

Comments from Mary Minow, The Califa Group

Public libraries rely on the First Sale Doctrine to enable community members to study in the "people's university." Taxes are levied and used to purchase books and other materials for the public good. The system allows a democratization of education for those willing and able to wait their turn for the limited loans and use of library materials.

As more and more materials are available not only digitally, but **only** digitally, public libraries are scrambling to figure out a viable and equitable distribution of resources. Most ebooks are available only by license, if available via public libraries at all. The picture has been grim, in that many publishers have limited content that they make available to public libraries. The efforts of the American Library Association and others have [improved](#) the picture somewhat over the past year, but dependence on licensing for ebooks in public libraries simply does not work. As a sole approach, it is untenable, as libraries are stuck with titles are subject to restrictions of all kinds, including titles that disappear after 26 checkouts from the library's virtual shelves. Libraries need to be able to preserve books and to make titles available to users, subject only to budget constraints.

Digital First Sale, at least for libraries, is essential. The general public needs libraries as an avenue to find reputable material for health concerns, educational opportunities and job training, etc. without each inquiry resulting in a pay-to-play.

The Califa Group, in partnership with the Contra Costa County Library and the Kansas State Library, has adopted the model set forth by the Douglas County (CO) Libraries. In this model, we buy ebook files from publishers that agree to a reasonable interpretation of First Sale in the digital realm (See Attachment A). This requires hosting the files ourselves (see <http://enkilibrary.org>), and treating each ebook file as we treat a print copy. One-copy-one-user.

Although the libraries have had success in using this Statement of Common Understanding with some small to medium sized publishers, it is more common for us to find publishers that insist on licensing ebooks with a plethora of restrictions. Licensing can be win-win to provide access to library users as a supplement, (for example, allowing multiple uses of a title while the title is still in hot demand), but it cannot serve as the backbone of a library's collection.

Language in a new copyright law can assure that licenses will not undermine the limitations and exceptions in copyright law that are essential to operate public libraries is needed. Sample language may be seen in the Treaty Proposal on Limitations and Exceptions for Libraries and Archives found at the site of the International Federation of Library Associations <http://www.ifla.org/node/5856>

Article 14. Obligation to Respect Exceptions to Copyright and Related Rights http://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/TLIB_v4.3_050712.pdf

"Any contractual provisions that prohibit or restrict the exercise or enjoyment of the limitations and exceptions in copyright adopted by Contracting Parties according to the provisions of this Treaty, shall be null and void."

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