

Kluwer Copyright Blog

Unlocking E-Lending in Europe: is independent secure digital lending legal under national laws? – Report Summary (Part II)

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In an age where digital access defines education, research, and participation, European libraries face serious legal and technical barriers to lending electronic books. Despite the digital shift, outdated or restrictive interpretations of copyright law often prevent libraries from fulfilling their public mission online. A new [report](#) led by the [Future Law Lab](#) at Jagiellonian University and the [Centrum Cyfrowe Foundation](#), developed as part of the [KR21 project](#), addresses this challenge by proposing a



legally sound and practical solution: the independent Secure Digital Lending (iSDL) model. Part I of the report examined whether iSDL is compatible with international and EU law, while Part II now explores whether national laws in selected European countries enable libraries to implement this model.

Can European libraries lend digitised books? Comparative legal analysis

The fact that independent Secure Digital Lending (iSDL) may be allowed under EU law does not mean it is automatically permitted under the national laws of Member States. EU law enables this model but does not require countries to adopt it. While the [Rental and Lending Directive](#), together with the [VOB](#) and [Darmstadt](#) rulings by the CJEU, open a legal pathway for digital lending by libraries, they do not obligate national legislatures to implement it.

For this reason, our study focused on a key question: To what extent do national legal systems across Europe currently allow—or could allow through dynamic interpretation—the implementation of iSDL by libraries? To answer this, we analysed the legislation of 22 countries, including 20 EU Member States, based on three essential legal conditions. These criteria reflect what is needed for iSDL to operate lawfully within national frameworks, considering EU directives and CJEU case law.

The **first condition** concerned whether national law provides a legal basis for digitising library collections (e.g., an explicit statutory provision authorising digitisation, a technology-neutral reproduction right that may cover digital copying, or an ancillary right). The **second condition** examined whether libraries are legally entitled to lend digital versions of works. While traditional (physical) book lending is universally recognised, e-lending remains legally unclear or restricted in many jurisdictions. National legal systems were assessed based on whether they expressly permit e-lending in legislation or can be interpreted, in light of the *VOB* ruling, to include digital formats within the lending right. The **final condition** concerned the existence of a Public Lending Right scheme that applies to e-books.

Findings: Fragmented national laws and the feasibility of iSDL

Although the iSDL model is legally allowed under EU law, our analysis shows no country has fully put it into practice. In none of the 22 studied countries do national laws meet all three conditions at once (**Group 1**). However, similar to [R. Xalabarder's](#) research on Spain, the study found that in many countries, copyright laws can be interpreted more flexibly to allow e-lending. This goes beyond the exact wording of the laws and focuses on the purpose of copyright exceptions—to promote public access to knowledge and culture. The analysis divides countries into groups based on their copyright frameworks:

- **Group 2** includes Germany, Croatia, Poland, and the United Kingdom, where national laws can be interpreted in ways that enable e-lending consistent with the *VOB* and *Technische Universität Darmstadt*
- **Group 3**, consisting of the Czech Republic, Estonia, Spain, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, and Slovenia, faces more interpretative challenges but these are not insurmountable.
- Finally, **Group 4**—Bulgaria, Greece, Portugal, Romania, Slovakia, and Ukraine—encounters more legal obstacles that currently prevent implementing iSDL e-lending.

Of course, interpretative approaches and doctrinal frameworks in individual countries mean that the classification we propose should not be considered definitive. However, it is important to note that, aside from Slovakia, local laws in most countries can likely be interpreted in a way that permits the implementation of e-lending under the iSDL model. This is because in Slovakia, book lending is not based on the derogation under Article 6 of the Rental and Lending Directive but rather on agreements with collective management organizations — making any lending model based on an exception effectively impossible.

Human rights as a foundation for Interpretation of copyright

One of the most important dimensions of the report is its emphasis on the need to interpret copyright law through the lens of users' fundamental rights. The right to culture, freedom of expression, the right to education, and the right to privacy — all recognised under European and international human rights frameworks — must guide the evolution of copyright [exceptions and limitations](#). In our view, implementing the iSDL model in European libraries requires a dynamic interpretation of copyright law—one that takes into account users' fundamental rights. The CJEU,

in the *Funke Medien case*, clearly emphasized that a national court must rely on an interpretation which, “whilst consistent with their wording and safeguarding their effectiveness, fully adheres to the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.” (para. 76)

The report highlights the key role of libraries and e-lending in supporting fundamental human rights like education, freedom of expression, cultural participation, and privacy. In today’s digital world, access to electronic books is crucial for equal opportunities and fighting digital exclusion. Libraries help people gain knowledge, develop skills, and connect with culture—important parts of the right to education and free information access. Using human rights to interpret copyright law creates a fair balance between protecting rights holders and meeting social needs, allowing libraries to carry out their mission online. Considering e-lending’s role in protecting fundamental rights when interpreting national copyright laws, following CJEU rulings, is not just optional but legally necessary. To comply with EU law, it may be needed to go beyond the literal wording of laws and rethink old concepts that have ignored this human rights dimension.

Digital publishing and user privacy: A conflict of models

A key factor supporting the legality of e-lending under the iSDL model is privacy. More and more, libraries provide e-book access through platforms owned by publishers or commercial companies. While this allows fast and wide access to digital content, it raises serious privacy concerns and may conflict with public libraries’ core values. Using e-books in this way involves collecting and sharing user data. Problems occur when license agreements force libraries to share this data—usually with rights holders. Even if this complies with data protection laws, it involves not just personal data under GDPR but also other data about how e-books are used.

Many publishers, including academic ones, are shifting to data-driven business models where user data is as valuable as the content itself. Apps and websites for e-books collect information like reading time, highlights, search terms, and user habits. This clashes with [librarianship’s ethical principles](#), which focus on protecting user privacy and allowing access without surveillance. This “surveillance publishing” model tracks user behavior and threatens a core value: intellectual freedom—the right to read, research, and explore information anonymously.

Users should be able to use library resources without being tracked and decide if their data stays within the library or is shared. Libraries should not be forced to act as middlemen in commercial data collection. The iSDL model can solve this by ensuring all interactions and data stay only between the library and its users, without involving third parties. This protects privacy, keeps access under library control, and supports intellectual freedom.

Policy recommendations: Towards a sustainable e-lending

Based on the study’s findings, we have developed recommendations across three key levels. To ensure uniform e-lending access across Europe, the **EU legislators should introduce a mandatory copyright exception allowing libraries to offer e-lending under the iSDL model or other approaches consistent with the VOB ruling**. This exception must be technology-neutral and not override contracts or TPMs. It should also permit libraries to digitize and use e-books even

if current agreements or technologies restrict this. Authors should receive fair remuneration through the Public Lending Right scheme. Ideally, this exception would be part of a broader framework focused on access to knowledge, such as a [Digital Knowledge Act](#) or [European Research Area Act](#).

Regardless of EU legislation, **national lawmakers should, within EU limits, introduce provisions allowing iSDL in their legal systems.** Such regulations are essential to protect users' fundamental rights, currently weakened by legal uncertainty and exclusive reliance on commercial licenses. Libraries need legal certainty to engage in e-lending regularly, best achieved through clear legal frameworks.

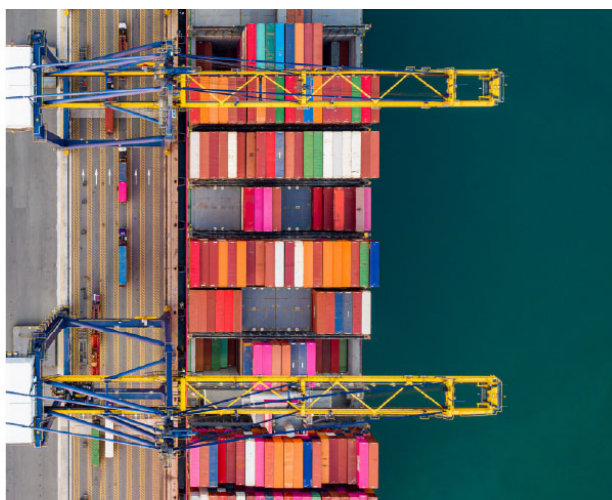
Finally, achieving e-lending requires the active involvement of **libraries** themselves. Whenever possible, they **should implement e-lending within the framework of existing national laws.** Local library associations must develop common guidelines addressing the legal and technical aspects of e-lending. While many national laws can be interpreted in ways compatible with iSDL, adopting codes of practice would provide greater clarity and legal certainty. Additionally, libraries need to actively engage with policymakers, demonstrating how current market conditions undermine their mission and the rights of users.

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