

PUBLIC LENDING RIGHT

What is Public Lending Right?

Public lending right (PLR) can apply to two separate concepts.

1. Public lending right may fall under copyright as one of the time-limited monopoly rights granted to the copyright owner of a protected work. In this case, it grants the owner the right to authorise or prohibit the public lending of a protected work after the work has been distributed to the public e.g. after it has been published. The copyright owner may be the author or it may be a commercial enterprise to whom the author has transferred their copyright e.g. a publishing company. Public lending can be authorised through licensing schemes and payment through collecting societies (who manage rights on behalf of rights owners). In some countries, an alternative to PLR is set out in copyright legislation, this is known as the remuneration right.
2. Public lending can also be a "remuneration right". This focuses more directly on the author. It is the right of an author (not necessarily the copyright owner) to receive financial compensation for the public lending of their work. In this case, a country may set their own criteria for who is eligible to receive payment and it may be designed in support of cultural objectives e.g. payments may be limited to authors who write in the national language in order to support the development of national culture.

The public lending right applies only to works in material formats e.g. printed books, sound recordings. It does not apply to electronic material or extraction of information from a database, both of which are subject to a licence.

See "The Relationship between Copyright and Contract Law: Electronic Resources and Library Consortia".

Practice

According to the PLR International Networkⁱ, nineteen countriesⁱⁱ have established PLR schemes and a further twenty-one countries have PLR systems in developmentⁱⁱⁱ.

It is important to realise, however, there is no international economic right for public lending, in other words, there is no international treaty or convention requiring any country to establish a PLR system. (In fact, it was decided to exclude PLR when the WIPO Copyright Treaty was being negotiated in 1996 because of the affect this might have on libraries and education in developing countries).

PLR in the European Union

There is, however, a legal requirement on members of the European Union (EU) to establish a PLR system. This is because the European legislator introduced a directive (a law binding on Member States) on rental and lending right in 1992. As well as the twenty-five Member States of the European Union (to become twenty-seven in 2007), directives must also be implemented by non-member countries that wish to benefit from the single European market, such as European Economic Area countries, Norway, Iceland and Liechtenstein.

In fact, PLR is a European invention, originating in the nineteenth century from literary authors who believed they were losing income from sales due to the availability of their books in the emerging system of public lending libraries. The first country to establish PLR was Denmark in 1946, followed soon after by Norway and Sweden.

In a nutshell, European law requires that authors of books, films and any other copyright works and (at Member States' discretion) other right holders, either have the right to authorise or refuse lending of their works by institutions such as public libraries, or that they are remunerated for such public lending. In other words, it accommodates both concepts of PLR.

The record shows that the majority of EU Member States have not taken to PLR with great enthusiasm. According to the 1992 directive, the European Commission should have issued a status report on implementation in 1997. Due to serious delays in several Member States, the Commission could not write its report until 2002, ten years after the Directive came into force. The Commission has taken thirteen of the original fifteen Member States to task including France, Greece, Ireland, Luxembourg, Netherlands, the UK. In some cases, it has initiated infringement proceedings at the European Court of Justice for either not implementing the Directive at all or for incorrect implementation (Belgium, Italy, Portugal and Spain have been successfully prosecuted). In addition, there were concerns that Scandinavian countries applied PLR in a discriminatory way, granted only for national or resident authors (Sweden) or for items published in the national language (Denmark, Finland).

This may in part be due to the nature of directives, a flexible instrument of European law, leaving room for Member States to unintentionally misinterpret the directive or the amount of leeway allowed by the directive. Indeed, one of the major problem areas was that, although the directive allowed for certain types of lending establishments to be exempted, several Member States exempted many types of lending institutions. In the opinion of the European Commission, if in practice most lending establishments are exempt, there is a risk that PLR is not effective.

The other reason may be that for most countries, public lending right was not part of the national tradition and was an alien concept that required the establishment of new systems of administration and remuneration. Some Member States support authors by other means, such as generous tax breaks.

How are payments calculated?

Each country calculates the payments differently. In the EU, remuneration is for the "use" of the work (which means that it can include reference works not usually lent out by the library). Others calculate payments on the basis of the number of times the author's books are borrowed, the number of copies held in library stock, the number of registered users or by direct grants to authors negotiated with representative organisations.

The rates of payment to authors are generally modest, and there may be a ceiling on the maximum amount that can be paid to an individual author. The cumulative amounts can be substantial, however. PLR costs Denmark approximately €20 million (\$26.6) each year, about 5% of public library expenditure^{iv}. In 2006, PLR in the UK cost over €11 million (\$15 million)^v.

In all countries except the Netherlands, the remuneration payments and the cost of administration of PLR schemes are met by the state.

Policy issues for libraries^{vi}

When a Danish author claimed remuneration for the public lending of his books at the first annual conference of the Danish Library Association in 1917, libraries and publishers opposed the idea, sparking a debate on whether library lending benefited or disadvantaged authors. An underlying assumption that lending from public libraries results in lost primary sales is unproven. Libraries are major purchasers of published works, often buying in multiple quantities. They enable borrowers to discover new authors through book promotions or

serendipity, providing a platform for nationwide dissemination of an author's work.

Where PLR has been established, public libraries are the bedrock of the system. Libraries supply data on book loans, stock holdings or numbers of registered users to PLR administrators for the annual calculation of payments. Library co-operation is essential to creating, maintaining and administering a PLR system. In countries with well-run PLR schemes and where librarians are closely consulted on the establishment and administration of the scheme, the experience for libraries has largely been positive. It creates new opportunities to forge partnerships with authors and to promote the role of the public library e.g. through author readings and public author support for libraries.

The International Federation of Library Associations and Institutions (IFLA) does not, however, favour the principles of lending right, which it believes can jeopardise free access to the services of publicly accessible libraries^{vii}. Public lending is essential to culture and education and should be freely available to all. This position is based on a number of established principles including:

- IFLA's core values;
- the public library shall in principle be free of charge;
- the lending of published materials by libraries should not be restricted by legislation or contractual provisions;
- funds for the payment of public lending right should be provided by the state and should not come from library budgets.

It goes on to make recommendations concerning the introduction or modification of PLR systems, funding, the legal framework, legislative definitions, consultation and involvement of librarians in the establishment and running of PLR systems.

PLR and developing countries

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

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 budgets on improving literacy rates and addressing basic educational needs, providing students with access to modern learning resources, developing innovative services to bring needed information to rural or underprivileged communities e.g. healthcare, agricultural techniques and democratic participation.

Public lending right in the digital age?

PLR applies only to tangible material such as printed books. It does not apply to electronic books or online material. There is a question mark over the role of PLR in the digital age where rights holders have more control over the access and use of electronic material through a combination of legal mechanisms (licences) and technological means (technological protection systems). For example, if a user borrows a book from a public library, the rights owner cannot control who reads the book or where it is read, whereas for digital resources, they can exercise such control. Librarians must be vigilant to ensure that these factors are taken into account in any move towards evolving PLR for digital material.

Library position statements

EBLIDA statement on the infringement procedures over Public Lending Right

http://www.eblida.org/position/PLR_Statement_March04.htm

IFLA Committee on Copyright and other Legal Matters (CLM)

Background paper on public lending right

<http://www.ifla.org/III/clm/p1/PublicLendingRight-Backgr.htm>

IFLA Position on Public Lending Right

<http://www.ifla.org/III/clm/p1/PublicLendingRigh.htm>

References

European Commission Rental and Lending Right

http://ec.europa.eu/internal_market/copyright/rental-right/rental-right_en.htm

PLR International

<http://www.plrinternational.com/>

ⁱThe PLR International Network, coordinated by the UK registrar for PLR, provides assistance to countries on PLR. <http://www.plrinternational.com/>

ⁱⁱ Australia, Austria, Canada, Denmark, Estonia, Faroe Islands, Finland, Germany, Greenland, Iceland, Israel, Latvia, Lithuania, Netherlands, New Zealand, Norway, Slovenia, Sweden, United Kingdom

ⁱⁱⁱ Belgium, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Liechtenstein, Luxembourg, Malta, Mauritius, Poland, Portugal, Romania, Slovak Republic, Spain, Switzerland

^{iv}<http://www.kum.dk/sw5573.asp>

^v[http://www.plr.uk.com/trends/pressrelease/feb2006\(1\).htm](http://www.plr.uk.com/trends/pressrelease/feb2006(1).htm)

^{vi}IFLA CLM Background Paper on Public Lending Right

^{vii}<http://www.ifla.org/III/clm/p1/PublicLendingRigh.htm>