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KR 21 Knowledge Rights 21

Safeguarding Libraries and their Users Against Unfair Contract Terms

Policy Recommendation

For European consumers to enjoy fully their rights to research, education, science and culture, the institutions they rely on in order to access information need to benefit from consumer-type protections against unfair contractual terms. This gap in European Union legislation could be remedied by the Digital Fairness Act, an amendment to the Consumer Contracts Directive, or as part of legislative initiatives around education and research, such as the upcoming European Research Area Act.

This would help in the achievement of a wide range of varied EU goals around competitiveness, research, education, culture and the enjoyment of rights.

To fulfil their patrons' rights to research, education, and cultural participation, Europe's over 100,000 libraries[1] have long engaged with the sellers of goods and suppliers of services to acquire books and other content. Both public libraries as well as libraries located in research and educational institutions provide an essential means of accessing works for students, scientists, clinicians, researchers, as well as people from a variety of socio-economic groups who cannot purchase all of the books that they need.

The role of libraries is typically set out in national laws which underline both the goals that they are required to pursue on behalf of their users, and the importance of unhindered collection-building to comply with these obligations.[2]

Imbalanced Relationships with Publishers

However, it is too often not possible for libraries to acquire works on reasonable terms from sellers and suppliers.

This is because there exists a stark imbalance in the bargaining position between a library and a seller or supplier. Given the huge number of libraries, publishers offer pre-drafted standard agreements with little scope for negotiating contract terms. Thus, the pre-drafted standard agreements libraries enter into frequently constitute contracts of adhesion.

[1] https://librarymap.ifla.org/

[2] See https://copyrightblog.kluweriplaw.com/2025/05/12/copyright-against-culture-do-restrictions-on-e-book-availability-and-use-undermine-library-laws-part-1/ and https://copyrightblog.kluweriplaw.com/2025/05/13/copyright-against-culture-do-restrictions-on-e-book-availability -and-use-undermine-library-laws-part-2/

Compounding the stark imbalance of power is the risk averse nature of libraries. Owing to their status as publicly funded organisations, libraries are highly susceptible to pressure or threats of legal action, and rarely have the resources to engage in litigation. Furthermore, as government institutions, libraries in certain countries will be unable to apply for indemnity insurance, reinforcing their aversion to risk as well as the structurally unbalanced legal relationship they have with publishers and suppliers.

Unfair Contractual Terms

When contracting with libraries, examples of potentially unfair behaviours by sellers and suppliers include:[3]

- Refusals to license to libraries
- 'Single seat' licences that make it impossible or excessively costly to serve all but a small share of a library's user group
- Obligations to buy whole bundles of content in order to access those elements which are desired
- Uncertainty around available content in ever-changing subscription bundles – including no guarantees of what content will be available, thus making collection development impossible
- Withdrawal of content with little or no notice, for example, just before or part way through a school or university term
- Significant price differentials, frequently from 300% to above 1000% the price charged to a consumer
- Limited duration of access. Unlike a consumer, the library will normally have to relicense the same title year in year out
- Very high or uncapped limitations on liability, including liabilities for the actions of their patrons
- Removing rights provided to libraries by other bodies of law, such as library acts and copyright law

The table below lists further examples of contractual terms imposed by sellers and suppliers, and their similarities with terms that may be unfair when imposed on consumers (in line with the Unfair Terms Directive) or businesses (in line with the Data Act):

[3] Newly published research from the CREATe centre at the University of Glasgow explores the range of behaviours that libraries come across in relation to eBooks (https://www.knowledgerights21.org/reports/elending-markets/), while another report from Digital Republic will demonstrate that, based on a sample of 100 contracts offered to or signed by libraries, a large majority undermine the possibility for library users to carry out the types of activities traditionally possible in libraries. See also Communia's report on contract terms and libraries: https://communia-association.org/2025/05/13/new-report-unfair-licensing-practices-the-library-experience-is-out/

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EXAMPLES OF POTENTIALLY UNFAIR CONTRACTUAL TERMS OFFERED TO LIBRARIES BY SELLERS & SUPPLIERS

	EXAMPLES OF TERMS LISTED IN	
CLAUSES OFFERED TO LIBRARIES	THE UNFAIR TERMS IN CONSUMER CONTRACTS DIRECTIVE 93/13/EEC WHICH MAY BE REGARDED AS UNFAIR (ANNEX)	THE HARMONISED RULES ON FAIR ACCESS TO AND USE OF DATA 2023/2854 (DATA ACT) WHICH MAY BE REGARDED AS UNFAIR (ARTICLE 13)
Unilateral variation of terms. For example,changing the titles that a library intends to license with no consultation.	(k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided.	—
An entire contract where no negotiation has been possible.	—	Art. 13.1 Unilaterally imposed contracts.
Limiting the legal rights of the institution vis-à-vis the publisher/vendor in the event of total or partial non-performance or inadequate performance by the seller or supplier.	(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him.	Art. 13.5 (a) Inappropriately limiting remedies in the case of non-performance of contractual obligations or liability in the case of a breach of those obligations, or extending the liability of the institution upon whom the term has been unilaterally imposed.
Permitting the publisher/vendor to retain sums paid by the institution despite not adequately performing the contract.	(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him.	—
The publisher/vendor having rights in the contract to reduce the guarantees and services vis-à-vis the institution, without the latter's agreement.	(p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement.	—
Limiting the institution's ability to pursue legal action or other remedies, notably by mandating exclusive arbitration.	(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.	—

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CLAUSES OFFERED TO LIBRARIES	EXAMPLES OF TERMS LISTED IN THE UNFAIR TERMS IN CONSUMER CONTRACTS DIRECTIVE 93/13/EEC WHICH MAY BE REGARDED AS UNFAIR (ANNEX)	EXAMPLES OF TERMS LISTED IN THE HARMONISED RULES ON FAIR ACCESS TO AND USE OF DATA 2023/2854 (DATA ACT) WHICH MAY BE REGARDED AS UNFAIR (ARTICLE 13)
The possibility for the publisher/vendor to cancel an auto-renewal excessively in advance. For example, 60 or 90 days which at its longest is the length of a whole academic term.	(h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early.	—
Giving the publisher/vendor the right to determine whether the goods or services supplied are in conformity with the contract, or giving the publisher / vendor the exclusive right to interpret any term of the contract.	(c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone.	Art. 13.4 (c) Provisions which give the publisher/vendor the right to determine whether the goods or services supplied are in conformity with the contract, and interpret terms accordingly.
Excluding or hindering the institution's right to take legal action or exercise any other legal remedy unless agreed to by the publisher/vendor.	In part analogous to: (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him.	Art. 13.4 (b) Where unilaterally imposed, excluding remedies available to the licensee in cases of non-performance of contractual obligations, or the liability of the licensor in the case of a breach of those obligations.
The publisher/vendor reserving a unilateral right to take action, including involving the institution in any legal action, at their sole discretion and without notice, including any settlement.	In part analogous to: (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone.	—
Contracts which remove rights provided by other bodies of legislation. e.g. copyright law, libraries acts etc.	—	Art. 13.9 The removal by contract of Article 13 which regulates unfair contractual terms is unlawful. Art. 13.5 (c) Prevent the organisation upon whom the term has been unilaterally imposed from using the data/to exploit the value of such data in an adequate manner.

CLAUSES OFFERED TO LIBRARIES WHERE NO CONSUMER CONTRACT PROVISION EQUIVALENT IS POSSIBLE
CONTRACTUAL OVERRIDE OF COPYRIGHT EXCEPTIONS & LIMITATIONS Taking away rights granted to institutions and their patrons by exceptions and limitations in copyright law
UNLIMITED OR VERY HIGH LIABILITIES Including libraries being held liable for actions of their patrons
FOREIGN JURISDICTION OR GOVERNING LAW REQUIREMENTS Imposing an unfamiliar third-country jurisdiction or governing law
NON-DISCLOSURE CLAUSES Preventing institutions from discussing and comparing contractual and financial terms
CLICK-THROUGH INSTITUTIONAL LIABILITY Binding the whole institution when students or employees without legal authority agree to online terms and conditions

A Lack of Protection for Consumers and Their Libraries

Currently in Europe, even though terms imposed on institutions may be similar to those which could be dismissed as unfair if they were offered to a consumer, libraries are not natural persons, and therefore they have limited scope to rely on statutory remedies such as unfair contract legislation that are available to consumers.[4] This is in spite of the fact that libraries exist to serve consumers.

Furthermore, while we see European legislation that protects businesses licensing data, as demonstrated in the table above, there is nothing equivalent for public interest institutions, which are required by law to license digital content more broadly.

It should further be noted that while EU copyright law provides some protections against contract override or the inappropriate use of technological protection measures in connection with specific exceptions or limitations, the majority of the consumer rights realised through exceptions and limitations can be removed by contractual terms and conditions that are imposed on institutions – even though the consumers themselves are not party to the contract.[5]

Furthermore, neither copyright nor competition law provide a clear solution to the endemic issues libraries face that arise from publishers' refusal to license, high-pricing, restrictive access conditions or unpredictability of access.

Recommendation

Against this backdrop, we encourage policy makers to expand the notion of consumer to institutions like libraries and academic institutions who intermediate between individuals and suppliers. A number of policy files offer an opportunity to revisit this definition, or to bring in consumer protection law into areas relevant to libraries, namely the Consumer Contracts Directive, the Digital Fairness Act, or as part of legislative initiatives around education and research, such as the upcoming European Research Area Act.

[4] It is worth noting that Singaporean copyright law, in Section 186, applies unfair contracts principles to copyright exceptions in general, including libraries: https://sso.agc.gov.sg/Act/CA2021

[5] This is the case, for example, for text-and-data mining and preservation, but not for other activities such as lending.