



CFLA-FCAB POSITION STATEMENT E-BOOKS AND LICENSED DIGITAL CONTENT IN PUBLIC LIBRARIES

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ISSUE:

Access to information in Canada should remain equitable regardless of an individual's economic circumstances. Many publishers withhold ebooks from public libraries, or use excessive pricing and restrictive licensing to make purchasing functionally impossible for some libraries. This situation will deteriorate if the Canadian government does not take action by identifying policy solutions that prevent restrictive licensing and pricing practices and encourage fair commercial practice.

BACKGROUND:

Since 2010, ebook use has exploded among consumers and in public libraries across the country. BookNet Canada reports that for leisure time reading, 67% of books were read in print, 24% were read digitally, and 9% were audiobooks¹. Public libraries have tried to respond to this demand to ensure that library users have the format that they prefer, supporting a vital reading and learning culture in Canada. Surveys have consistently found that public library patrons who use library ebooks regularly purchase books they first discover at the library. They use the library as a source of inspiration to discover new books and new authors and go on to purchase books by authors they first discover at the library.²

Canada's urban public libraries now spend 20-30% of their materials budgets on digital content. This content includes ebooks and downloadable audiobooks; digital newspapers and magazines; and streaming film, music and learning resources. In the digital environment, content is usually only made available to public libraries through licences, and thus libraries rarely have the opportunity to purchase digital content on a permanent basis and ensure future access to Canadian content. Instead, public libraries are forced to acquire this content on an annual basis through licensed subscriptions.

Because digital content is licensed, publishers can choose to withhold ebooks from libraries for a period of time, they can charge libraries higher prices than they charge consumers, and they can limit how long a library can use an ebook before the library has to purchase it again. All of these restrictions are being exercised by publishers, and the situation has not improved over the past eight years of broad ebook availability. As stated earlier, library patrons are also book purchasers. By limiting libraries' access to

¹ Who is the average ebook reader, BookNet Canada, July 17, 2018.
<https://www.booknetcanada.ca/blog/2018/7/17/who-is-the-average-ebook-reader>

² First Panorama Project Research Report Released. Panorama Project, Nov. 29, 2018.
<https://www.panoramaproject.org/news/2018/11/29/community-reading-event-impact-report-released> and New Findings Reaffirm Library Borrowers are also Buyers. InfoToday. Nov. 12, 2012.
<http://newsbreaks.infotoday.com/Digest/New-Findings-Reaffirm-Library-Borrowers-Are-Also-Buyers-86225.asp>

new ebooks, publishers also reduce the exposure of those books to readers who are potential buyers.

Public libraries are charged pricing that ranges from consumer prices for an ebook (\$11-18) to rates ten times higher (\$92-\$120), a practice that is akin to retail arbitrage. These ebooks are available to only one person at a time, so the use itself mimics print. The highest prices are charged by Hachette, a multinational publisher. While other multinational publishers usually charge less than Hachette, they often restrict the duration or number of uses for the licensed ebook, so that after one or two years, or after a specific number of loans, the library must license another copy. In contrast, print books often last significantly longer than two years in public libraries, and their availability is ensured for future generations. With ebooks, this access is lost. While public libraries have repeatedly shared with publishers that libraries would like to have both limited short-term access licences available to help meet initial demand, and separate licences for permanent access, publishers have not responded meaningfully to these requests.

The time and loan-limited approach is used by Harper Collins, Macmillan, and Simon & Schuster. The same approach has recently been announced by Penguin RandomHouse, publisher of many Canadian imprints. Penguin RandomHouse holds the rights to the books published by historic Canadian publisher McClelland & Stewart and thus controls access to critical cultural heritage. When Canadian public libraries cannot purchase these ebooks because of restrictive licences and excessive prices, access to Canadian heritage is compromised. As the content environment continues its shift to digital, access may be lost entirely.

Some publishers completely withhold new eBooks from libraries. TOR, an imprint of Macmillan, announced in July 2018 that they will withhold new publications from libraries for four months³. In the digital audiobook market, businesses like Audible are obtaining the rights to valuable Canadian content, such as books by Margaret Atwood and Bev Sellars, and producing audiobooks that cannot be licensed to libraries. These are Canadian books that have benefitted from taxpayer support, yet these works are not being made available in accessible formats to Canadian libraries by their publishers. These issues affect digital publications in all languages, and if this practice spreads, Canadians will be prevented from fully participating in conversations about culture if they depend on libraries for access to content.

ANALYSIS:

Digital products are offered predominantly by vendors from outside Canada that act as intermediaries and aggregate content from different publishers. An urban library in Canada pays license fees annually to each intermediary, ranging from a few thousand per year to more than \$80,000 at the largest libraries. A significant portion of the sums paid by libraries go to these intermediaries, such as OverDrive or EBSCO, rather than to authors, creators, and publishers. In addition to limiting access, these businesses draw revenue from the Canadian marketplace.

³<https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/77532-tor-scales-back-library-e-book-lending-as-part-of-test.html>

When libraries pay intermediaries, they do not have access to information about how much of the funds intermediaries retain, however, from anecdotal information, libraries know that for some products it is in the range of 15-25% of the funds paid by libraries. At an urban public library with annual digital spending of \$1 million, this means that \$150,000 that likely would have reached publishers for distribution to authors in a print environment does not reach them in the digital environment. Intermediaries pay publishers and rights holders based on confidential agreements. Greater transparency on agreement terms would be valuable for both libraries and creators.

In the print environment, Canadian libraries can purchase books from other countries when they are not available in Canada, described in section 27.1 of the *Copyright Act* and governed by the Book Importation Regulations. In the digital environment, if an ebook is not available with a Canadian licence, libraries cannot acquire it at all. From one country to another, access to content from multinational publishers varies considerably, as demonstrated [in an Australian study from Monash University](#). Libraries and Canadians would benefit from the ability to purchase and lend digital files across borders when pricing is excessive in Canada or licences are not available. In such circumstances, libraries could utilize a type of controlled digital lending, where a print item is acquired for the sole purpose of being digitized and circulated just like a print version.

In addition, all types of libraries seek amendments to the *Copyright Act* that will ensure user and library rights related to print content are not lost in the digital environment. Too often licences for digital content will override exceptions (user rights) found in the *Copyright Act*. Copyright legislation must ensure that agreements libraries sign with content providers do not override user and library rights, such as interlibrary loan, granted through legislation, as described in the CFLA-FCAB statement on Protecting User Rights from Contract Override.

Canadian municipalities approved a resolution [calling for action by the federal government on bringing down eBook prices for public libraries](#) on 5 March 2016. Public libraries provide information about the continued challenges with access and licensing at <http://www.fairpricingforlibraries.org/>

RECOMMENDATIONS:

The Government of Canada should develop policy solutions that ensure access to content through libraries is ensured in a digital environment. This should include:

1. Encouraging publishers to sell, or license, the same content to libraries as they sell directly to individual consumers.
2. Developing tax incentives or granting programs for publishers and vendors that sell digital content in Canada and meet fair pricing and licensing terms.
3. Requiring that recipients of Canadian government grants be required to license ebooks to Canadian libraries at fair prices and under fair licence terms.
4. Permitting digitization and digital lending of out-of-market content by libraries as per controlled digital lending.
5. Supporting the creation of best practices for digital content licensing by a joint library-publisher-author committee guided by Heritage Canada.