

# THE IFLA POSITION ON PUBLIC LENDING RIGHT

April 2005

## Introduction

The International Federation of Library Associations and Institutions (IFLA) is a non-governmental organisation (NGO) representing the interests of libraries and information services as well as the users of such services throughout the world.

Libraries accessible to the public, together with other not for profit cultural, scientific and educational institutions, exist to serve the public and guarantee free unlimited access by citizens to the full spectrum of humanity's recorded knowledge and information. They take a crucial role in the development and maintenance of a democratic society by enabling access for all members of the community to a wide and varied range of knowledge, ideas and opinions. Public libraries in particular enable people, especially children and young people, to acquire and develop the habit of reading. As idea stores and knowledge powerhouses they also provide essential facilities for learning and research.

Library and information services are essential gateways to culture and information for users, including the creators of copyright works. As significant players representing their users, they take a pivotal role in ensuring that the public interest represented by society's need for knowledge is recognised as a priority and appropriately balanced against copyright holders' legal and moral rights.

Furthermore library and information services are major customers of information producers, purchasing both analogue and digital formats, and they are also the major customers of reproduction rights organisations as their principle licensees, in order to be able to extend access and use of copyright works to users beyond the limited provisions of the statutory exceptions and limitations to copyright. Working within those exceptions and limitations, they strive to ensure that their users have lawful and equitable access to the knowledge contained in copyright works, while respecting the intellectual property rights of authors, performers, publishers and other producers of the works.

IFLA's long held position on copyright and related rights is that the economic rights of information providers must be balanced against society's need to gain access to knowledge. The onward and consistent expansion of copyright and related rights into new arenas has led to the increased use of licensing, extending to more and more activities such as 'lending right', which this paper addresses. IFLA believes that unless great care is taken to preserve and indeed vigorously uphold the exceptions and limitations to copyright throughout the world to maintain this balance, this trend will in due course impact in a profoundly negative way on education and research and its outcome, which is the cultural, scientific and economic progress of individuals, and of nations and society, affecting in particular the economies of developing countries.

## What is Public Lending Right?

Public Lending Right (PLR) does not exist in many countries, and varies in its application from country to country where it does exist. The term applies to two separate concepts

1. In its strict legal sense, PLR may be a copyright - one of the limited, monopoly rights granted to the copyright owner of a protected work. It grants the owner the right to authorize or prohibit the public lending of a protected work in its tangible form\* after the work has been distributed to the public. Authorisation of public lending can take place through licensing and through payment of royalties to authors through collecting societies.

2. A second concept sometimes described as PLR, is a "remuneration right," which is the right of an author (not necessarily the copyright owner) to receive monetary compensation for

the public lending of his or her work. Where countries have chosen to establish a remuneration right, they have set their own criteria for eligibility and in some cases (but not all) this is to meet cultural objectives. In some countries, the remuneration right exists under law as an alternative to the PLR (in the legal sense described in (1) above), and is therefore seen as being associated with copyright. In other countries, the remuneration right is entirely outside of the context of copyright. In either case though, remuneration made to authors is not considered a payment of copyright royalties.

\*(Public lending is not an act of extraction or reutilisation as from a database. It applies to works in *material* formats only.)

## **IFLA's position on Public Lending Right**

IFLA has already established core values and principles concerning free access to ideas, information and works of the imagination, and in turn free access to publicly accessible libraries, their place within the national infrastructure, and public lending right. These are listed below.

### **1. IFLA's Core Values include**

- the endorsement of the principles of freedom of access to information, ideas and works of imagination and freedom of expression as embodied in Article 19 of the Universal Declaration of Human Rights
- the belief that people, communities and organizations need universal and equitable access to information, ideas and works of imagination for their social, educational, cultural, democratic and economic well-being
- the conviction that delivery of high quality library and information services helps guarantee that access

2. "The public library shall in principle be free of charge. The public library is the responsibility of local and national authorities. It must be supported by specific legislation and financed by national and local government. It has to be an essential component of any long-term strategy for culture, information provision, literacy and education." IFLA/UNESCO Public Library Manifesto 1994.

3. "IFLA believes that the lending of published materials by libraries should not be restricted by legislation and that contractual provisions, for example within licensing agreements, should not override reasonable lending of electronic resources by library and information staff." IFLA CLM: Limitations and exceptions to copyright and neighbouring rights in the digital environment: an international library perspective (revised 2004).

4. "...It is important that funds for payment of public lending right should not be taken from libraries' funds for the purchase of materials. However, public lending right, if separately funded, does provide support for authors without affecting public libraries' budgets. In some schemes it can also provide useful statistics on the loans of books by specific authors. Librarians should participate in the development of public lending right schemes to ensure they are not financed from library budgets. The Public Library Service: IFLA/UNESCO Guidelines for Development, 2001(p17 para 2.3.3).

### **In line with these established principles IFLA affirms that**

**IFLA does not favour the principles of 'lending right', which can jeopardize free access to the services of publicly accessible libraries, which is the citizen's human right.** IFLA endorses freedom of access to information, and will continue to resist all circumstances that could hamper this access.

**Public lending is essential to culture and education and should be freely available to all.** It is in the public interest that lending not be restricted by legislation or by contractual

provisions such as licensing. While the cultural and social support for authors that most existing PLR schemes provide is indeed laudable, the justification usually given for PLR - that the use of copyright works through public libraries detracts from primary sales - is unproven. In fact, lending by publicly accessible libraries often assists in the marketing of copyright works and encourages sales.

Even though there is no international requirement by treaty or convention to grant "lending right," a number of countries, particularly in Europe, have made lending a restricted act under copyright, and it is possible that other countries might follow suit. Given these circumstances, the growth of PLR can not be ignored and librarians need to be able to influence the design of PLR systems where they are nevertheless to be introduced, since the introduction of PLR systems can put the services of publicly accessible libraries at risk unless sensitively handled by legislators.

In countries where PLR systems are introduced, librarians could, in the right circumstances, accept PLR as a means of cultural recognition and economic and social security support for authors provided that the financial and administrative support for PLR **does not come from library budgets**, but from the State as a cultural support. IFLA advocates that the introduction of PLR should not result in costs for access by users to information held in publicly accessible libraries.

## **Recommendations concerning the introduction or modification of PLR systems**

### **1. Funding principles**

*Access to public libraries, whether to use the works they contain for reference purposes or in order to borrow them, must remain free at the point of use. Furthermore, the costs of PLR should not in any way impinge on the quality and variety of the services publicly accessible libraries provide. Therefore, in order to best support national cultural and educational objectives, the funds for establishing and maintaining PLR systems and remunerating rights holders must not come from library budgets but should be separately funded by the State.*

#### **Justification**

Libraries that serve the public are usually funded directly or indirectly by the State at the national or local level. They often provide their services from constrained, even meagre, budgets and thus are simply not in a position to find additional monies to fund PLR, whether PLR takes the form of a remuneration scheme or copyright licensing. If they were forced to do so, such libraries would have to make swingeing cuts to the purchase of stock, the number of staff and the provision of their many valuable services, to the detriment of user choice and access. In addition to such cuts, they may also be forced to charge users for loans or to use the library at all.

"Everyone has the right of equal access to public service in his country." (Universal Declaration of Human Rights Art. 21(2)). *Access which is not free can not be equal.* Any such refusal by the State to support its national culture and the role of its public library system and other not-for-profit educational, cultural and scientific establishments in providing access to information, denies equal access to learning and knowledge to all its citizens, including not only the most vulnerable members of society, but also authors themselves. Everyone in society needs publicly accessible libraries to provide them with the knowledge and information to foster intellectual creativity.

### **2. Developing countries**

Lending right should be rejected in the greater public interest in situations where a country can not afford to fund PLR without diverting resources earmarked to fund more fundamental public services. In particular, lending right should not be established in countries that are not considered high or middle income by the World Bank.

#### **Justification**

In developing countries, the first priority is that monies allocated for cultural and educational

purposes are used to provide wide access to education and the development of a good public library service and infrastructure. Libraries must be able to focus their often meagre budgets on improving literacy rates and addressing basic educational needs, providing students with access to modern learning resources, developing innovative services to bring much needed information on healthcare, AIDS prevention, agricultural techniques and democratic participation to rural and underprivileged communities.

By increasing literacy rates and encouraging reading habits, libraries are fostering the long- term development of a market for information products, especially for the local content industries. In the short term, libraries are using their purchasing power to support and encourage these industries.

If PLR were introduced in developing countries, the State may be unable to divert funds to pay for it without severely compromising other services, such as primary healthcare, which may be considered more essential to the public interest. Publicly accessible libraries in such countries are likewise not in a position to be able to pay for PLR without fatally undermining their already fragile core services. If new charges were introduced to use public libraries, many people would be unable to pay. Library usage would decrease, which would have a profoundly negative impact on literacy levels and the subsequent economic growth of that country.

It should also be noted that developing countries would most likely experience more payments for PLR to foreign authors than to their own nationals.

### **3. Legal framework**

If a PLR system is introduced, it should be either a cultural support scheme or a remuneration right with its own enabling legislation outside the copyright legislative regime.

- a. Where it is proposed to introduce PLR or modify existing systems, librarians need to campaign vigorously in the public interest to ensure that the PLR scheme benefits authors, but without detracting from access to information by the public and without the use of funding for libraries.
- b. In the event that in future the introduction of PLR should be required in order to comply with international treaties or conventions, countries should be allowed to settle PLR rates and rules for execution of it that are in line with their financial and organisational resources and that do not constrain the goals and objectives of publicly accessible libraries. Countries should furthermore be allowed to obtain a temporary waiver of their obligations on the grounds of their economic and social viability. The introduction of PLR and the rate of remuneration chosen should take into account the respective country's relative wealth so that damage to access to information is minimalised or avoided.

### **Justification**

If the introduction of PLR is not properly handled, PLR is likely to result in the deterioration of library holdings and the withdrawal of the free access currently enjoyed by the citizen to education, culture, information and ideas through the universal gateway to knowledge provided by publicly accessible libraries. Choosing the wrong type of PLR system for the country's own interests could, especially in the case of developing countries or where holdings of publicly accessible libraries are dominated by foreign authors, result in the drain of precious resources in the form of remuneration to authors abroad (possibly in wealthier more developed countries) under copyright national treatment rules. This would be to the long-term detriment of the national economy and culture.

### **4. Legislative definitions**

Definitions or explanations of phrases and terms used in legislation are crucial, and librarians need to lobby effectively to ensure that legislation is carefully drafted.

### **Justification**

The only current supranational definition for 'lending right' is that of the EU Directive

92/100/EEC which states in *Articles 1(2) and 1(3)* that "'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public." In the absence of any international treaty or convention relating to lending right, this Directive is likely to be influential for countries considering its introduction. However countries outside the EU (other than candidate countries) are not bound by its terms and are under no obligation to follow it.

The perils of drafting are such that it should be noted that in the EU's case, phrases such as 'making available for use' can be interpreted more widely than what is commonly understood in normal language by 'lending.' The phrase accommodates the existing use of reference works in Sweden's libraries as 'lending,' and this extension to PLR is now proposed in the UK.

In another example, as EBLIDA, the European Bureau of Library, Information and Documentation Associations, reminded the Commission, the failure to provide an exhaustive list of categories of 'establishments which are accessible to the public' in the Directive, has contributed to the current dispute between the European Commission and certain Member States over which categories of establishment accessible to the public may be exempted from PLR. As EBLIDA pointed out, the later harmonising Information Society Directive 2001/29/EC indicates that the categories of establishments that qualify as being 'accessible to the public' are in fact publicly accessible libraries, educational establishments, museums and archives, so these all potentially qualify for exemption. (EBLIDA Statement on the infringement procedures over Public Lending Right, March 2004)

## **5. Consultation and involvement**

a. Librarians should lobby to ensure that, as is the usual practice in countries with established PLR systems, they as well as rights holders should from the very start be consulted about proposed legislation and the process of setting up and running the PLR system. Librarians also should seek to be invited to serve, together with rights holder representatives, on national advisory boards which develop policy, advise the PLR administrators and negotiate with rights holder organisations or collecting societies.

b. Additionally, where a copyright licensing system operates rather than a cultural scheme, librarians need to ensure they are directly involved in negotiations with collecting societies to determine the terms and conditions and fees for their lending licences.

c. Any legislation should be established in close cooperation with all stakeholders, including library organisations.

### **Justification**

It is important that the PLR administration be run efficiently and not absorb too much of the funding in its costs, so that the maximum possible percentage of the remuneration fund goes to the eligible recipients and so that the administrative burden on the libraries is minimised or even made insignificant. The best way to ensure cooperation from all stakeholders and the smooth running of the schemes is to involve both librarians and rights holders in the policymaking.

# **BACKGROUND PAPER ON PUBLIC LENDING RIGHT**

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2. A second concept sometimes described as PLR, is a "remuneration right," which is the right of an author (not necessarily the copyright owner) to receive monetary compensation for the public lending of his or her work. Where countries have chosen to establish a remuneration right, they have set their own criteria for eligibility and in some cases (but not all) this is to meet cultural objectives. In some countries, the remuneration right exists under law as an alternative to the PLR (in the legal sense described in (1) above), and is therefore seen as being associated with copyright. In other countries, the remuneration right is entirely outside of the context of copyright. In either case though, remuneration made to authors is not considered a payment of copyright royalties.

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### ***The origins of PLR***

The demand for PLR originated in the 19<sup>th</sup> century from literary authors who believed that they were losing income from sales due to the availability of their books in the then burgeoning system of public lending libraries. In September 1883, a resolution claiming remuneration for the lending of books by 'lending bookshops' was passed at a meeting of the General German Writers Association in Darmstadt. In 1917, Thit Jensen, a major Danish author, publicly claimed remuneration for authors for public library lending of books in a speech at the first annual conference of the Danish Library Association. Libraries and publishers opposed this idea and the debate on whether the free library loan disadvantaged or benefited authors continued until the introduction of Denmark's PLR system in 1946. The idea spread to authors elsewhere in Europe and elsewhere in the world leading to the introduction of PLR in other countries.

Existing PLR systems provide economic and social support to authors, and are seen as a means to encourage the growth and development of national culture. Authors are often passionately in favour of PLR, regarding it as a necessary and long overdue public recognition of their art and its contribution to the national culture. Many authors, even (with a few exceptions) famous ones, do not earn great riches from their work and their livelihood can be precarious. The 'social security' provisions of many national schemes are seen as a vital safety net and for many authors PLR remuneration is a significant source of income.

### ***The relationship between authors and publicly accessible libraries***

The primary motivation for an author to make a copyright work, particularly if it is his or her own intellectual creation, is because he or she has something to communicate to others. To this end, publicly accessible libraries do much to promote all classes of authors' works to users and maintain authors' profiles in the public domain long after the works have ceased to be sold commercially. Indeed the oft held assumption that primary sales of authors' works may be lost through library use is mistaken. Not only are such libraries themselves major purchasers of authors' works and the main purchasers of important and expensive reference works in analogue and digital formats, but library users often encounter an author's works for the first time in a publicly accessible library which can lead to further primary sales. Such libraries also enable people (including authors) to undertake learning and research, since they preserve older works from physical deterioration so that they remain available to the public.

Thus many authors benefit significantly from the availability of their works to users free of charge through publicly accessible libraries in ways other than the immediate collection of royalties from primary sales. Librarians and authors are natural allies seeking to promote creative works and the knowledge they contain and they often work together through activities such as reading groups, lectures, art exhibitions, film screenings, and performances of music and drama. UNESCO's annual World Book Day is just one example of the valuable work publicly accessible libraries achieve in cooperation with publishers and authors.

## The international framework for 'lending right' and 'rental right'

### *Treaties and Conventions*

*Note:* As far as existing legislation is concerned, 'lending' is an activity which is not conducted for profit, whereas 'rental' is a commercial activity conducted for profit, thus 'lending right' is distinct from 'rental right' and the two terms should not be confused.

- **'Rental right'** was introduced by the 1994 TRIPS Agreement in relation to the commercial rental to the public of originals or copies of computer programs, cinematographic works and phonograms. TRIPS was followed by the World Intellectual Property Organisation (WIPO) Copyright Treaty 1996 (WCT Art.7) in respect of the commercial rental to the public (of originals or fixed copies that can be put into circulation as tangible objects) of computer programs, cinematographic works and works embodied in phonograms, and by the WIPO Performances and Phonograms Treaty 1996 (WPPT Arts. 9 and 13) in respect of works and performances fixed in phonograms. 'Rental right' is not a provision of the Berne Convention, the Universal Copyright Convention or the Rome and Phonograms Conventions.
- **'Lending right'** of any class of copyright work is currently *not* provided for by TRIPS or any international copyright Treaty or Convention.

There is no international framework for 'lending right' apart from that which applies within the European Union (see below). However, it seems that WIPO did consider the question of national treatment and PLR in the mid 1990's and suggested a protocol to the Berne Convention. While the proposed protocol was not supported by a majority of delegations, neither was any final decision made as to whether or not public lending is a matter for international copyright conventions and treaties.

### *European Union Directive on Rental Right and Lending Right 1992 (92/100/EEC)*

The first, and currently only, supranational legislation providing for 'lending right' is the European Union (EU) Directive 92/100/EEC, which established a copyright framework for the recognition of lending rights by Member States for authors and other rights holders.

- *Article 1* gives authors and performers, phonogram producers and film producers an exclusive right (subject to Article 5) to license or prohibit the lending of "originals and copies of copyright works, and other subject matter as set out in Article 2(1)."
- *Articles 1(2) and 1(3)* define 'rental' and 'lending' as follows:  
"2. For the purposes of this Directive, 'rental' means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage.  
3. For the purposes of this Directive, 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public."  
The European Commission's subsequent view is that "Such establishments are in the first place public libraries. Depending in particular on the definition of the term "public" under national law, university libraries and those of educational establishments may also be covered."<sup>1</sup>
- The Directive does not just apply to books. *Article 2(1)* provides that: "The exclusive right to authorize or prohibit rental and lending shall belong:  
- to the author in respect of the original and copies of his work,

- to the performer in respect of fixations of his performance,
  - to the phonogram producer in respect of his phonograms, and
  - to the producer of the first fixation of a film in respect of the original and copies of his film. For the purposes of this Directive, the term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound."
- *Article 5* permits Member States to derogate from the exclusive lending right *provided that at least authors are remunerated*. Member States may define the amount of the remuneration, so long as it corresponds to the underlying objectives of the Directive and of copyright protection in general. Member States may also exempt "certain categories of establishment" (unspecified) from payment of remuneration, and give priority to their own national cultural objectives when setting up PLR systems. The Commission subsequently maintains that "Member States may exempt certain, but not all, establishments from paying the remuneration."<sup>2</sup>

### **Where is PLR established?**

At the time of writing, according to the PLR International Network<sup>3</sup> 35 countries have PLR legislation which recognises 'lending right' at least for authors.<sup>4</sup> This includes all the EEA states<sup>5</sup> (except Hungary which has legislation pending), Romania (a candidate country for the EU), and Australia, Canada, Israel, Mauritius and New Zealand. Of these, 20 schemes are actually established and a 21st expected soon.<sup>6</sup> There is no PLR in the United States, Russia and the former Soviet Union states, countries in the Caribbean, Latin America, Asia and Africa.

Within the EU, although nearly all Member States have transposed Directive 92/100/EEC into their own legislation, some 13 years later a significant number of Member States had not established active PLR systems and have been subject to infringement proceedings by the European Commission. Belgium was successfully prosecuted before the European Court of Justice (ECJ)<sup>7</sup> and proceedings were initiated against France, Ireland, Italy, Luxembourg, Portugal and Spain in January 2004.<sup>8</sup> Belgium and France are now implementing PLR systems aimed at complying with the Commission's wishes. Ireland, Portugal, Spain, Italy and Luxembourg are to be prosecuted before the ECJ "because they simply exempt all public lending institutions" or, in the case of Italy and Luxembourg, fail to ensure that authors are remunerated for public lending.<sup>9</sup>

The Commission's argument is that while categories exempted under Article 5 may include public libraries and the libraries of universities and educational establishments, if a Member State with well established public libraries was to exempt all public libraries from payment of the remuneration "it would exempt the majority of lending establishments from the application of the public lending right. As a result, the PLR as defined in Article 1(3) would be deprived of adequate effect. This situation would be contrary to the intention of the Community legislator in providing for a PLR."<sup>10</sup>

### **How do the PLR systems operate?**

All countries, except Canada, Israel and New Zealand have their PLR systems backed by legislation. The established systems operate under copyright legislation, as part of direct State support for culture, or as a separate remuneration right, or a combined approach of PLR system and copyright licensing may be taken. There are differing philosophies and modes of operation but two common features of the established schemes is that payments are at least made to authors for the lending of books and that PLR systems are seen as a means of support for cultural objectives.



When lending right is operated under copyright legislation as in Austria, Germany and the Netherlands, PLR is regarded as a related or neighbouring right.<sup>11</sup> Alternatively, PLR operates as a direct form of State support for culture, for example in the Scandinavian countries. The United Kingdom (UK) PLR system, which applies to public library lending only, provides an example of PLR as a right to remuneration outside copyright.<sup>12</sup> This is a right to payment not an exclusive right, so authors may not prohibit or license the lending of their books. Similar systems operate in Australia and Canada. PLR administration in the UK is independent of but funded by the ministry of culture, whereas in Australia it forms part of the ministry responsible for the arts. In Canada and New Zealand it is within their arts councils. The UK is also an example of a combined approach to PLR as the public library lending of material forms of film and works embodied in phonograms, including audiobooks, comes under the copyright regime and requires licensing.<sup>13</sup>

***Typical characteristics of PLR systems are:***

- Generally the remuneration payments and cost of administration of PLR schemes are met by the State, centrally or locally.<sup>14</sup> Each country calculates payments differently and the rates of payments are generally modest, sometimes with an overall maximum ceiling for annual remuneration. Although in most systems (i.e. within the EU) the remuneration is for the 'use' of the work, many systems actually make payments on a payment per loan basis according to how often an author's work is borrowed,<sup>15</sup> or alternatively payments are made for the number of copies held in library stock,<sup>16</sup> or the number of registered library users,<sup>17</sup> or by direct grants.<sup>18</sup>
- Some PLR funds also provide pensions, health insurance, scholarships and emergency grants to authors, or other grants to support travel or other projects.<sup>19</sup>
- PLR schemes have their own eligibility criteria on who may qualify for payments. Usually authors need to register to receive PLR remuneration and need to be citizens of, or permanently domiciled in, the country concerned but EU Member States are prohibited from discriminating against Community rights holders on grounds of nationality.<sup>20</sup> The Australian, German and Flemish schemes and the forthcoming French scheme also remunerate publishers for book loans.
- Some PLR schemes restrict eligibility for PLR payments to support literature in their national languages, e.g. in Scandinavia. The aim is to encourage new literature in that language, as well as preventing the bulk of PLR payments going to foreign language (almost invariably English language) authors. However, the European Commission is doubtful about the legitimacy of the eligibility criteria for PLR applied in Denmark and Finland (only for works published in the national language) and Sweden (granted only for national or resident authors) and has formally requested that these Member States provide further information about possible indirect discrimination in relation to these restrictions and Finland's exemption of public lending institutions from paying remuneration to authors.<sup>21</sup>
- Some PLR schemes cover more than just the loan of books: e.g. the Dutch PLR system, which is entirely under the copyright regime, covers loans of recorded sound discs, audiovisual media and works of art. The Australian scheme (not a copyright scheme) is considering the inclusion of audiobooks.
- Where PLR systems have been established, public libraries are seen as the bedrock of the system. It varies whether or not other types of publicly accessible libraries are also included in the system.<sup>22</sup>

## **Libraries and PLR: opportunities and threats**

The administration of PLR differs widely from country to country but all existing schemes have recognised the principle of a right of remuneration for the use of authors' works in libraries accessible to the public (although some of these might be excepted from the system) and the use of these funds to fortify cultural expression. As in most existing systems the State provides the funding for the rights holder remuneration, the financial burden is lifted from libraries and their lending and reference services remain free at the point of use. Author and other rights holders' organisations usually wish to work in partnership with libraries over PLR as they do on so many other projects and have generally supported librarians in seeking State or other non-library funding for PLR.

In a number of countries the operation of PLR works well for libraries because it is recognised that the role of librarians is crucial to its function. They supply the data on book loans, stock holdings or numbers of registered users to the PLR administrators or licensors to enable payments to be calculated and their cooperation is essential to creating and maintaining good and successful PLR systems. Where librarians have been positive about PLR and have taken the opportunity to forge successful partnerships with authors and the PLR administration to set up and then run the system smoothly, both they and authors reap the benefit. Not only are authors much more publicly supportive of libraries, but an unexpected outturn was that the statistics from PLR systems can attract wide national media coverage and draw public attention to libraries and to the most loaned authors, which helps to encourage more people to take up reading through libraries.<sup>23</sup>

Regrettably however, despite the generally positive experience that librarians have had with most of the existing PLR systems, whenever proposals are made to establish a new PLR system, there is always the risk that publicly accessible libraries may be made responsible for funding it from their existing budgets, and it is often the case that the library and information community need to vigorously defend their services in the face of such demands.<sup>24</sup> Because PLR in effect acts like a tax on their core services, they simply can not afford to pay for it from their, often slender, library budgets without withdrawing the citizen's right to free access to libraries in the public sector and also diminishing the quality and variety of their services to the extent that their very purpose and existence could be undermined.

The altruistic 19<sup>th</sup> century social concept of free public libraries maintained by the State for the public good, which as the 'people's universities' have been a most significant part of civilized society for more than 150 years, could be seriously jeopardized by any attempt to make such libraries pay for PLR. This would be contrary to the very reason for having public library systems. The losers would be that country's citizens for generations to come, including those whom PLR is meant to benefit.

## **The future of PLR**

Interest in PLR is growing around the world, and there is always the possibility that it might be considered again by WIPO, yet there is the question of whether there will be a role for PLR systems in an age of increasing digitisation. However, it is likely that books in material form (even if one day on electronic 'paper' rather than printed) will remain very user friendly and convenient formats for linear reading, and will continue to be available in publicly accessible libraries (as possibly may tangible multimedia formats for film and phonographic works), so PLR may continue for some time to come. If PLR evolves to take account of the digital world, librarians will need to campaign hard to ensure that account is taken of the fact that nearly all digital products, whether tangible or online, are already subject to licensing and potential controls to access by rights owners through digital rights management systems and technological protection systems, and that rights holders are already well rewarded by those means.

A harbinger of future change is indicated by the European Commission's recognition that "Both the media market and the role of libraries are undergoing profound changes. Public libraries are constantly improving their services and are exploiting new territory in the public lending of all media products with the help of the new digital environment. These developments are closely observed by rightholders, publishers, the cultural community and policy makers... All developments in the exploitation of new technologies in libraries must be further monitored particularly with regard to any potential impact they may have on the functioning of the Internal Market and in light of their impact on rental and lending activities... At this point, it is difficult to assess if and if so to what extent, traditional public lending by libraries will be replaced by new forms of on-line distribution, which would not be covered by the present scope of this Directive. In this respect, the Commission will ensure the proper functioning of PLR rules enshrined in the Directive. In the same spirit, it will continue to examine the functioning of public lending and observe the new technological developments in lending institutions, with a view to assessing the possible need for further actions in this field."<sup>25</sup>

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1. Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the public lending right in the European Union COM/2002/0502 final. September 2002

2. Ibid.

3. <http://www.plrinternational.com/> The Network is coordinated by the UK PLR Registrar enquiries@plr.uk.com

4. The Czech Republic, Poland and Slovenia only recognise the lending right principle for the lending of music.

5. EEA comprises the 25 EU Member States (see [http://europa.eu.int/abc/index\\_en.htm](http://europa.eu.int/abc/index_en.htm)) plus Iceland, Liechtenstein, Norway and dependencies. EU candidate countries will also need to implement the Directive.

6. Australia (1974), Austria (1977), Canada (1986), Denmark (1946), Estonia (2004), Faroe Islands (1988), Finland (1963), Germany (1972), Greenland (1993), Iceland (1968), Israel (1986), Latvia (2004), Lithuania (2002), The Netherlands (1971), New Zealand (1973), Norway (1947), Slovenia (2004), Sweden (1954) and United Kingdom (1979). Belgium: no national system as required by Directive 92/100/EEC, but Flemish speaking provinces have a cultural PLR grant scheme (2002-03) open to Flemish and Dutch authors. France (legislation 2003-04): a scheme is expected to launch very soon.

7. Europa Rapid Press Release IP/02/989 03/07/2002; ECJ Case C-433/02, October 2003

8. Europa Rapid Press Releases IP/04/60 16/01/2004 and IP/04/891 13/07/2004

9. Europa Rapid Press Release IP/04/1519 21/12/2004 and IP/05/347 21/03/05

10. See (1) above and Europa Rapid Press Release IP/02/1303

11. Authors have the right to license library lending so licensing and fees distribution are organised by collecting societies, which negotiate with federal and provincial governments (Austria and Germany), or directly with libraries (Netherlands).

12. Qualifying authors who register have a legal right to receive payment (up to a maximum annual ceiling) from the government in respect of the number of occasions on which printed and bound books (excluding musical scores) are lent out by public libraries only.

13. UK public library lending of recorded music is by a free national licence from the major recording industry producers. Many independent record producers also freely licence public library lending. A licence is proposed to remunerate authors and performers for the loan of audiobooks. Currently no licensing scheme exists for public library lending of videos and DVDs: public libraries must purchase rental copies (often at a reduced price), which come with a licence to lend.

14. However, in the Netherlands since 1993 the cost has been funded entirely by libraries, which negotiate licensing direct with collecting societies.

**15.** E.g. Estonia, Germany, Iceland, Israel, Latvia, Lithuania, the Netherlands, Slovenia, Sweden and UK. Sweden also remunerates for reference use of books within library premises and there are proposals for this to happen in the UK.

**16.** E.g. Australia, Canada, Denmark, and New Zealand.

**17.** E.g. the forthcoming French system.

**18.** Norway: government fund negotiated with author organisations, which then distribute it as grants to members. Finland: authors apply for government grant from fund equating to percentage of government expenditure on library books. Iceland: government PLR funding available through grants and other means including payment for book loans.

**19.** E.g. Austria: 50% of PLR fund for the 'social needs' of authors. Germany: 55% of fund for health and insurance schemes and emergency funds for authors. Slovenia: 50% of fund for scholarships. Sweden: 66% of fund for pensions, long-term grants and emergency funds for writers. France: part of fund to finance supplementary pensions for writers and translators.

**20.** E.g. UK: system is open to authors of any nationality resident in any EEA country, whose books are lent out by UK public libraries. Austria, Germany and the Netherlands: have copyright based systems which must follow national treatment rules and make cross border payments to nationals of all countries which offer reciprocal schemes. Canada: so that PLR supports Canadian authors and due to libraries' fear of being made responsible for funding if PLR was under copyright, all stakeholders united to avoid PLR being under a copyright regime, since the majority of books held in Canadian libraries are of foreign authorship.

**21.** See (9) above.

**22.** E.g. Australia: educational libraries are included in PLR (in separate scheme). France: educational libraries will be included. UK: not-for-profit publicly accessible libraries (other than public libraries) and educational establishments are excluded from lending right and are not in the PLR system. They may lend any class of work without a licence.

**23.** E.g. UK: <http://www.plr.uk.com/enhancedindex.htm> Click on Trends.

**24.** Spain (one of the countries being prosecuted by the European Commission): reports suggest that the public library system may be forced to pay for PLR from existing budgets without the funding to do so.

**25.** See (1)