

Congress of the United States

Washington, DC 20515

November 18, 2021

Mr. Amandeep Kochar
President and CEO
Baker & Taylor
2810 Coliseum Centre Drive, Suite 300
Charlotte, NC 28217

Dear Mr. Kochar:

We write seeking information about opportunities for libraries to license e-books published by major publishers from Baker & Taylor 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 and e-book aggregators, 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. "Major publishers," as used in the following questions, include Hachette Book Group; HarperCollins Publishers; Macmillan Publishers; Penguin Random House; and Simon & Schuster.

1. For the licensing of e-books to academic and public libraries, please describe, separately for each major publisher, 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, separately for each major publisher, 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, separately for each major publisher, sold to academic libraries and to public libraries, respectively?

2. Please provide copies of your standard e-book licensing agreements, separately for each major publisher, for academic libraries, public libraries, and consumers, and please answer the following questions separately for each major publisher:
 - a. Do you offer perpetual e-book licenses to academic libraries, public libraries, or consumers? If so, under what terms and conditions and for which major publishers' e-books?
 - b. Do you offer sales of any major publishers' e-book files (with print-like rights of ownership, instead of licenses) to academic libraries, public libraries, or consumers?
 - c. Do you require, ask, or incentivize academic libraries or public libraries to sign any form of non-disclosure agreement concerning any aspect of the licensing of e-books from any publisher?

3. Please explain whether or not you independently set e-book license prices, separately for each major publisher, for academic libraries and public libraries, and please answer the following questions separately for each major publisher:
 - a. Do your agreements with publishers permit you to independently set e-book license prices for academic libraries and public libraries?
 - b. Do publishers provide you with suggested e-book license prices for academic libraries and public libraries?
 - c. When a publisher provides you with a suggested e-book license price for academic libraries and public libraries for a given title, how frequently do you set a substantially different price?
 - d. For your top ten revenue-generating e-book license titles for each major publisher, if the publisher suggested a license price, did you set a substantially different license price than the license price suggested by the publisher?
 - e. If you set prices for e-book licenses, what information about e-book license prices do you share with publishers?

4. Please summarize the lending restrictions, separately for each major publisher, 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 data about libraries and their patrons, including:
 - a. what information libraries are required to report as part of any agreement or license to access e-books;
 - b. whether you have any access to the lending logs of the e-books, including personal information associated with patrons and check-outs;
 - c. what other patron data you have access to, including patrons' uses of the e-book (e.g., highlighting, notes, or annotations), and how long you retain that data;
 - d. what library or patron data you sell or otherwise provide to third parties, including major publishers; and,
 - e. whether patrons have the ability to opt out of any data collection or sales that you conduct.

6. Since 2016, have you experienced any data breaches that exposed library or patron data, or have other incidents unintentionally exposed library or patron data (including data breaches experienced by third parties or services providers that you provided library or patron data to)? If so, please explain each of these incidents, including:
 - a. the total number of patrons and libraries affected;
 - b. each category of data that was, or may have been, exposed;
 - c. the earliest possible date on which the breach or unintentional exposure may have occurred;
 - d. the date on which the breach or unintentional exposure became known to you;
 - e. the date on which the breach or unintentional exposure ended;
 - f. what measures you took to end the breach or unintentional exposure and prevent similar breaches or unintentional exposures in the future;
 - g. the list of federal and state agencies you notified about the incident, the dates of those notifications, and whether any agencies notified you that the breach may be a violation of federal or state law; and,
 - h. if, when, and how you notified patrons and libraries that were affected, or may have been affected, by the breach or unintentional exposure.


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, separately for each major publisher, 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.

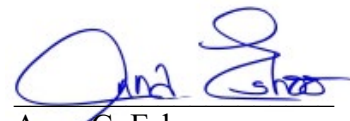
8. For each of your 100 most sold or licensed works to libraries in 2020, please provide the following data from 2020:

- a. the average price of an e-book license to an academic library and the average number of loans permitted;
 - b. the average price of an e-book license to a public library and the average number of loans permitted;
 - c. the average price of an e-book license to consumers;
 - d. the profit margins for the license of an electronic copy of the book to consumers and to libraries;
 - e. 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 and the average licensing rate for a digital copy to consumers and to academic and public libraries.

Please contact our staff no later than December 9, 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