

Struggling for legally based e-lending

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Knowledge Rights 21 webinar
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dbv

**deutscher
bibliotheks
verband**

Public libraries in Germany: basic statistics

- 83 Mio inhabitants
- Among 14- to 75-year-olds, only 29% currently use PL
- Public library membership card holders: 6,44 Mio.
- 1.932 PL led by professionals / 1.563 offer e-lending
- 4.927 PL led by volunteers / part-time staff / 554 offer e-lending
- Active accounts for e-lending:
 - 1,3 Mio. (Onleihe) versus 4,4 Mio. (GfK)
- E-book buyers: 3,8 Mio. (GfK)

German Library Association

- Founded in 1949
- More than 2,000 members = libraries of all kinds, led by professionals
- Represents the interest of ca. 9,000 libraries in Germany, with 25,000 staff members and 11 Mio. users
- our main concern: strengthening our libraries to ensure free access to information for all people

Lending / E-lending in German public libraries

- 109 million physical media annually
- 4,6 million e-books annually
- Due to the pandemic, borrowings of printed books fell sharply from 340 million in 2019 to 223 million in 2020
- e-books were borrowed 30.2 million in 2020, which is less than 14% of the total borrowings
- Just like a printed book, an e-book is lent on a one copy one loan model

E-Lending system in Germany

- 2,117 public libraries offering e-lending to their users
- 7,200 publishers offer e-licenses
- Public libraries
 - do not directly negotiate with publishers
 - have no licensing agreements with publishers
- Two aggregators:
 - Divibib GmbH with „Onleihe“ (since 2007)
 - Overdrive with „Libby“ (in recent years, growing)
 - Technical platform, support, licensing contracts
 - For library user: access via individual library website

Remuneration system for rightholders for print

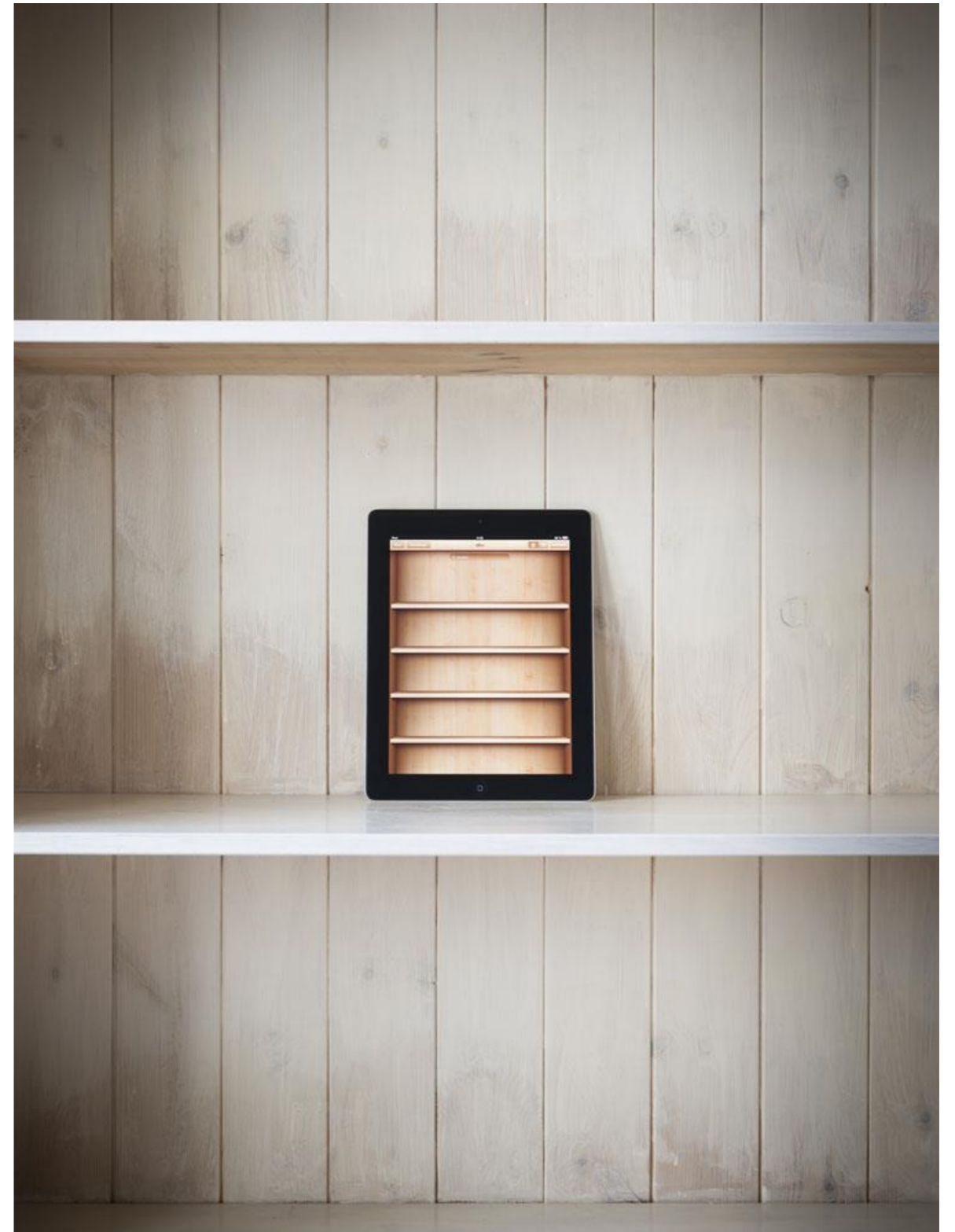
- PL ist able to buy a print book as soon as it is available on the market
- Rightholder is remunerated by public lending scheme
- Library royalties are financed by the 16 Federal „Länder“ and the National Government, not by libraries
- Annual sum of 14 Mio. distributed on the basis of a random sample via VG Wort (collecting society word)
- By pure calculation: 4,3 cent per loan for author
- Currently only for physical media, based on regulation in copyright legislation

Legal basis in the print sector in copyright law

- Libraries have the **statutory right** to choose from all physical works available on the market **as soon as they are published**, to buy them and to lend them to their users
- Since 1972, **authors and publishers** have been - in addition to the purchase price paid by the library - remunerated for each library loan of physical works with a **“library royalty”** paid by the Federal Government and the Länder via the KMK. This is also regulated by law, total sum is 14 millions Euros annually

The problem: new e-books are not available

- library users are deprived of many new releases on the e-book market for a period of up to 12 months
- This is best illustrated by the “Spiegel” bestseller list (fiction and non-fiction): 70% cannot be licensed for up to 12 months



Irrelevant e-books

- about 7,200 publishers have licensed about 500,000 e-book titles, but:
- < 7% are of publication year 2021, achieve 8,5% of all loans
- >76 % are of years 2010-2019
- Many of the 500,000 e-book titles are not relevant for library users



The Conflict:

- Libraries guarantee the right to information from freely accessible sources, no matter in which format
- Other than in the print environment, authors and publishers feel endangered by e-lending
- They vehemently defend their current practice of licenses, whereby they themselves determine when and under which conditions they offer a license to a library

Current practice by publishers of volunteer licensing and windowing threatens to restrict the fundamental right of freedom of information, for which libraries see themselves as trustees

What we call for:

- The German Library Association (dbv) has been calling for **more than 10 years** for **same conditions** for lending of printed books and e-books (one copy, one loan model)
- Libraries should be able to select, license and lend e-books according to their own criteria **immediately after publication**
- Authors and publishers should also receive appropriate **remuneration** ("library royalties") for digital lending, which is currently not the case

The campaign by German Library Association



#BuchistBuch

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Campaign #abookisabook launched in September 2020

Window of opportunity: implementation of EU copyright directive to be implemented into national law by June 2021

The aim: National government includes legal basis for e-lending in copyright law and library royalty is extended to digital media to compensate authors and publishers

#Abookisabook.

Equal rights for e-books in libraries

Logo and Claim #BuchistBuch

Statement about need to have legal regulation for e-lending in copyright

Pro-active media work

Materials für library association members to support contact with their own members of National Parliament

Background information on e-lending on association website

Open letter: More than 1.150 library directors signed within 14 days, forwarded to National Parliament

Meetings with Publishers and Authors Associations

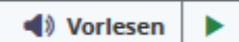
Meetings with Members of Parliament and Government

Channels of communication

- Website: www.bibliotheksverband.de
- Social media channels: Twitter, Facebook, Instagram
- Newsletter
- Internal information system to address our members
- Pro-active media work: articles and interviews in national and regional (trade) press
- More than 90 articles on e-lending were published between September 2020 to November 2021, including Süddeutsche Zeitung, Frankfurter Allgemeine Zeitung (FAZ), DIE ZEIT, ZDF, 3-Sat Kulturzeit, WDR, Deutschlandfunk, etc.



E-BOOKS IN BIBLIOTHEKEN



#BuchistBuch : Gleiches Recht für E-Books in Bibliotheken

"Bücher erscheinen immer häufiger auch in elektronischer Version. Das verändert auch die Welt der Bibliotheken. Was ihre Nutzer immer stärker nachfragen, können Öffentliche Bibliotheken nur bedingt zur Verfügung stellen: die „Ausleihe“ auch von elektronischen Büchern. Denn nicht nur die finanziellen, auch die rechtlichen Hürden für die elektronische „Ausleihe“ in Öffentlichen Bibliotheken sind hoch. Öffentliche Bibliotheken können unter den derzeitigen Bedingungen nur die E-Books zur Ausleihe anbieten, bei denen der Verlag sein Einverständnis gegeben hat.

Aus Sicht des Deutschen Bibliotheksverbandes müssen die Rahmenbedingungen für die „Ausleihe“ von E-Books und E-Medien dringend rechtlich geklärt werden. Öffentliche Bibliotheken müssen rechtlich in die Lage versetzt werden, grundsätzlich jedes im Gebiet der Europäischen Union auf dem Markt erhältliche E-Book zu erwerben und ihren Nutzern zur Verfügung zu stellen. Das Grundrecht aus Artikel 5 Grundgesetz „...sich aus allgemein zugänglichen Quellen ungehindert unterrichten zu können...“, kann nur so gewährleistet werden."

First success: § 42b Digital lending

On 26 March 2021 - in course of consultation phase - the Federal Council (Bundesrat) suggests a new paragraph for legal regulation for e-lending:

If a written work has been published with the consent of the rightsholder as a digital publication (e-book) and is available as such, the publisher **is obliged** to grant non-commercial libraries **the right of use on reasonable terms and conditions**. Reasonable conditions include in particular that libraries are granted the right to make **one copy** of the work digitally available **to one person at a time for a limited period**.

Next steps:

March 2021: dbv calls on Members of Parliament to take up this initiative by the Federal Council and implement this additional paragraph into law

June 2021: Federal Parliament passes new copyright law without a legal regulation for e-lending

June 2021: dbv sends election touchstones to political parties, incl. question on e-lending

September 2021: national elections

Evaluation of the political parties' programmes and their answers to our election touchstones for the 2021 Bundestag elections:

SPD, Bündnis 90/ Die Grünen and the FDP are in favour of a legal regulation of e-lending. They won the elections.

October 2021: Launch of publishers' and authors' counter-campaign "fair reading"

Huge media interest and many interviews

dbv calls on its members to contact the authors they know and explain the libraries' concerns but also the principle "one copy, one loan"

November-December 2021: Creation of discussion guidelines with the most important questions and answers about e-lending

Meetings with members of Parliament

Meetings with CEO of bookselling chain for statistics based negotiations

Virtual meeting of dbv representatives with Chairwoman of Culture KMK calling to support e-book regulation

Meeting with new Vice-president of dbv who is a member of Parliament

More meetings with politicians in planning

International Support



International
Federation of
Library
Associations and Institutions

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eLending requires legal guarantees: IFLA supports German members in calling for reform

25 October 2021

Activity in Federal Parliament

„Lending of E-Books by libraries and library royalties“

Initiative of party „The left“: Written question to the Federal Government of 1.3.2022

Answer by the Federal Government of 22.3.2022:

"The question of the **future remuneration structure** will play a **central role** in the dialogue to be conducted with the stakeholders concerned: **For the user** institutions and the rights holders **ultimately agree to want to attract the largest possible readership for e-books**. There is a **need for clarification in particular about the organisation and financing of this desired access**. In this respect, too, the Federal Government's opinion-forming and decision-making process is not yet complete."

Digital lending and libraries: Study on authors' and translators' views

- Commissioned by NAR Network of Author Rights, publ. May 22
- 14,000 authors/translators contacted: < 6% (805) responded, almost one quarter of them were bestselling authors
- 83 % do not know which contracts are negotiated for e-lending, 98 % do not know about need of renewal of licenses
- presumably also no deep knowledge of the current practice of public libraries and e-lending
- Almost 95% feel that they are not sufficiently informed by their publishers about the lending and remuneration system although aggregators settle accounts with publishers for e-books on a title-by-title basis

Digital lending and libraries: Study on authors' and translators' views

- 84% are not informed how the budget for library royalties is determined
- More than 50% tend not to understand the distribution notices from their collecting society (VG Wort)
- In view of this low level of information, it is (not) surprising how libraries are blamed for the low income of authors
- We understand that the authors' association favours a higher library royalty; the dbv has demonstrably been calling for this for 10 years.
- 70% think it is basically good that e-books can be borrowed in public libraries and 80% have also made this possible in their publishing contracts

dbv calls upon the authors and publishers

- Leave the propaganda mode
- Get back to serious exchange of fact-based views
- Get acquainted with the remuneration system
- Get acquainted with the e-lending model used in PL
- Let us call upon the government together to ensure fair conditions for authors and publisher
- **dbv calls upon the government**
- Introduce a legal basis for e-lending into copyright law to ensure fair conditions for all just as in the printed environment

Libraries will never accept the arbitrary access restrictions to electronic works operated by publishers, as this restricts the fundamental right of freedom of information. Libraries regard themselves as trustees for that right.

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