

# Could 'public licences' work?

WHAT shall we do about the digital library? It seems likely that something will be done, and that it could fundamentally change the way your copyright in your freelance journalism works. So the NUJ is consulting you on the ways one scheme that's being floated might, or might not, work. Please visit the online version of this at [www.londonfreelance.org/library](http://www.londonfreelance.org/library) and give us your views.

The background is this: libraries are under instruction from governments to digitise the works they hold and – here is the issue – make them available to the public online. This is what has driven the debate here in Europe over “orphaned works”: how can they get permission to make works available online in the case when they do not know who to ask?

Arguably, the fully-parented works they hold present a larger problem. Seeking rights clearance for each of these works would multiply the cost of creating the digital archive manifold.

We will call the idea that some librarians have floated a “public licence”. There is precedent: if your work – whether text, video, spoken script, illustration or photo – appears on television, UK law provides for it to be re-transmitted on cable TV – without asking you, but on condition that a fair fee is paid to a collecting society, such as ALCS for words and DACS for images, which distributes it to you.

That's an exception to your exclusive right, in law, to authorise the making of your work available, or not. A “public licence” would be a much bigger exception. If it could work – a big “if” – it would need to be very tightly defined.

## Some questions

**1** Discussing these matters, it seems that it falls to us to propose the exact nature of the digital future of the library.

Is it to be a service to citizens, offering the largest portion possible of the historical record? In that case, the terms of the proposed Google Books settlement (see last issue) will be instructive. That includes the right of the author to withdraw works from the settlement.

Or is it to be a deposit library, a key institution of our civilisation, the complete archive of everything published? This the default position of librarianship and, it has to be said, its bulwark against censorship. Does that lofty goal in fact justify authors not having at least the right to with-

draw works? For example, the website [www.archive.org](http://www.archive.org) is both a necessary response to the need for archiving in the digital age, a vital resource for some journalists, and likely wholly illegal because it tries to copy everything on the web, without asking.

Which is it to be?

**2** How would you be paid? What is proposed is like library lending. The UK's Public Lending Right makes payments to authors by virtue of being authors (including crossword compilers and photographers), based on a survey of lending. But making works available online has much more effect on their resale or syndication value than does lending books. Payments would need to be higher, and there would need to be an independent review body, including authors' organisations, setting them. Do you have another proposal for payment?

**3** How long would they have to wait before making your work available like this? Is, say, 10 years too soon?

**4** Any public licence must be available only to public (not corporate) libraries. And it would have to apply only when libraries make works available for free, without advertising. Sites that get income must share it. Your comments?

**5** ...and it would have to apply only to published and broadcast works, not unpublished material that libraries may get hold of. Are any other restrictions necessary?

**6** ...and so that users cannot re-cover copies suitable for re-sale for print, illustrations and photos would have to be made available only at restricted resolution (technically, say 72 dpi). If publishers submit stuff to libraries in formats like PDF, they will need to be degraded. What else?

**7** Libraries must provide full author information with every work: if they make it available online they must provide a prominent statement that the user may make no further distribution of the copy and, without getting too technical here, a means for authors to enter claims to amend this “metadata”. That suggests that libraries could have a part to play in building the voluntary database linking works to their authors that photographers, in particular, are calling for. What further safeguards would be needed?

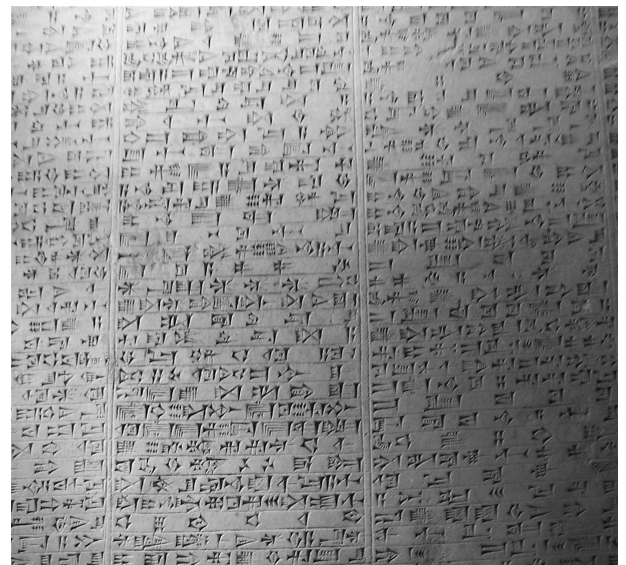
**8** We authors need proper and accessible means of enforcing our rights – whether against abuse of any “public licence” or against other

ways our work may get nicked. As the NUJ has been arguing vociferously, that means something like a Small Claims Court that will handle copyright matters, a presumption that the cost of abusing your work be at least three times the cost of asking nicely, and effective sanctions – criminal in the absence of a better idea – against removing credits. What else?

**9** It's hard not to be cynical about governments' motives for promoting digital libraries. They might be wonderful – but is the sub-text shredding the books and selling the sites? Should the NUJ devote any resources to campaigning to keep physical libraries open, not least as a place where future journalists from noisy homes can do their homework and research in peace?

**A**nd... Three-dimensional libraries are organisations that lend books to members. Who is a member of a digital library? The implications for liberty and privacy of registering who sees what are large. The implications for law-enforcement, including authors' rights enforcement, of not doing so are large, too. Answers on a postcard, please.

**T**hen there's the question we forgot. What is it?



If – and, once more, it's a big “if” – some kind of “public licence” were workable, it would ease the pressure in Europe for “orphaned works” laws. Some of the “public lending” money would go into a fund for authors who showed up claiming parentage. Any proposal to allow their use by anyone or anything except a free public library would need much more work.

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Definitely, certainly, out of copyright and worth archiving by any means necessary: cuneiform carved on stone inna Babylon, about 2600 years ago.

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