet Archive/Open Library scheme emerges from this category as the most supportive to library principles based on a full complement of green dots, with the Digital Public Library of America close behind in the rankings.

### **3.8 Other e-lending programmes/models**

This category represents initiatives which do not fit neatly into any of the sections mentioned above. The uniqueness of the programmes within this category generally refers to their innovative e-book acquisition procedures made available for users.

With the exception of Amazon's Kindle Lending Programme, the standout feature associated with the profiled projects relates to their attempt to ensure value for money when a user accesses e-content through their respective platforms. Brain Hive operates a pay as you go system where libraries only pay for content that their patrons have read. In contrast, 24 Symbols operates a (spotify-esque) system in which users can remove adverts from their e-books if they agree to pay a premium fee on top of the basic subscription (the premium fee also allows access to a broader range of content). Whilst Brain Hive is only focused on content for school children, the point to take away from these examples is the greater financial freedom offered to users. Users can decide if they wish to purchase premium content on the 24 Symbols platform, whilst Brain Hive ensures that libraries pay only for what is actually read. Brain Hive essentially enables users to decide exactly what should be determined premium content, the library then pays the appropriate cost based on total readership numbers.

Amazon's Kindle Lending Programme offers an opportunity for peer to peer e-lending to take place. Once an e-book has been purchased a user can opt to lend that title, just once, to a peer. Whilst this initiative could be deemed positive in the sense that Amazon is exposing its online catalogue just slightly to the broad principles associated with public access, it is important to note that this particular service actually cuts out libraries as primary e-lending hubs. The Kindle Lending Programme enables users to directly loan e-books on a peer to peer basis and does not require any interaction with third parties – in this case libraries – in order for that process to be completed. The limitations associated with this programme, chiefly the one shot lending option, ensure that Kindle owners in the vast majority of instances must purchase content to gain access to titles.

### 3.9 A note on the elephants in the room

In his speech to the Society of Young Publishers Conference at the end of 2011, Alistair Horne from Cambridge University Press adopted an interesting analogy.<sup>19</sup> Urging the audience to cast their minds back to the turbulent European geopolitical landscape on the eve of World War I, Mr Horne cast the publishing industry in the role of the “pre-1914 Austro-Hungarian Empire” (the proverbial “sick man of Europe”). Expanding upon that historical template he continued by describing Amazon as “Germany” (aggressive, expansionary), Apple as “Russia” (already possessing an empire but keen to expand after an important leadership change), and Google as “Britain” (currently aloof, unsure of the extent of desired involvement). The cautionary tale within this comparison is that we are all well aware how that episode of imperial rivalry played out – the Austro-Hungarian Empire was dissolved while the other major powers stayed intact.

Apple and Amazon have both established firm footholds in the online retail, publishing and self-publishing sectors. Now through its Kindle lending programme Amazon has finally closed the loop, establishing a vertically integrated business model which connects both writer and reader without the need to cater to publishers or libraries. Apple may well follow in Amazon's footsteps in this regard, and Google certainly has the commercial ubiquity, household brand, innovative potential and financial muscle to step into this equation should it choose to do so. Note that in April 2012 Google announced that its recently launched Google Drive facility (which allows users to upload, edit and share documents through cloud based software) offers full integration with the Lulu One-Click

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<sup>19</sup> <http://www.thebookseller.com/blogs/future-publishing.html>

Publishing app.<sup>20</sup> It is also worth remembering that all three players produce their own devices/hardware which serves to increase their potential for both vertical integration and consumer capture within proprietary formats.

## 4 Talking points and further questions for consideration:

### 4.1 Negotiable access to all titles underpinned by legislation?

Negotiable access to all titles is arguably one of the most important and fundamental characteristics of any viable and sustainable model for public access to digital content. Of course it is far from ideal if a combination of high licencing prices or draconian licence restrictions dramatically limit the range of titles/content that libraries can acquire for their users to access. However, if certain titles or content are categorically and unilaterally removed from the pricing/licencing/ownership negotiating table – this critically undermines the entire concept of equity of public access to digital information and content. It also diminishes the capacity of libraries to adequately serve the interests and needs of individuals within their local community who lack the financial or technological resources to access this material.

One solution of course is for the library community to seek legislation at national (and potentially international/supra-national level via WIPO or the European Commission) to underpin the requirement for publishers and rights holders to make all digital content available for library licencing or purchase. This is certainly a far more feasible proposition than attempting to secure legislation to regulate e-book pricing/licencing restrictions, which could expose libraries to accusations that they are seeking to distort market forces and commercial incentive structures. Libraries would not be seeking to dictate the terms upon which access to digital content is provided – but merely uphold that for the public interest to be adequately served; all titles should be accessible for public access purposes.

Interestingly, on the 26<sup>th</sup> of September 2012, the UK Government launched a Review on e-Lending<sup>21</sup> which will consider a range of issues including the “*barriers to supply of e-books in libraries*”. Certainly in the face of this and other similar windows of political opportunity which may emerge, it would seem logical for libraries to take advantage of any chance to make their case in favour of public access to all titles.

However, there are still a number of significant challenges for this proposition:

- Libraries do not always speak or act with a single unifying global voice and yet cohesive and coordinated messaging is required in this instance. There is scope for achieving a robust consensus on this among library representative bodies – but more impact may be achieved by library associations working at national level.

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<sup>20</sup> <http://mashable.com/2012/04/24/lulu-google-drive/>

<sup>21</sup> [http://www.culture.gov.uk/news/media\\_releases/9365.aspx](http://www.culture.gov.uk/news/media_releases/9365.aspx)

- Recent anti-trust proceedings have made it increasingly difficult, if not impossible, to get major publishers into the same room to discuss these and other issues. As such there is a problem identifying a suitable interlocutor to engage with at both national and international level. National and regional trade associations can effectively speak for some of the smaller players, but any negotiations which exclude the big multinational publishers will have insufficient traction to deliver significant results.
- If some publishers and rights holders continue to see e-lending as a threat to their primary business models then even legislation which compels them to make all digital content available for library licencing/purchase will not necessarily prevent them from applying pricing structures and terms/conditions designed to discourage that form of public access.

A more viable solution may be that publishers and rights holders may decide, particularly if facing a credible spectre of legislation/regulation, to develop self-regulatory frameworks and voluntary codes of practice which attempt to address this problem. In one sense, there is also evidence that progress towards this objective is already organically occurring given that at the point of writing this paper Hachette, Penguin and Macmillan have all joined Random House and Harper Collins by piloting library e-lending programmes, with Simon & Schuster the only remaining big six hold out. However, the question remains whether these pilot programmes are the start of a mainstream e-lending initiative to be rolled out to all libraries, or whether they will be seen as temporary failed experiments with the benefit of hindsight. The looming merger between Random House and Penguin also casts uncertainty as to how the Penguin/3M e-lending pilot will play out during the course of 2013.

#### **4.2 Copyright exceptions and limitations reinforced by legislation?**

As referenced in section [2.4](#) of this paper the Hargreaves Review on Intellectual Property and Growth included a recommendation that the UK Government should legislate to ensure copyright exceptions and limitations are protected from override by contract.<sup>22</sup> Indeed, such a scenario already exists in an existing EU Member State (Ireland) where contracts cannot trump exceptions to copyright. The UK Government review of e-lending referred to in the previous section could also offer an opportunity to highlight that recommendation within the context of library access to digital content.

Additional work on this policy area is being conducted by The International Federation of Library Associations and Institutions (IFLA) through its engagement with WIPO member states to cement support for an internationally binding instrument on copyright limitations and exceptions.<sup>23</sup> Suffice to say that significant progress in this area would make future terms and conditions surrounding purchasing and licencing of digital content more palatable to libraries, by limiting the capacity of those regimes to inhibit traditional activities associated with non-commercial reproduction and format shifting connected with research and preservation.

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<sup>22</sup> <http://www.ipo.gov.uk/ipreview-finalreport.pdf>, page 99

<sup>23</sup> <http://www.ifla.org/copyright-tlib>

### 4.3 How important is ownership in the digital age?

In the context of physical content, libraries and consumers had full and enduring ownership of titles they purchased. This system benefited big libraries with large numbers of users as once they had purchased a title, the cost per use of that item would fall consistently with each successive loan until either interest subsided or the book wore out/could no longer be repaired. Under this system smaller libraries would face similar upfront costs for securing individual titles, but with smaller budgets and lower numbers of users, their cost per use would generally remain higher. This system therefore offers significant benefits in terms of simplicity and predictability, but it could be argued that to an extent this system discriminated against smaller libraries in favour of larger ones. Then again, as most public library books are centrally purchased and then allocated to branches, perhaps this feature of the system raised few concerns from the libraries themselves.

Today libraries and consumers rarely have full and enduring ownership of digital content. Instead, in most instances a licence to access this content is purchased. Currently these licences have no standardised or universal basis – and tend to vary between different publishers and distributors. They frequently place restrictions on a wide range of activities for each item governed by the licence – including limitations on simultaneous use, limitations on the number of loans, and limitations on the overall duration of the licence itself.

Recently there have been calls from the library community for publishers to resurrect the old enduring rights system and apply it to the supply of digital content, suggesting that is the only method by which libraries can continue to satisfy their traditional role of providing and maintaining public access to information, knowledge and culture. However, in the new digital arena, it is unclear whether this is strictly accurate. The new digital licence model has significant downsides, specifically in relation to the proliferation of different restrictions and standards across the licencing regimes operated by publishers and distributors. This forces many libraries to enter into multiple and sometimes overlapping agreements with different licensees in order to support public access to an acceptably wide range of digital content. Operating within the context of multiple licences and agreements also makes the administration of this system highly complex, and makes effective budgeting more logistically challenging for libraries, particularly smaller ones.

However, the licencing model does not necessarily or intrinsically undermine the role of libraries in as providers of public access to digital content. Indeed if implemented appropriately, it could potentially provide a welcome flexibility and diversity in the options and pricing structures available to libraries. In a context where negotiable access to all digital content and titles is enforced, libraries need not necessarily secure enduring rights/ownership of that content. Indeed it may be financially convenient in most cases not to do so.

### 4.4 The burden of ownership the blessing of licencing

In the world of physical books, ownership continued to be a burden on libraries where new purchased titles competed for limited shelf space with large numbers of unread titles within their existing collections. Of course, libraries monitor usage levels within their collections and therefore have the opportunity to sell on unused or underutilised items within their existing collections. However, the fact that these items are being removed from collections based on low or non-existent

public demand has implications in terms of their re-sale value. This perhaps explains the consistent reports of libraries discarding, dumping or in some instances incinerating parts of their collections.<sup>24</sup>

Setting aside the argument for digitizing and preserving all published works for posterity – there are good reasons why most libraries will not want to keep all books that they own, as school librarian Julie Goldberg describes in her blog post of May 16<sup>th</sup> 2011:

“Realizing that people object so strongly to throwing out books, I began to save a few of the most egregious examples to show people who got upset. The library owned a book entitled *Careers for Women* that included secretary, piano teacher and flight attendant, but strangely enough, not public school teacher, let alone financial analyst specializing in mergers and acquisitions. An anthropology book called *The Races of Man* explained, scientifically of course, why some races were more evolved than others. A book originally published in the 19th century and gamely reprinted in the 1920s, defended the early European settlers of North America, downplaying their casual brutality towards the Indians by recasting their actions in light of their Christian intentions.”<sup>25</sup>

The point is that over time most physical information/content becomes outdated, inaccurate, culturally inappropriate, dilapidated – or simply less relevant or desirable to library users (as well as consumers in general). The same principle applies universally to digital content too – but the silver lining of an appropriate and balanced licencing model for access to digital content is that libraries should (in theory) have the option of paying lower prices for temporary access to digital content of potentially transient or short term value. The pertinent question here is - why should libraries seek to pay a higher upfront cost to secure enduring rights to digital content when most of that content has a limited shelf life/value to library users?

Providing that licencing options exist which permit access to all digital content/titles, with a balanced pricing regime linked to the value of those items to library users, libraries could potentially welcome the opportunity to pick and choose a flexible portfolio of digital content which includes premium front list titles, standard titles and discounted backlist titles. Instead of being forced to invest in enduring ownership of any titles, libraries would have the freedom to update their licences on an on-going basis to ensure that their collections represented an efficient compromise between their available budgets and value to library users. With continual and on-going negotiable access to all digital content/titles, libraries would be allowed to drop (and reinstate) items to their digital collections to satisfy user demand.

#### 4.5 Acceptable friction, acceptable pricing

In the analogue context, the ability of libraries to offer equal access to physical content has always been subject to certain constraints. Book purchase budgets were/are always limited. Library users would need to present themselves in person to borrow a book, and then present themselves in person to return it. In the case of popular titles, access would often involve waiting lists if all the existing copies were out on loan.

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<sup>24</sup> [http://menmedia.co.uk/manchestereveningnews/news/s/1580827\\_fears-over-central-librarys-hidden-treasures-after-300000-works-are-disposed-of](http://menmedia.co.uk/manchestereveningnews/news/s/1580827_fears-over-central-librarys-hidden-treasures-after-300000-works-are-disposed-of)

<sup>25</sup> <http://perfectwhole.wordpress.com/2011/05/16/i-cant-believe-youre-throwing-out-books/>

However, these forms of acceptable friction were relatively straightforward and understood by librarians and library users as “part of the deal” to ensure on-going and enduring public access to physical content. In the context of modern digital content this deal has broken down. In its place, publishers and rights holders have experimented with a broad spectrum of techniques to preserve, and in some instances arguably expand, the amount of friction inherent to the process of e-lending.

#### 4.6 Forging a new deal

What is important here is to understand that the price of digital content offered to libraries cannot be considered in isolation of the specific restrictions applying to the supply and licencing of that content. The present combination of high licencing fees and a fragmented system of licencing restrictions across different publishers and distributors is not sustainable. Many features of this system are the product of an attempt by publishers to make e-lending less attractive in order to safeguard revenue streams from online sales. Instead, these pricing/licencing regimes should be adjusted to recognise that:

- In forgoing enduring rights/ownership of digital content, libraries should pay a lower price for temporary renewable/extendable licences to access that content.
- Restrictions on simultaneous use, number of loans or duration of licences should be used as a means to offer libraries a range of lower priced licencing options suitable to their size/budget – as opposed to a strategy for discouraging e-lending in general by the injection of artificial friction.
- Despite the challenges which face publishers in officially coordinating pricing structures it is in the public interest that these licencing options be harmonised into a predictable menu of standardised and transparent alternatives which enable libraries to make rational choices

#### 4.7 Pricing principles and models:

- A premium price can legitimately be charged to libraries seeking to acquire access to front list titles within the first six months of publication. However, this premium price should bear some alignment with the online retail price of that title during those six months multiplied by the number of simultaneous users the library wishes to be attributed to that licence. Licences which include restrictions on the number of loans or the duration of the licence itself should be discounted further from that price.
- Backlist titles discounted to reflect their reduced commercial value and the marketing role that libraries can play in drawing attention to the existence of author backlists
- Big libraries – longer duration licences, backlist subscription + metered pay as you go model?
- Small libraries – limited number of loans/short duration licences at a suitable discount?
- Inter-Library Loan replaced by further discounted micro-sale short term rental licence options to secure a specific title on a temporary basis for an individual library patron?

#### 4.8 The benefits and opportunities for libraries and publishers:

- Digital content represents an opportunity for libraries to deliver better and more user friendly services to library users.
- Licences which afford temporary but extendable access to all digital content could potentially enable libraries to acquire access to flexible portfolios of content which can be continually updated to reflect the demands of their users without expending additional resources to invest in permanent ownership of content which (for the most part) diminishes in value over time.
- Licenced digital content represents an opportunity for publishers to increase sales through enhanced discovery and impulse purchases, while building a culture of legitimate consumption based on convenient, trusted and interoperable access for borrowing and purchasing among library users.

Public access to licenced digital content through libraries need not present a threat to online sales revenues. Instead it represents an opportunity for both libraries and publishers. For libraries, it potentially offers the chance to purchase flexible and affordable licences to access a broad range of digital content on behalf of their users – as opposed to the universal requirement to invest in perpetual or lifetime ownership of resources which do not necessarily maintain their value for library users.

For publishers, it represents an opportunity to secure additional impulse purchases when all the licenced copies of a particular title are on loan – but more importantly the chance to socialise a new generation of users into accessing digital content (either by free library loan or by subsequent purchase) within an integrated and trusted environment which is mutually beneficial to both libraries and publishers – instead of persuading a new generation of readers to decide that is quicker and easier to procure content illegally. Lessons from the music industry and the film industry show that once such a culture has developed it can be difficult or impossible to turn back the clock.

#### 4.9 In DRM we trust – but not in isolation

The Digital Rights Management (DRM) software which publishers depend on to enforce the terms of their licencing agreements with libraries and consumers can be circumvented with a minimum amount of effort and technical knowledge. Furthermore, large number of websites and blogs offer continually updated instructions/tools to by-pass the DRM protection used across all e-book and e-reader formats. Even more sites offer access to the unlocked versions of these titles available to download at the click of a mouse button. The drawbacks for users are of course a) it is illegal to access this content, b) the standard/authenticity of the content is not dependable; and c) many such sites are used by cyber criminals trick users into downloading and installing malicious software.

This presents an opportunity for libraries and publishers to work together to present an easily accessible, dependable and trusted platform which helps to socialise consumers into developing and maintaining a sustainable culture of legal consumptive behaviour. Rather than attempting to

criminalise consumers, publishers and libraries should seek to dis-incentivize illegal behaviour by providing an immediately accessible and seamless alternative service. Young people who grow up legally borrowing e-books through libraries will be more likely to spend their future pocket money/pay cheques on purchasing e-books through such an integrated mechanism than those who have resorted to scouring the internet for free illegal versions of those same titles. This is not to say that DRM is not an integral part of this incentivisation process – but without being accompanied by a suitably convenient “carrot” it is likely to prove an ineffective “stick” in isolation.

#### 4.10 How can libraries meet the cost of this online nirvana?

For the traditional library principles of universal access (subject to content availability) and user privacy to be respected such an access system would require:

- Adequate incentives for publishers, distributors and device manufacturers to support both demarcated symbiosis and interoperability with integrated library systems and online public access catalogues
- Viable approaches for libraries to support the cost and initial complexity of implementing and supporting these systems – along with a layer of supportive signposting to commercial purchasing options and searches.

The former could arguably be achieved through libraries working together at a local, regional or national level to spread the costs of such innovations – whilst simultaneously creating aggregated demand and an aggregated capacity to negotiate those terms with the relevant third parties above. This approach is currently exemplified by the US-based Douglas County Library and Califa initiatives, but there is clearly scope for this model to be embraced by other library networks at a local, regional and possibly national level.

#### 4.11 Closing comments

One of the key challenges facing any attempt to take an analytical snapshot of the state of play of public access to digital content is that this is by nature a constantly evolving and rapidly changing area. As authors, publishers, distributors, retailers and libraries continue to experiment (and ideally at certain points negotiate) the range of options on the table are likely to be subject to continual flux. Current e-lending pilot projects operated by major publishers could be either the harbingers of future mainstream library access models rolled out across multiple countries – or merely temporary trial exercises which end up being discontinued.

A further challenge is that each of the topics covered fleetingly in this paper effectively represent individual rabbit holes leading to vast subterranean caverns of complex and detailed debate. A more detailed study could easily spend a hundred pages examining the subtleties of copyright exceptions and limitations or the international variances in inter-library loan arrangements.

What is clear is that the next few years and months will be crucial in defining the future balance between commercial concerns and sustainable public access. All parties involved in this complex ecosystem need to be prepared to shed preconceived assumptions (should they be held) and take a look at the unfolding landscape with fresh eyes. Content creators and rights holders need to feel confident and secure that future business models which support public access will preserve their

ability to effectively monetise digital content. Libraries on the other hand need to be bold and unashamed of championing the cause of public access, whilst keeping an open mind as to the multiple ways this might be practically achieved.

The democratisation of access to information, knowledge and cultural content which began in the post-Gutenberg era and accelerated exponentially over the last 200 years - supported at national, regional and community level by libraries - is arguably one of mankind's most important achievements. It would be a great disservice to future generations if access to a broad range of digital content becomes the unique preserve of those individuals who surpass a defined socio-economic resource threshold (in terms access to private technology and private financial resource) as opposed this content being made freely available to anyone who has the patience to wait quietly for a popular digital title to be returned to their local library.

Returning to the quote from Mr Grandinetti referenced at the start of this paper, the digital content revolution presents all parties involved with attendant risk and potential opportunity. In a context where internet users with fibre optic broadband connections can download an hour long television programme in 30 seconds, an entire album of music in 6 seconds<sup>26</sup> and the latest \$100 million dollar Hollywood blockbuster is available to download online for free in high definition three months after it was first shown in theatres<sup>27</sup>, it is clear that the technological barriers to what Facebook CEO Mark Zuckerberg referred to as "*frictionless sharing*"<sup>28</sup> have all but dissolved.

Indeed it could be argued that those who seek to constrain illegal public access to digital content by technological standards and in some cases prosecution have failed to appreciate the extent to which the proverbial horse has potentially already bolted in this instance. In the absence of legal options to access digital content through libraries, there is substantial evidence that the next generation are amply equipped to simply take what they want, when they want. In the aftermath of the case of the Norwegian Kindle user described earlier in this paper a number of online articles posted detailed instructions on how to strip Kindles files of their DRM protection<sup>29</sup> (whilst helpfully reminding readers that this violated both Amazon's terms of service and the US Digital Millennium copyright act).

Furthermore, innovative players such as Amazon (with Apple and Google waiting in the wings) have already taken steps to establish vertically integrated business models which seamlessly connect author and reader (including the Amazon Kindle Lending Programme) to the exclusion of both publishers and libraries. In the face of these potentially game changing competitive forces, there are strong arguments for publishers and libraries to work together to deliver their own version of these seamless user experiences which have the capacity to socialise a new generation with both an appreciation of the written word and a culture of legal consumption where public access and legal purchase cross-pollinate and reinforce each other. A recent Pew Survey suggests that more than 50% of American library users are e-book purchasers.<sup>30</sup> Perhaps what the Economist newspaper has

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<sup>26</sup> <http://store.virginmedia.com/broadband/speeds-explained/index.html>

<sup>27</sup> <http://www.wrsko.eu/prometheus-2012-1080p-bluray-x264-amiable/>

<sup>28</sup> <http://gigaom.com/2011/09/30/why-facebooks-frictionless-sharing-is-the-future/>

<sup>29</sup> <http://arstechnica.com/gadgets/2012/10/drm-be-damned-how-to-protect-your-amazon-e-books-from-being-deleted/>

<sup>30</sup> [http://libraries.pewinternet.org/files/legacy-pdf/PIP\\_Libraries\\_and\\_Ebook\\_Patrons%206.22.12.pdf](http://libraries.pewinternet.org/files/legacy-pdf/PIP_Libraries_and_Ebook_Patrons%206.22.12.pdf), page 20

playfully termed the reassuringly dull “tired marriage”<sup>31</sup> between publishers and libraries is about to get far more intimate and interesting.

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<sup>31</sup> <http://www.economist.com/node/21559654>