

**Congress of the United States**  
Washington, DC 20515

September 23, 2021

Don Weisberg  
Chief Executive Officer  
Macmillan Publishers  
120 Broadway  
New York, NY 10271

Dear Mr. Weisberg:

We write seeking information about opportunities for libraries to license e-books from Macmillan Publishers and loan them to students, researchers, and the public, in the customary library lending cycle. E-books play a critical role in ensuring that libraries can fulfill their mission of providing broad and equitable access to information for all Americans, and it is imperative that libraries can continue their traditional lending functions as technology advances.

In recent years, e-books have been a growing part of library catalogs. Not only do many library users prefer to borrow e-books, but digital options can provide greater accessibility for Americans who have disabilities, face mobility challenges, or live in remote areas. The COVID-19 pandemic and related mitigation measures—including the prolonged closure of schools, libraries, and other public institutions—highlighted the importance of ensuring that Americans have remote access to the resources provided by public and academic libraries. Ensuring that libraries can offer an array of resources, including e-books, is essential to promoting equity in education and access to information.

Many libraries face financial and practical challenges in making e-books available to their patrons, which jeopardizes their ability to fulfill their mission. It is our understanding that these difficulties arise because e-books are typically offered under more expensive and limited licensing agreements, unlike print books that libraries can typically purchase, own, and lend on their own terms. These licensing agreements, with terms set by individual publishers, often include restrictions on lending, transfer, and reproduction, which may conflict with libraries' ability to loan books, as well as with copyright exceptions and limitations. Under these arrangements, libraries are forced to rent books through very restrictive agreements that look like leases.

In order to better understand the terms of e-book licensing agreements and how these agreements may impact the work of libraries and their rights under longstanding federal law, please respond to the following questions:

1. For sales of physical books to academic and public libraries, please describe any restrictions you place on the sale related to potential exercise of copyright limitations and exceptions available to schools and libraries.
  - a. For each year from 2018 to 2020, what was your total revenue for the sales of physical books to academic libraries and to public libraries, respectively?
  - b. For each year from 2018 to 2020, what was the total number of physical books sold to academic libraries and to public libraries, respectively?
2. For the licensing of e-books to academic and public libraries, please describe any restrictions you place on the license related to copyright limitations and exceptions available to schools and libraries.
  - a. For each year from 2018 to 2020, what was your total revenue for the licensing of e-books to academic libraries and to public libraries, respectively?
  - b. For each year from 2018 to 2020, what was the total number of e-book licenses sold to academic libraries and to public libraries, respectively?
3. Please provide copies of your standard e-book licensing agreements for academic libraries, public libraries, and consumers, and please answer the following questions:
  - a. Do you offer perpetual e-book licenses to academic libraries, public libraries, or consumers? If so, under what terms and conditions?
  - b. Do you offer sales of e-book files (with print-like rights of ownership, instead of licenses) to academic libraries, public libraries, or consumers?
4. Please summarize the lending restrictions included in your standard e-book licenses for both academic and public libraries, including:
  - a. the number of times and amount of time you allow an e-book to be loaned; and,
  - b. the legal or technical restrictions you place on each loan.
5. Please summarize the standard e-book licensing terms, for both academic and public libraries, regarding your access to library data, including:
  - a. what reporting requirements are placed on libraries for acquiring these e-books;
  - b. whether you have any access to the lending logs of the e-books, including tracking any personal information associated with patrons and check-outs; and,
  - c. what other data you have access to, including uses of the work (e.g., highlighting, notes, or annotations) and patrons' data.
6. During COVID-19-related shutdowns, did you create any new licensing or permission regimes (e.g., permission to read aloud) for some or all of your e-book offerings? If so, please describe the nature of the works covered by the change and the extent of the changes.
7. Please describe any legal actions—including cease and desist letters, threat of lawsuit, actual lawsuits, or imposition of restrictive licensing terms—you have taken since 2016 in response to the following activities:
  - a. multiple checkouts of digital texts;

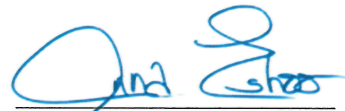
- b. interlibrary loan;
  - c. controlled digital lending;
  - d. libraries making copies of owned works to lend digitally on a one-for-one basis;
  - e. schools making available electronic copies of books they physically own to students during the pandemic; and,
  - f. e-reserves.
8. For each of your 100 most sold or licensed works to libraries in 2020, please provide the following data from 2020:
- a. the average price of a physical copy of the work sold to libraries;
  - b. the average price of a physical copy of the work sold to consumers;
  - c. the average price of an e-book license to an academic library and the average number of loans permitted;
  - d. the average price of an e-book license to a public library and the average number of loans permitted;
  - e. the average price of an e-book license to consumers;
  - f. the profit margins for the sale of a physical copy of the book to consumers and to libraries;
  - g. the profit margins for the license of an electronic copy of the book to consumers and to libraries;
  - h. whether you allow libraries to purchase (rather than license) a digital copy of a book, and if so, at what average price.
9. For each of your 100 most sold or licensed works over the period of 2015 to 2019, please provide all the information requested in question 8 above, along with the year-over-year changes in the average sales price of a physical copy and the average licensing rate for a digital copy to consumers and to academic and public libraries.

Please contact our staff no later than October 7, 2021 with responses to these questions. If you have any questions you may contact our office at (202) 224-4515. Thank you for your prompt attention to this matter.

Sincerely,



Ron Wyden  
United States Senator



Anna G. Eshoo  
Member of Congress