

Why It's Difficult For Your Library to Lend Ebooks

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A pilot program operating in Massachusetts that officials hope to expand has library officials excited about the prospect of increasing access to ebooks and digital content for the state's library patrons.

The program is run through the Massachusetts Library System (MLS), a state-funded nonprofit that coordinates sharing between libraries statewide. It allows participating libraries to access one broad, common collection of ebooks. Currently, individual libraries and regional networks have their own ebook collections. The pilot program has seen 51 libraries participate, and officials hope it ultimately operates statewide.

The significance of the program might be lost on library patrons and consumers who are unaware of how ebook lending at libraries works, or the long, grinding conflict between libraries and the publishing industry over how ebooks are procured.

Nobody who buys an ebook—library, consumer, or otherwise—actually *owns* it upon purchase. Instead, they purchase a license to access the content. The distinction might seem like a small one, but it has presented publishers with the opportunity to explore new ways of working with libraries in the digital age. And in so doing, it's caused massive headaches for libraries as they've sought to broaden their ebook collections.

But library officials are hopeful that the new Massachusetts program could help to resolve the resulting conflict.

"Our intended purpose is to change the playing field and to increase the availability of content to Massachusetts libraries," MLS president Gregory Pronevitz says.

A long-standing conflict

To understand what Pronevitz and Massachusetts librarians think is in need of shaking up, you first have to understand how libraries go about offering ebooks to their patrons—and how that differs from the lending of print copies.

As recently as a few years ago, major publishers made it very difficult for libraries to be able to buy and lend ebooks. Relations in the past couple years, by the admission of both librarians and publishers, have grown much stronger as publishers have increasingly dipped their toes into the digital lending waters. While some ebooks still aren't available to libraries, most are.

However, library officials wouldn't necessarily equate "better" relations with good ones.

Publishers put restrictions not just on which ebooks libraries can offer, but how they can offer them. Some publishers only allow for an ebook to be borrowed 26 times before the library has to purchase the license again. Others opt for the license to expire after a year. And still others instead charge libraries significantly more than they do consumers for ebooks. For example, Facebook COO Sheryl Sandberg's best-selling "Lean In," released last year by Random House, was available as an ebook to consumers at \$12.99, but cost libraries \$74.85 to purchase. Librarians generally find this system perplexing, considering the overhead costs for creating an ebook—without physical production—are much lower than print books.

It would plainly violate copyright law to require libraries to put such restrictions on libraries for paperback or hardcover books. That notion is covered by the "first-sale" doctrine of copyright law, which says once somebody buys something, they're free to do what they like with it—donate it, resell it, or in the case of libraries, lend it out.

The thing about ebooks, though, is that libraries and consumers *don't buy* them, instead paying for the aforementioned license—which isn't covered by first-sale doctrine. And that affords publishers the ability to set different prices for different customers. Their justification for library pricing: Since libraries can lend ebooks out to what otherwise might be customers, they should pay more to compensate for those perceived losses.

The licensing argument doesn't just hold true for ebooks. It's also the terminology used for digital copies of music, movies, and more. What they reflect, more than anything, is that U.S. copyright law is still waiting for a makeover that would put it better in line with the realities of the digital age, says Mitch Stoltz, an attorney with the Electronic Frontier Foundation.

"New technology tends to reassign rights and privileges," Stoltz says. "Then (regulation) has to catch up."

Librarians say the current system presents issues beyond the costs of licensing.

In an interview with Boston.com, American Library Association President Barbara Stripling identified a few of the other areas of concern libraries feel when it comes to licensing.

For one, there's the notion of preservation—something that has always factored into the mission of libraries. Today, most works of significance come out in both print and

digital form. However, Stripling pondered the notion that as the technology continues to grow, some important works may only be released in digital form. In that case, libraries would not want to be in a position in which they did not have guaranteed access to the literature in question.

There's also the issue of overall accessibility. Libraries and publishers work through middleman companies, which essentially act as a book list for libraries to order ebooks through, at prices and terms set for publishers. This can be tricky because there are different types of ebooks, and there are different file formats for different types of e-readers. Amazon's Kindle, for example, uses a proprietary ebook format. Therefore, it can be difficult to guarantee access for every user to every format. (The most widely-used middleman system, called Overdrive, offers most formats—and is the only system to offer Kindle access.)

And finally, there's the sharing issue—the one the Mass. Library System is looking to take on. Individual libraries, or by regional library groups, sign up for systems like Overdrive. Regional networks refer to a group of libraries that act as one body, often sharing resources with one another. Massachusetts has nine such regional networks, but it also has a number of individual libraries that are not aligned with any of those consortiums. MLS has long served as an intermediary not just between the consortiums, but individual libraries as well. Pronevitz, its head, says about 6 to 7 million items are shared between different libraries and consortiums each year. But while today's ebook licensing systems allow for regional networks to share digital materials, sharing statewide is considerably more difficult—if not impossible. An Overdrive spokesperson says it's near impossible to allow for inter-library lending on a statewide basis through their system, due to publisher restrictions.

Librarians say they are eager to ensure greater access to the digital space, but say it's an ongoing struggle to do so. Former Massachusetts Board of Library Commissioners director Rob Maier, who now serves on a working group about digital content for the American Library Association, puts it in the starkest terms, saying: “At its root, it's the public interest against the private interest of publishers.”

Publishers' perspective

That said, the private interest isn't an impossible one to sympathize with.

Ebooks, publishers say, are fundamentally different from physical books in the most obvious way: You don't need to go anywhere to pick them up. So while publishers have long and happily sold print books to libraries—in fact, they usually even do so at a discount—that usually involves a bit more effort to get the book on the part of the patron. They visit the library, spend some time there, and become more closely associated with the reading ecosystem at large. Ideally, in the long term, that creates a book customer.

Maier, among others, say ebooks stand to do the same thing. They expose readers to the content in question and build their relationships with reading both as an activity

and passion, and as an industry. But publishers point to the lack of “friction” ebooks enable. Rather than going to a library to check out a book, the digital systems allow people to borrow ebooks from the couch or the beach. It’s more of an automated process rather than an active building of a patron’s relationship with books, they argue.

That is, of course, an arguable point, and librarians say it sounds behind the times. But publishers also say part of the hesitance is just their practicing due diligence. “It’s a format that’s new to all of us,” says Andi Sporkin, the vice president of communications for the Association of American Publishers.

In addition, publishers defend the lending limitations they put on libraries as reasonable.

For example, Harper Collins President of Sales Josh Marwell points to that company’s policy. It does not charge a premium for its ebooks, but they expire after 26 uses. Marwell says 26 uses, if each user borrows for the typical library maximum of two weeks, puts it on par with about a year’s worth of lending. He also says less popular ebooks usually aren’t even lent 26 times, and that the typical paperback won’t last much longer than that anyway. Current Mass. Board of Library Commissioners Director Dianne Carty didn’t strongly dispute that point, though says paperbacks will generally last between 30 and 50 uses, depending on its size.

Other publishers are similarly-armed. Penguin Random House, which uses large price increases as seen with “Lean In,” doesn’t put any limitations on the number of lends. Hachette also sells access to new ebooks at a much higher price to libraries than to consumers, but doesn’t put limitations on the borrows—and takes it a step further by dropping prices after the ebook has been on the market for a year. Macmillan sells licenses to libraries for about 1.5 times the listed cover prices, but allows for two years or 52 borrows before requiring renewal.

Many of these policies are fairly new, launched in 2012 and 2013. Their implementation marked a positive turn in what had previously been frosty relations between publishers and libraries that had left libraries shut out from many popular ebooks. Librarians are quick to acknowledge the progress.

But they still see a lot of room for growth. They also feel a sense of urgency to better improve ebook access. Carty provides the data. Ebook demand at Massachusetts libraries jumped more than 5,000 percent between 2005 and 2012, and 83 percent of those polled said they want access to statewide ebook access. Some more figures: The Boston Public Library lent 465,000 ebooks in 12 months ending in March 2014, marking a 13 percent increase from last year. And between 2011 and 2014, the percentage of adults to have read an ebook in the past year jumped from 17 percent to 28 percent, [according to Pew](#).

That's a lot of new demand, putting the onus on libraries to satisfy it. For Massachusetts, that has meant building the new pilot program—and, librarians hope, expanding it soon as well.

“The time has come, says Carty, “for a statewide resource (for ebook sharing).”

What Mass. stands to gain

The pilot program only addresses one of the many concerns for librarians: That of inter-library sharing, at the state level.

Under the program, any participating library or consortium will gain access to the same pool of ebook resources. A patron of a participating library on, say, Cape Cod would have access to the same ebook license as a patron of a participating library in the Worcester area.

The pilot program is run in partnership with three companies that provide similar services to Overdrive.

Baker and Taylor is a company that has long connected publishers with print books, and its Axis 360 portal does so with digital content. Axis 360 operates much the same as Overdrive. It offers 700,000 digital titles that libraries can pay to access at rates set by publishers. And it has been able to talk some publishers into trying statewide lending programs on a case-by-case basis. Unlike Overdrive, though, the system does not have a contract with Amazon allowing for Kindle users to access ebooks. (Michael Bills, who oversees the Axis 360 system, says the company is in discussions with Amazon.)

The state is also providing access to academic ebooks through a program called Ebook Library, offered by research company ProQuest. And the state is also working with a smaller system called BiblioBoard, which MLS head Pronevitz says adds to the collection most by providing access to self-published authors.

The pilot program isn't perfect. Baker and Taylor provides most of the collection's consumer-facing ebooks, but those books can't be read on a Kindle—meaning it doesn't address accessibility issues. It does nothing to address the perceived high costs of licensing, or the preservation issues.

What's more, a statewide ebook sharing program technically isn't novel in Massachusetts. Though officials say few people know this, any Massachusetts resident is eligible to get a library card with the Boston Public Library. And doing so grants access to BPL's vast digital content, according to BPL Director of Library Services Michael Colford.

Still, Pronevitz says allowing for statewide access to the same ebook collection is a big step in the effort to ensure better digital reading access for library members. It means that if one library or regional network doesn't have access to a given ebook, the patron isn't out of luck. It also means individual libraries don't need to spurn their

patrons by directing them to Boston, and that more ebooks would be in circulation statewide as opposed to reliance on Boston's system.

But the biggest advantage the new system could give libraries, Pronevitz says, is proof of concept. If patrons use the shared resources the system provides on a statewide basis, and it ultimately results in greater familiarity with authors and the wider reading ecosystem, publishers might find themselves more willing to relax restrictions on libraries. Officials also say collective purchasing power could ultimately serve to better leverage libraries against publishers.

Many librarians credit an initiative from the Douglas County Libraries in Colorado for the aforementioned improvements to this point. Douglas County has refused to pay premium prices for ebooks from major publishers and instead worked with smaller independent publishing groups, creating its own platform for checking ebooks out.

By working with Baker and Taylor, ProQuest, and Biblioboard, the Mass. Library System is eschewing the idea of setting up its own system. But in some ways, the concept remains the same. The state's librarians might ultimately put pressure on publishers to create a system deemed more equitable by libraries if they show publishers they are willing to find outside-the-box methods to get ebooks into patrons' hands—err, onto their e-readers.

The other side of that argument is that there might be no proof of concept. Demand for, and participation in, the program could always fall flat. And there's also a question of how many libraries the program might ultimately serve. It appears slated to expand in the coming months, but could do so more quickly and broadly depending on how the state's 2015 budget shakes out.

Two lines buried deep in the Senate's proposal would call for increases in state aid to local libraries, by about \$3 million, and to technology and resource sharing, by about \$1 million. The House budget also calls for increases on both lines, but only by about \$1 million total. (The two budgets remain in conference committee.) While individual libraries pay to join the program, increases in those two lines would subsidize those costs and help provide discounts for poorer towns.

In any event, Pronevitz says the system will help produce answers about how the still-evolving landscape of ebook library lending should look.

"We are trying to level the playing field," he says.