Public Lending Right Conference

Budapest 20-22 April 2007

Conference Reports

June 2007

European Writers' Congress
Fédération des associations européennes d'écrivains A.I.S.B.L.

Edited by
Myriam Diocaretz
Secretary General
Brussels

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Introduction:
A Report
Myriam Diocaretz, EWC Secretary-General

The European Writers Congress (EWC-FAEE AISBL), working in partnership with the Norwegian Non-Fiction Writers and Translators Association (NFF) and Kopinor as ponsors; the UK PLR Office, as organizer; the Hungarian Ministry of Education and Culture; the József Attila Circle, Literary Association for Young Writers (JAK); the Petöfi Museum of Literature, as host, held a conference on Public Lending Right for authors in the stately Károlyi Palace in Budapest, on 20-22 April 2007.

The conference speakers consisted of invited delegates from authors' organisations and governmental bodies from European countries where PLR is not yet established, its implementation is lagging behind or has only recently been set up. 40 participants including collecting societies for authors, authors' associations, EWC delegates, government representatives took part in the discussions, and followed the updates and/or gave reports. The following countries were represented: Hungary, Bulgaria, Croatia, Latvia, Lithuania, Czech Republic, Slovenia, Slovakia, Romania, Estonia, Norway, United Kingdom, Italy, Poland, Switzerland, the Netherlands, Belgium, Greece, Ireland, Spain, France, Germany, and Luxembourg. The conference is the latest in a series of such meetings organised under EWC-FAEE auspices and supported financially by NFF and Kopinor to encourage and support the development of new PLR systems for authors across the EU.

An important 2007 **Budapest PLR Resolution** was adopted by participants, to be widely disseminated amongst European authorities, European government officials, and authors' organizations. The resolution is included in the present collection and can also be downloaded from the EWC website:
http://www.european-writers-congress.org

The country reports included in this collection should be considered as pre-prints, as the final edited versions will be published shortly in printed form by Dr Katalin Budai (Hungary).

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Report

The PLR seminar began on 20 April in the evening with an official reception offered by the Hungarian hosts, with welcoming speeches by: András Gerevich (President, József Attila Circle. Literary Association of Young Writers), Csilla E. Csorba (Director General, Petőfi Museum of Literature), István Magi (Head of Department of Arts, Ministry of Education and Culture), and Trond Andreassen (Secretary General, The Norwegian Non-Fiction Writers and Translators Association, and President, European Writers' Congress)

On 21 April the First Session consisted of the **Opening remarks** by **Trond Andreassen**, who provided the historical background of PLR. He recalled that the European Directive for PLR on 19 November 1992 was a crucial year which established the prospects for a PLR system in all countries. A report on the progress of PLR implementation started in 1997; in 2002 an EC report showed that the number of countries which had implemented PLR had not changed since then. In 2003 the EC embarked on specific actions by taking some countries to the European Court of Justice, of which the first one was Belgium. Work has been ongoing to promote the participation of authors and to obtain reports on the progress. However, authors in many countries are still waiting for PLR. The current priorities and challenges for the progress of PLR were highlighted by EWC-FAEE President as follows:

- More authors should be participating in the PLR seminars.
- Funding is very uneven with only a small remuneration in many countries.
- The digital age, which was identified in the Madrid seminar (2006) as source of new concerns, needs to be addressed.
- Another challenge is the authors' communities and their relationships with librarians.

Jim Parker, **PLR Registry UK**, in **"The international PLR situation: developments since March 2006"** presented a worldwide overview, stressing that about 43 countries in the world (not including the USA) have instituted the PLR system to-date. He underlined that nowadays there are many challenges,and globalisation in particular, is a big threat. The large variety of approaches to fund and implement the system, showing marked differences between one country and another is yet another dominant challenge in the development of PLR, as fully reported by J. Parker. **Krisztián Grecsó**, **"PLR in Hungary – the authors' perspective"** gave an update and emphasized the fact that PLR has been placed in the "common fund" and there are difficulties in the process between the government and the organisation that is supposed to protect the rights of authors. During the discussion K. Grecsó mentioned that there is a collecting society specialized in music; but he believes that the broadcasting of music should also be the media's responsibility, since authors can hardly control the use of their works. There is no organisation acting with authority to monitor the media and to protect authors' interests.

The subsequent report was by **Anikó Gyenge**, **"PLR in Hungary – the government's plans. "** In Hungary, PLR falls under the control of the *Ministry of*

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Justice and Law Enforcement. The Ministry's representative described in detail the "complexities" in the implementation process of the Directive. The report recognizes the failures in the implementation, which are said to be caused by a) too wide exceptions, and b) a discriminative regulation. A series of additional reasons were provided to explain that the transposition of the Directive in Hungary has been a "daunting" task. The second part of the presentation referred to developments since the inception of PLR such as the easier free access to books, and the fact that one book can have an unlimited number of readers; the history of PLR being parallel to other "special rights" for authors; and the market development and the legal development in lending that are closely related but do not go hand in hand. The library is not a "market player", and as such it has to "exercise the constitutional right to guarantee access." From this focus, it seemed evident that the government presentation was not taking into account the emergence of new business models in which libraries are also acquiring or assuming new roles. However, the next section of the report tackled the role of libraries as actors in the market, by distinguishing between the publishers, whose priority is economic, and in second place are the cultural considerations, while for libraries, the priority is the cultural aims, and second the economic consideration. The third section of the governmental presentation dealt with the cultural tasks of the state in relation to PLR, followed by a clear set of thought-provoking questions on the difficulties of adoption, concerning: "Who shall pay the fee (can the library charge the reader?); what is the 'relevant act': the act of the library or of the reader?; what is the basis of the fee?: the procurement of the library? The lending of the book, which can be read by many? Or the borrowing of the book; what books are relevant? Those which will be 'written' after the Directive coming into force, those which will be procured after, or those which will be lent after the Directive's coming into force."

During the discussion that followed, some of the participants found the presentation "provoking" in terms of being an in-depth summary that centred mainly on the difficulties and obstacles to implement PLR. Contributions from the audience included recommendations that the government changes focus from questions and difficulties to the use of valuable guidelines and best practices from existing PLR systems, and to review the role of libraries in the digital environment. Another participant praised the approach by commenting on the logic of the presentation, and noting that governments are very "imaginative." Trond Andreassen prompted the government representative to expand on the model to be used in Hungary, given that there are 23 schemes operating. Finally, Jim Parker asked directly about the date when the government expects to have the legislation in place. Hungary expects to do so in 2008.

The next intervention was by Ms. **Danièle Muffat-Jeandet**, under the title **"Latest news from the European Commission,"** who was unable to attend, so her speech was read my Ms. Maureen Duffy, former EWC President. The EC update included an introduction for renting and lending right in the context of harmonisation. Of key importance in this report is the set of specifications regarding the legal process D92/100/EC in relation to D2006/1.15/EC in the European Parliament and the Council codification, and an updating of the new

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references. This is described in detail regarding PLR provisions regarding Art. 3, Art. 2 and 6. Equally important was the briefing on Case 6433/02 from the European Court of Justice vs Belgium (16 October 2003), and the EC report in a communication to the European Parliament and the Council of Ministers. Additionally, the EC sent letters to the ten New member States for comments. The report also referred to the new legislation in September 2006 through the French amendment, in Italy (2006) and Spain (2005). The EC considers 2006 an important year for PLR in relation to the European Court of Justice. Due to its importance, we have included the full version of the report in this Newsletter.

National Reports :

The updates from Member States that have been the subject of legal action by the Commission, were initiated, of course, by **Belgium: what lessons have been learned?** The key issues in the current situation in Belgium were provided by a representative from Reprobel, the Belgian collecting society for authors and publishers. Given that Belgium is a federated state, the linguistic communities composition is relevant for PLR implementation, and it consists of three main groups: the French, the Flemish and the smaller German speaking communities. Negotiations are currently in progress concerning the decision whether the libraries or the communities should pay. Librarians are not against it provided that they do not have to pay. The first *collection* of lending right remuneration has been completed. Distribution of the payments will be according to the number of borrowers.

Ireland's report was presented by **Anthony Quinn**, with good news on the progress made, and an explanation that PLR is under two Ministries: on the one hand, Trade and Enterprise, which handles copyright issues, and on the other hand, the Department of Local Government and Environment, in charge of public libraries' issues. PLR in Ireland will include audiobooks. The news were somehow mixed, since the next steps in the legislation depended on the newly elected government. Since this week the election results were known, there is a good prospect that PLR will continue to develop for the benefit of Irish authors. **Italy** reported on the progress made since November 2006. In Italy, the university and school libraries are exempt from PLR payment. Funding has been made available for collection of PLR and distribution by collecting society, under 3 categories: printed copies, phonogram and video (for sequences of images with word and sound). The government has invited associations of creators to consult on and establish the criteria of distribution and percentage for the fee. **CEDRO** reported the news from **Spain**: The new law on reading, books, and libraries of November 2006 is significant and will have an impact on future developments. Moreover, there has been a large media campaign by librarians against the 4 collecting societies in Spain, and against PLR, which somehow has an effect on the process for further implementation.

Next were the **"Updates from Member States where legislation has recently been introduced."** The update on the **Czech Republic** was presented by **Simon Pellar**, who emphasized that the Public Library has played a crucial role. The Czech PLR system will be based on a "per loan system", covering only books. The

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question of VAT deduction is an issue in current debates. **Luxembourg**'s PLR system is under the Ministry of Economy and the key issues are the lack of data for libraries. Luxorr Manages PLR in Luxembourg. Luxembourg has started to comply with European legislation on the public lending right since the end of January 2007. As the law requires compulsory collective management. Regulation fixes a yearly lump sum payable per user borrowing at least one item (book, newspaper, periodical, electronic media) during a specific year under review. Libraries serving the educational sector are not subject to payment. This new development has been positively received.

The two final sessions covered the future: **"*Who will be next?*"** consisted of updates from Bulgaria, **Croatia**, **Cyprus**, **Greece**, **Poland**, and **"News from new PLR systems. *What are the prospects for future funding and developments*?"** brought updates from France, Estonia, Slovenia, Latvia, and Lithuania. **France**'s update was given by SOFIA, the collecting society for authors and publishers. The key indicators for collection are 50% of readers from public libraries and the 6% of the fixed price from sales of books by booksellers. For the first time 13 million Euro will be distributed on the basis of 200.000 titles. In France PLR is part of the national cultural policy taking into account the factors of cultural diversity and reciprocity of agreement. **Estonia** reported that the most popular books are in foreign languages, such as the best-selling author Barbara Cartland; for this reason it is the translators who get remuneration in this field. This has created some dissatisfaction among Estonian authors. In **Slovenia**, to qualify for PLR remuneration authors must write in Slovenian language. Funding from the government is linked with how libraries' spending budget on books, especially in areas of work-related lending, the educational sector, and travel. Two main issues will influence future funding, namely, authors who qualify for PLR get less funding from grants, and the concern about the future in Slovenian language authored works. In **Latvia** funding is expected to emerge from private levy, and private lending institutions. The challenge is that here has been no directory of data available; the gathered information s based on electronic lending data. In Latvia implementation of PLR follows a cultural approach. **Lithuania r**eports that funding comes from other state budget sources. A very small sum is assigned to national authors, while it is larger for translators, as in the case of Estonia, and much less for authors and illustrators. The indicators used come from 38 libraries through their computerized figures as basic information. The update from **Bulgaria** was presented by a representative of the Union of Bulgarian Writers.

In **"Who or what should be covered by PLR in the future?"** Owen Atkinson, ALCS, provided an overview by raising key questions in the overall schemes of PLR in Europe. The first open question is whether PLR is an authors' right only, and he hinted at the disadvantages if it excludes publishers. The qualification criteria for PLR, especially in terms of language, nationality, and residency are also varying factors. Another point is the sector in which PLR should be applied: only public, academic, or libraries? Especially unclear is the type/s of media which PLR should cover: whether books, printed, visual works, and digital material. The latter points to the larger uncertainty surrounding the digitisation of works by large companies such as Google and Microsoft. A key change element is that the national

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boundaries dissipate in the digital world. The last point he made regards the reason for payment: is it per loan, per copy on the shelf? Per purchase? The country reports which had presented before somehow illustrated the fragmentation and variety of criteria applied, thus fully sustaining the open questions set by Owen Atkinson as increasingly relevant for the future.

Towards Digital Lending Right

As part of the final debate, upon a request from Owen Atkinson, I mentioned a priority that should be considered in the immediate future, which he and I had had time to briefly discuss earlier: the question of PLR in *digital environments*. One could address it as *Digital Lending Right* (DLR). This is a discussion that requires a specific approach, particularly in the context of the i2010 digital libraries initiative and the ongoing digitization projects to provide access to resources, both cultural and scientific. Currently the solutions are mostly technology driven. Furthermore, from the different country reports we can conclude that one of the key challenges is the electronic information data on lending in libraries, which requires an approach that combines the cultural and the technological, relevant to PLR. Significantly, one of the central questions is whether the access in digital libraries is through open access through Internet to anyone or through the closed or secure networks. Next to this is the fact that the digitization and access by national/public libraries is also beginning to comprehend works under copyright. It is my hope that these topics are taken into full consideration.

From the overall discussions, two core arguments came to light. The first one, summarized by Trond Andreassen, is the **cultural** approach to PLR as compensation to authors, associated with a remuneration to provide them with a reasonable support, and to strengthen the cultural situation for "smaller languages"; in which case, PLR is not a copyright law but rather a separate law aimed at strengthening the economic situation of authors. The second one, voiced by SOPHIA, is that it is a **copyright law** in which there is a social complementary pension scheme for authors (which is not linked with copyright law). But, as SOPHIA added, the Directive is a copyright law, while in the principles of the Bern Convention there is no PLR. Therefore, for France, PLR is a cultural policy. Other participants offered additional arguments for PLR as part of Intellectual Property Right (which would include publishers) or an exclusive cultural/social policy matter. Other important conclusions were the need for authors and libraries to work together, the need to educate and inform actors and stakeholders on copyright

The Summing up and conclusions session ***The Next Steps in Hungary,*** was delivered by Katalin Budai, as government representative (and who is also an author).

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The 2007 Budapest PLR Resolution

4th European PLR Conference
Budapest, 19-22 April 2007

This conference brought together representatives of authors' organisations from 20 European Union Member States and Candidate Countries, including the two newest Member States – Bulgaria and Romania. The conference has been organised under the aegis of the European Writers Congress (EWC-FAEE AISBL). The conference, which last met in Madrid in March 2006, reviewed the progress of Member States over the last year in implementing the PLR provisions of the 1992 Directive on Rental, Lending Rights and Piracy.

The conference strongly supports the efforts being made by the European Commission to enforce correct implementation of the Directive in several established Member States; we also note the progress made towards correct implementation of the Directive's lending right provisions in the national laws of Ireland, Italy and Spain. But the conference urges the Commission to:

(a) set a clear timetable for implementation of the Directive by all Member States to ensure that legislation leads to the establishment of working PLR systems; and

(b) take active steps to ensure that Member States provide equitable PLR payments to authors. "Remuneration" cannot, we believe, be said to exist where the sums allowed for are in some countries so derisory.

The conference applauds the establishment of PLR systems in the newer Member States such as Estonia, Latvia, Lithuania and Slovenia, and the recent progress made in the Czech and Slovak Republics. However, the conference urges the Commission to adopt a more proactive approach in achieving correct implementation of the Directive among those States such as Greece, Poland, Romania and Bulgaria where little progress has been made. In particular, the conference urges the government of the host country Hungary to take positive steps immediately to implement the Directive and respect the rights of the creators of one of Europe's oldest and most respected literatures.

Organisations Represented at the Conference

European Writers' Congress – "EWC-FAEE A.I.S.B.L."
József Attila Circle, Literary Association of Young Writers (Hungary)
KOPINOR (Norway)
The Norwegian Non Fiction Writers & Translators Association
Estonian Authors' Remuneration Fund
AKKA/LAA (Latvia)
Authors' Licensing and Collecting Society (UK)
CEDRO (Spain)

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DILIA (Czech Republic)
Hellenic Authors' Society (Greece)
Irish Copyright Licensing Agency
Institute of Literature (Bulgaria)
Irish Writers Union
LITA (Slovak Republic)
Lithuanian Writers' Union
LUXORR Luxembourg Organisation for Reproduction Rights
REPROBEL (Belgium)
SIAE (Italy)
SOFIA (France)
Szépírók Társasága (Hungary)
VG Wort (Germany)
Writers Union of Romania
ZIKAS (Poland)

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Report on the European Directive on Lending Right

Danièle MUFFAT-JEANDET
European Commission[1]

Thank you for inviting the European Commission again to this Conference. And again accept my apologies for not being able to join you in Budapest.

I hope this small contribution will help you. It will include a short general introduction on PLR at the European level, to the attention of the new participants in particular, and give an update on the work of the European institutions since your last seminar.

I. General Introduction

Let me repeat that the Directive concerning rental and lending rights and certain related rights is certainly an important piece in the Internal Market and in the copyright and related rights harmonisation process. This Directive aims at providing for a balance between the different rights and interests.

I would like to start with some important information: Directive 92/100/EEC has been codified in **Directive 2006/115/EC** of the European Parliament and the Council, of 12 December 2006 [OJ L 376, 27.12.2006, P. 28]. The codification process aims at up-dating the text of an old directive, but does not affect the content of the directive. However, it means we all have to get used to new references…

For PLR, the main provisions today are as follows. Under **Article 3 (ex Article 2)** of the Directive, the PLR is granted to authors, performing artists, phonogram producers and film producers. If the Member States may exclude phonograms, films and computer programs from the application of the exclusive lending right, **Article 6(2) (ex Article 5(2))** recalls that they must provide for remuneration at least for authors. **Article 6(3) (ex Article 5(3))** allows a Member State to exempt "certain categories of establishments" from the payment of the remuneration. However, it cannot concern all public establishments and this limited number of establishments must be clearly identifiable.

Indeed, given that this Article is derogating to PLR, the Commission considers that this provision has to be interpreted narrowly. The national legislator remains free to determine the categories of lending establishments and therefore those which can be exempted, but there is a limit: PLR, as defined in **Article 2(1)(b) (ex**

[1] Administrator in Internal Market and Services Directorate General, Copyright and knowledge base economy Unit.

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Article 1(3)), cannot be deprived of adequate effect; therefore, all, or almost all, categories of public lending establishments cannot be exempted from PLR according to Article 6(3).

The Commission view about these provisions was first confirmed by the European Court of Justice in the Case C-433/02, European Commission against the Kingdom of Belgium. The ECJ, in its decision of 16 October 2003, agreed with the Commission and concluded that Belgium had failed to fulfil its obligations under Articles 1 and 5 of Directive 92/100/EEC. Following this decision, a new "Arrêté Royal" was adopted in Belgium and the Commission could conclude that Belgium complied with the Directive in principle. National courts are now competent to judge any alleged incorrect application of the national legislation.

This Court's decision contains some interesting arguments. It constituted a strong support for the Commission's approach of the application of harmonised PLR and reinforced the Commission's position in the other infringement proceedings initiated after the Commission's report of 2002. This Court's decision has been followed and confirmed by others in 2006, as we shall see in a moment.

II. The state of play for PLR in the EU

The Commission drew a report on the application of PLR in the Union in a Communication that was delivered to the European Parliament and to the Council in September 2002.

This Report indicated that PLR was applied in very various ways across the European Union. Therefore, in April 2003, the Commission decided to open the informal step of the infringement proceeding set out by Article 226 of the EC Treaty and sent letters to 10 Member States regarding their national situation and asking comments from their side. The issue was mainly a non or a bad implementation of Articles 1 and 5 of the Directive, concerning the remuneration of the authors for the public lending of their works.

On the basis of the Member States' answers, the Commission did not pursue the case against Greece where the principle of the exclusive PLR had been maintained in the law, but the Commission took further steps in 9 cases [Press Releases of 16 January 2004, IP/04/60].

Now, more Member States have implemented PLR or are in the process to do so, although others are still reluctant to change their legislation.

1. New legislations

1.1. In September 2004, **France** adopted two decrees, No 2004/920 and 2004/921, amending its Intellectual Property Code, to define:

- the lending establishments concerned (following the 2003 law, only school libraries are exempted) and the conditions for the agreement of the

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societies which will be responsible for the collective management of the remuneration for PLR;
- the State contribution in the remuneration, in the form of a lump sum for each user registered in public libraries.

These amendments completed the implementation of Directive 92/100/EEC. Therefore, on 14 December 2004, the Commission decided to close the infringement proceeding against France [Press Release of 21 December 2004, IP/04/1519].

1.2. On the contrary, the Commission lodged a case against **Luxembourg** before the ECJ, in April 2005 (Case C-180/05) [Press Release of 21 March 2005, IP/05/347]. In its decision of 27 April 2006, the ECJ confirmed that Luxembourg had failed its obligations under Articles 1 and 5 of the 92/100/EEC Directive.

Following this decision, Luxembourg adopted and notified the Commission two new acts. The "règlement grand-ducal" of 8 January 2007 [Memorial, Recueil de legislation, A-N°3, 25.01.2007, P. 29] defines the remuneration for PLR, to be paid by the State or the commune, depending on the lending establishment concerned, and to be distributed to right holders by collective management societies. The "arrêté grand-ducal" of 15 January 2007 [Memorial, Recueil administratif et économique, B-N°5, 25.01.2007, P. 62] provides for an exhaustive list of lending establishments exempted from the payment of the remuneration. This completed the implementation of PLR in Luxembourg. The Commission could therefore close the case.

1.3. The Commission lodged a case against **Italy** before the ECJ in May 2005 (Case C-198/05) [Press Release of 21 March 2005, IP/05/347]. In its decision of 26 October 2006, the ECJ confirmed that Italy had failed its obligations under the 92/100/EEC Directive.

Following this decision, Italy adopted and notified the Commission a new provision included in the Law N° 286 of 24 November 2006 containing certain urgent fiscal and financial provisions. Paragraph 132 of this law creates a fund for PLR, which will be distributed by the SIAE according to certain rules to be determined in a decree signed by the Minister of cultural goods and activities after consulting interested parties. Without the text of this decree, the Commission had to initiate an infringement proceeding under Article 228 of the Treaty, but is expecting a notification which will complete the implementation of PLR in Italy as soon as possible.

2. Draft Legislations

2.1. The Commission lodged a case against **Spain** before the ECJ in January 2005 (Case C-175/05) [Press Release of 21 December 2004, IP/04/1519]. In its decision of 26 October 2006, the ECJ confirmed that Spain had failed its obligations under the 92/100/EEC Directive.

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Following this decision, the Spanish Government adopted and notified the Commission a draft law to apply the Court's decision. This text could be approved by the Spanish Parliament before summer 2007. Meanwhile, the Commission had to initiate an infringement proceeding under Article 228 of the Treaty, but is expecting a notification as soon as possible.

2.2. The Commission lodged a case against **Ireland** before the ECJ in April 2005 (Case C-175/05) [Press Release of 21 December 2004, IP/04/1519]. In its decision of 11 January 2007, the ECJ confirmed that Ireland had failed its obligations under Articles 1 and 5 of the 92/100/EEC Directive.

Following this decision, the Commission had to initiate an infringement proceeding under Article 228 of the Treaty. However, the Irish authorities have long ago taken steps to amend their national law to implement PLR. We know that the different competent authorities have already agreed on certain principles. The Commission services have been following this process which could be achieved in the coming months.

3. Situation unchanged

3.1. The Commission lodged a case against **Portugal** before the ECJ in February 2005 (Case C-53/05) [Press Release of 21 December 2004, IP/04/1519]. In its decision of 6 July 2006, the ECJ confirmed that Portugal had failed its obligations under Articles 1 and 5 of the 92/100/EEC Directive.

Portugal has not informed the Commission of any step taken to apply the Court's decision. The Commission is therefore pursuing an infringement proceeding under Article 228 of the Treaty.

3.2. In December 2004, the Commission sent letters of formal notice to **Denmark, Finland and Sweden**, on the basis of a possible indirect discrimination in their PLR system [Press Release of 21 December 2004, IP/04/1519]. Since then, the Commission has been negotiating with the authorities of these countries in order to find a constructive solution.

III. Conclusion

2006 has been an important year for PLR in Europe. The European Court of Justice adopted several decisions which cannot be ignored. The Commission will ensure that these decisions are respected by the Member States concerned.

Thank you very much for your attention. I wish you all a successful seminar.

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Off We Go: Public Lending Right in the Kingdom of Belium 2006-2007

Wim De Mont, Reprobel

0. INTRODUCTION

The greater availability of works in public libraries leads to a drop in sales and subsequent losses for authors and copyright holders. From an economic perspective, it is only normal that authors and copyright holders should be able to share in the use of their works. Of course, the availability of these works in public libraries promotes reading and (sometimes) buying these works afterwards, but it should be made clear that the economic losses are more significant than the economic gains…

It was not only the rental right, but also the financial compensation for authors and copyright holders that formed the underlying objective of the EU Directive that dealt with these rights in 1992.

There are significant differences in the national legislation of Member States in relation to the rental and lending rights. These differences in the respective legislations of the Member States "are sources of barriers to trade and distortions of competition which impede the achievement and proper functioning of the internal market"[2].

With this Directive, the European Union wishes to secure and standardise the right to an equitable remuneration for the rental and lending of copyright-protected works and works that enjoy protection under copyright-related rights.

After all, an equitable remuneration for the production of artistic works is of inestimable value for European cultural and economic development.

1. PUBLIC LENDING RIGHT IN BELGIUM

The impetus for a Belgian lending right regulation was given by the European Directive 92/100/EC of 19 November 1992 relative to the right of rental and of lending and to certain neighbouring rights of the copyright into the domain of intellectual property (OJ, L. 346, 27 November 1992), which was slightly amended by a Directive in 1993 (93/98/EEC).

In Belgium, this was translated into the Law of 30 June 1994 on copyright and neighbouring rights (Belgian O.J. 27 July 1994, err. Belgian O.J 5 November 1994, err. M.B. 22 November 1994), amended by the Law of 3 April 1995 (Belgian O.J.

[2] Directive 92/100/EEC, recital 1 of the preamble.

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29 April 1995), amended by the Law of 31 August 1998 (Belgian O.J. 14 November 1998) and amended by the Law of 22 May 2005 (Belgian O.J. 27 May 2005). This Law is known as the Authors Law for short.

Articles 23, 47, 62 and 63 of this Authors Law are particularly relevant to the lending right.

Article 23 §1 states that the author may not prohibit the lending of literary works, databases, works of photography, music scores, sound works and audiovisual works if:

- the lending takes place for an educational or cultural purpose
- by institutions that are officially recognised or set up to this end by the government

Article 47 §1 states that the performing artist and producer of phonograms and of first recordings of films may not prohibit lending if:

- the lending takes place for an educational or cultural purpose
- by institutions that are officially recognised or set up to this end by the government

Article 62 states that in the event of a loan of:

- literary works
- databases
- photographic works
- music scores
- sound works or audiovisual works

Under the conditions set forth in Articles 23 and 47, the author, the performing artist and/or the producer are entitled to a fee.

Article 63 §2 states that the King may entrust one society with the collection and distribution of fees for public lending:

- in accordance with the conditions and more specific regulations laid down by Him
- whereby all categories of right holders must be represented by the collective society

After the executory decision (Royal Decree) of 25 April 2004 relating to public lending right was published, there was a great deal of disappointment amongst several Reprobel members, since neither the way it was set up nor the amount of the remuneration matched their expectations. At least, this Royal Decree made it possible and even compulsory to take the first practical steps towards collecting

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and distributing remunerations for public lending right. The Royal Decree of 7 April 2005 entrusts Reprobel with the management of public lending right.

Reprobel is the Belgian reproduction rights organisation (RRO). It was created on 27 June 1994. It has a cooperative structure, representing fifteen Belgian copyright management societies for authors (writers, playwrights, composers, journalists, photographers, illustrators, authors of scientific or educational texts and others) and publishers (of books, newspapers, periodicals, musical scores and others) concerned.

Reprobel is a private organisation. The State is involved in its running only to lay down the legal framework of its activities. The Federal Minister of Economy monitors our activities and the forms and documents designed for the debtors. Reprobel is also the mouthpiece in Belgium for authors and publishers from all over the world.

On 22 June 2005, Reprobel's and Auvibel's Members of the Boards signed an agreement whereby Auvibel mandated Reprobel on this matter.

Auvibel stands in Belgium for authors, producers and performing artists of sound and audiovisual works. Reprobel's recognition till the end of October 2005 was extended on 26 October 2005 to 31 December 2006. In the course of 2006, Reprobel was recognised for indefinite duration. Still in 2006, a new mandate agreement was signed between Auvibel and Reprobel.

The Royal Decree makes it possible to collect public lending right remunerations in a decentralised way from every individual public lending institution, but allows that the three Belgian Communities, namely the Flemish (or Dutch-speaking), the French-speaking and the German-speaking communities, would pay for the public lending institutions they recognise and subsidise.

As from 2004, it became clear that it would be easier for Reprobel and for public lending institutions to aim at a centralized collection. Indeed, every community holds centralized figures relating to the number of readers, the number of loans and so on.

Since the federal authorities had set forth very low tariffs, i.e. 1 euro per year per adult borrower and 0,5 euro per minor borrower, it has quickly become clear that a centralised collection was the only way to maintain the costs for the collection of public lending remunerations at a low level.

3. WHAT HAPPENED IN 2006?

Breaking news! In 2006, lending right remunerations were collected for the first time in the fine Kingdom of Belgium for a total amount of 1,285,282 euros. It is a start, anyway. Off we go!

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As far as collection is concerned, Reprobel strove for a centralised collection per community. We have three communities in Belgium: the (Dutch-speaking) Flemish Community (58% of the Belgians), the French-speaking Community (41% of the Belgians) and the German-speaking Community (1% of the Belgians). These communities are responsible for public libraries.

Specific meetings with the three Ministers in charge and/or their representatives started in 2004 and were concluded successfully in 2006. There were further discussions over VAT, that Reprobel is bound to apply, and/or over the payment procedure. Nevertheless, a consensus was finally reached on those issues after a few more contacts with the communities.

Reprobel and Auvibel executives hold regular consultations. The Board of Directors was regularly informed orally and in writing over those consultations and the steps that were made.

At the end of 2006, the French-speaking and Flemish communities paid the agreed amounts for the year of consumption 2004. The German-speaking community paid, at the end of 2006, the agreed amounts for the years of consumption 2004 and 2005.

Authors and publishers are thankful to the communities for this positive gesture. However, they consider the tariffs as set forth by the federal authorities as clearly insufficient and they keep lobbying to obtain tariffs in accordance with the equitable remuneration laid down by the European Directive.

Meanwhile, authors and publishers have started to set up a distribution scheme. These distribution schedules need to be approved by the Federal Minister of Economy before the collected sums can be released on behalf of authors and publishers. 70 percent of the collected sums will be released on behalf of authors, 30 percent will be released on behalf of publishers.

4. TO DO IN 2007!

The first collection of lending right remunerations in Belgium has been completed. However, authors and publishers may not rest on their laurels. There is still a lot of work to do in 2007!

There is no formal plan what to do in 2007, but an action plan would certainly contain what follows:

- Initiatives can be taken in order to obtain fairer tariffs. A few collective societies for authors and publishers are already taking action now, both by way of influencing journalists and through judicial procedures.

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- A series of public lending institutions are not covered by one of the communities with which a contract was concluded for the period 2004-2006. Those institutions need to be notified separately.

- Reprobel also needs to negotiate again with the Flemish, French-speaking and German-speaking communities in order to agree on centralised payments from 2007 onwards.

So, to conclude with the lessons that have been learned:

1. Rightsholders feel obliged to be very patient. Every step ahead takes a lot of time…
2. Legal action by the European Commission is very helpful.
3. Rightsholders should be pleading very active on fair tariffs.
4. Most librarians understand the importance of PLR, although they don't like their budget being cut because of PLR schemes. Government funding, at least temporarily, might make librarians allies.

Wim De Mont
Managing director ad interim, Reprobel
Brussels, Belgium

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Public Lending Right in the Republic of Croatia: History of Public Lending Right in Croatia Including the Current State of PLR

Vesna Stilin
State Intellectual Property Office of the Republic of Croatia

On 13 October 2005 the Government of the Republic of Croatia accepted a document prepared by the State Intellectual Property Office of the Republic of Croatia (hereinafter: SIPO) under the title: "National Strategy for the Development of the Intellectual Property System of the Republic of Croatia 2005 – 2010", laying down among other measures, that the collection of remuneration for public lending of the copyright works by collective management associations (CMAs) should start in 2007. Relevant institutions for the implementation procedure of PLR with CMS are also the following: The Ministry of Culture (MC) funding public libraries, the National and University Library (NUL) as a central institution of the Croatian library system and SIPO authorising CMA for the collective management of rights, and also regarding public lending right.

Several meetings have been held at the Ministry of Culture so far, pursuing the subject of PLR as well, with no significant breakthroughs.

At the initiative of the State Intellectual Property Office of the Republic of Croatia a meeting concerning PLR was convened in March 2007, and all the subjects involved with the PLR implementation in Croatia were invited. The outcome of the mentioned meeting was an initiative of the Croatian Writers Society to institute a procedure before the SIPO for the purpose of obtaining authorisation for the collective management of PLR for writers.

By now SIPO has granted authorisations for the collective management of PLR to the following collective right management associations:
(1) Croatian Composer's Society, Service ZAMP (HDS-ZAMP), right to remuneration for public lending of musical works, among other rights,

(2) Croatian Association for the Protection of Performers' Rights (HUZIP), right to remuneration for public lending of fixed performances, among other rights,
(3) Association for Protection, Collection and Distribution of Phonogram Producers Rights (ZAPRAF), right to remuneration for public lending of phonograms, among other rights.

Given the books are primarily subject matter of lending in public libraries, notwithstanding the fact that the three above CMAs have been granted authorisation by SIPO for the collective management of PLR for musical works, fixed performances and phonograms, and after the authorisation for the collective management of PLR for writers, we are awaiting this year, one could really speak of the PLR implementation in the Republic of Croatia; the respective provisions were included in the Croatian Copyright and Related Rights Act in October 2003.

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Public Lending right is the sole right incorporated in our Copyright and Related Rights Act for over three years, and still not applied. Its application is awaited after the Croatian Writers' Association obtain authorisation by SIPO for the collective management of PL R for writers.

Our Ministry of Culture is willing to provide funds for the PLR implementation.

One of the requirements the Croatian Writers' Association has to fulfil for the purpose to be granted authorisation by SIPO for the collective management of PLR for writers, is to provide a reciprocity agreement. Therefore it is recommendable to conclude a reciprocity agreement with the country paying remunerations for PLR to foreign, i.e. the Croatian writers. Namely, our Copyright and Related Rights Act provides for the principle of assimilation of foreign citizens: in the Republic of Croatia they enjoy equal protection as the citizens of the Republic of Croatia, within the obligations Croatia has accepted on the basis of international treaties, and on the basis of actual reciprocity.

On 24 November 2006 in Zagreb was organised annual symposium concerning copyright and related rights organised by the Croatian Society for Copyright, in cooperation with our Office, and one of the subjects was PLR in Croatia and in the world as well.

Legal status

The Republic of Croatia, albeit not yet Member State to the European Union, has harmonised its national legislation with seven EU Directives in the field of copyright and related rights in whole, and particularly with the Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

The Croatian Parliament adopted Copyright and Related Rights Act on 22 October 2003 with effect from 30 October 2003 (NN/Official Journal of the Republic of Croatia, No. 167/03). The Copyright and Related Rights Act, in compliance with the indicated Directive, laying down in Article 33 that authors shall have the right to equitable remuneration where the original or copies of their works of which further distribution is admissible, have been lent through public libraries. A definition of lending follows, meaning: making available for use for a limited period of time and without direct or indirect economic or commercial benefit. Furthermore, an author may not renounce the right to remuneration.

For authors of databases, a derogation is provided, so that the authors of databases shall have the exclusive right of public lending of the originals or copies of their databases, while other categories of authors have a right to remuneration only (harmonised with Directive 96/9/EEC of March 1996 on the legal protection of databases).

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The Copyright and Related Rights Act, Article 128 provides that performer shall be entitled to an equitable remuneration, where his fixed performance in respect of which further distribution is allowed is lent by intermediary of public libraries.

The Copyright and Related Rights Act, Article 134 lays down that producers of phonograms shall have the right to an equitable remuneration for lending of their phonograms, that is, the copies thereof, by intermediary of public libraries.

Furthermore, Article 140 of the Copyright and Related Rights Act provides that film producers shall be entitled to equitable remuneration for public lending of videograms by intermediary of public libraries.

Article 156 of the Copyright and Related Rights Act has a list of all the categories of rights of authors and related rights of performers, producers of phonograms, film producers and publishers to be managed under the collective system. There is a list of rights normally managed collectively, among others, the right of the author to remuneration for public lending (Article 156 paragraph 1., subparagraph 1. item d) of the Copyright and Related Rights Act); right of performers is a right to remuneration for public lending of a fixed performance (Article 156 paragraph 1., subparagraph 2, item f) of the Copyright and Related Rights Act); the right of producers of phonograms for public lending of phonograms (Article 156 paragraph 1. subparagraph 3. item d) of the Copyright and Related Rights Act) and the right of film producers to remuneration for public lending of video recordings (Article 156 paragraph 1., subparagraph 4 item a) of the Copyright and Related Rights Act).

Beforehand, a collective right management association shall apply for authorisation to be granted by SIPO, for performing collective management of rights. Such association shall comply with certain requirements to obtain such authorisation, with the focus on fulfilling the professional criteria provided under the Regulations on the professional criteria and procedures for granting authorisations for performing collective management of rights and on remunerations for the work done by the Council of Experts (NN/Official Journal of the Republic of Croatia, No.72/04).

SIPO shall, save for granting authorisations, keep the records of collective rights management associations, and carry out inspection of their activities.

My personal forecast is such, that after the Croatian Writers' Association has been granted authorisation for the collective management of PLR for writers by SIPO, the negotiations concerning the level of remuneration for writers and other holders of rights shall commence with the Ministry of Culture and National and University Library, still during the year 2007.

In the ANNEX you shall find the specific Articles of PLR relevance.

April 2007

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Vesna STILIN
Assistant Director General
State Intellectual Property of the Republic of Croatia
Ulica grada Vukovara 78,
10 000 Zagreb
Phone. (+385 1) 6106-275; 6106-100
Fax.: (+385 1) 6112-017
Mobile: (+385 98) 9813-061
E-mail:vesna.stilin@dziv.hr

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STATE INTELLECTUAL PROPERTY OFFICE OF THE REPUBLIC OF CROATIA

Public Lending Right in Croatia

Legal basis: Copyright and Related Rights Act (NN/Official Journal of the Republic of Croatia, No. 167/03)

Right to remuneration for public lending
Article 33

(1) The author shall have the right to equitable remuneration where the original or copies of his work of which further distribution is admissible, have been lent through public libraries.
(2) The lending, under this Act, shall mean making available for use for a limited period of time and without direct or indirect economic or commercial benefit.
(3) Provisions referred to in paragraphs (1) and (2) of this Article shall not apply to:
   (1) buildings and works of applied art;
   (2) works that are mutually lent by institutions referred to in paragraph (1) of this Article.
(4) The author may not renounce the right referred to in paragraph (1) of this Article.
(5) By way of derogation from the provision of paragraph (1) of this Article, authors of databases shall have the exclusive right of public lending of the originals or copies of their databases.

Right to remuneration
Article 128

(1) A performer shall be entitled to an equitable remuneration for any audio or audiovisual recording of his fixed performance for private or other personal use, as referred to in Article 32, paragraph (1) of this Act.
(2) A performer shall be entitled to an equitable remuneration, where his fixed performance in respect of which further distribution is allowed is lent

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by intermediary of public libraries. The provisions of Article 33 paragraphs (2) and (4) of this Act shall apply mutatis mutandis to such right.

Right to remuneration
for public lending
Article 134

A producer of phonograms shall have the right to an equitable remuneration for lending of his
phonograms, that is, the copies thereof, by intermediary of public libraries.

Right to remuneration
for public lending
Article 140

A film producer shall be entitled to equitable remuneration for the lending of videograms by
intermediary of public libraries.

Collective management of rights
Article 156

(1) Collective management of rights may include the following:

1. **Rights of authors**:
   a. right of public performance, right of public transmission, right of public communication of a fixed work, right of broadcasting, right of re-broadcasting, right of public communication of a broadcasting and right of making available to the public of non-stage musical and literary works;
   b. right of reproduction (audio recording) of musical works;
   c. right of distribution, including the right of rental and the right to a remuneration referred to in Article 20 paragraph 5 of this Act;
   d. right to a remuneration for public lending;
   e. resale right when the original works of art are being resold;
   f. right to a remuneration for reproduction of a work for private or other personal use;
   g. right to a remuneration referred to in Article 85 paragraph (2) of this Act
   h. right to a remuneration for communication to the public of folk literary and artistic creations.
2. **Right of performers**:
   a. right of public communication of a fixed performance and broadcastings;
   b. right of public presentation of a fixed performance;
   c. right of broadcasting and re-broadcasting of a fixed performance;
   d. right of making available to the public of a fixed performance;

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e. rental right of a fixed performance, and the right to a remuneration referred to in Article 20 paragraph (5) of this Act;
f. right to a remuneration for public lending of a fixed performance;
g. right to a remuneration for reproduction of a fixed performance for private or other personal use.

3. **Rights of producers of phonograms**:
   a. right of making available to the public of a phonogram;
   b. right to a remuneration for broadcasting and public communication of a phonogram;
   c. right of rental of a phonogram;
   d. right to a remuneration for public lending of a phonogram;
   e. right to a remuneration for reproduction of a phonogram for private or other personal use.
4. **Rights of film producers:**
   a. right to a remuneration for public lending of a videogram;
   b. right to a remuneration for reproduction of a videogram for private or other personal use.
5. Rights of publishers:
   a. right to a remuneration for reproduction of their written editions for private or other personal use.

(2) The right of broadcasting and re-broadcasting referred to in paragraph (1), items 1a) and 2c), the right to a remuneration for broadcasting referred to in paragraph (1) item 3b) the rental right referred to in items 1c), and where it regards recorded musical works, 2e) and 3c), the right to a remuneration for public lending referred to in items 1d), 2f), 3d) and 4a), and the right to a remuneration for reproduction for private and other personal use referred to in items 1f), 2g), 3e), 4b), 5a), shall be managed only through a collective rights management association.

(3) The provisions referred to in paragraph (2) of this Article shall not apply to cable retransmission, where it concerns the broadcasting organization in respect of its own broadcasts, irrespective of whether the rights concerned are its own or have been transmitted to it by other holders of copyright and related rights.

Collective right management associations
Article 157

(1) Collective management of rights may be carried out by an association of the right holders, which has the authorization granted by the State Intellectual Property Office (hereinafter: the Office) for performing such activity;

(2) The authorization referred to in paragraph (1) of this Article shall be granted by the Office to an association which:
   a. has its principle place of business in the Republic of Croatia;
   b. has adequate premises, equipment and technical service with at least one employee with a law degree (a lawyer);

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c. is engaged in the collective management of rights as its only activity, unless its other engagements relate to the cultural or art activities, and to the activities aiming at professional or social interests of its members.

(3) The association shall manage the rights in its own name and for the account of the right holders.

Activities of the Office with regard to the collective management of rights
Article 169

(1) The Office shall grant authorizations to the collective rights management associations referred to in Article 157 of this Act.

(2) The Minister shall prescribe the professional criteria and procedure of granting the authorizations referred to in paragraph (1) of this Article.

(3) The Office shall keep the records of the collective rights management associations.

(4) The Office shall revoke the authorization referred to in paragraph (1) of this Article, if an association ceased to comply with the prescribed criteria, and if seriously and repeatedly violates the provisions of this Act. In such case, prior notice in writing shall be given to the collective rights management association by the Office, and the Office shall set a time limit of 30 days for the collective rights management association to eliminate the found irregularities.

(5) A decision on the grant of the authorization for collective management, and a decision of revocation of such authorization shall be published in the Official Gazette of the Office. The revocation of the authorization referred to in paragraph (4) of this Article shall take effect on the 30th day following its publication.

(6) The Office conducts inspection of the work of the collective rights management associations.

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Cyprus PLR Scheme update: April 2007

Despina Pirketti
Union of Cyprus Writers

The most recent meeting of the Union of Cyprus Writers representative at the Cultural Services of the Education Ministry took place on February 21, 2007. The UCW was called to that meeting after having sent three memos on a PLR scheme proposal in Cyprus and having attended a first unofficial meeting at the Ministry in late 2006.

February 21 was the first official meeting on PLR, since the issue in question was discussed in the presence of a librarians' representative (the Head of the Cypriot Library), an IT advisor, and of course the Ministry's official who's been assigned to look into our proposal.

At our introduction we referred to two specific aspects of our subject matter. First, why a PLR scheme is necessary (legal parameters (E.U. directive) & possible fines in case of non-compliance, as well as authors rightful compensation for their work); and second, how a PLR scheme could work in the specific case of Cyprus where merely a 10% of library loans concern books by Cypriot authors. (The majority being loans by Greek authors who have consistently been more popular among library goers, owing largely to the state education policy, among other reasons). Therefore, to put it simply, the initial question posed was "Is it really worth the trouble?"

It seems that this was soon overcome since the participants went on to inquire further information on existing PLR schemes, i.e. what are the different rates per loan in various countries? The IT advisor was then asked to submit a proposal on how the libraries can estimate the annual lending of books by Cypriot writers (a "filtering-out" method) so as to avoid the burden of encumbering library employees with additional workload.

Further, at an initial stage we are looking into incorporating into the scheme all State and Municipal Libraries, as well as the University of Cyprus Library (around 30 in all).

The next step will be the drafting of a proposal for a PLR scheme in Cyprus, to be submitted to the Head of the Cultural Services & then to the Culture Minister himself. We are expecting to be called to assist with the drafting of the proposal - as soon as the Ministry will have received the official IT proposal.

In the meantime, we are waiting for the outcome of the Budapest PLR seminar, that will give us a good reason to go back to the Ministry with further ideas and (hopefully) concrete reasons why this is something that simply needs to be implemented in Cyprus, too.
Until then, best of luck to all of you. Nicosia, April 6, 2007

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PLR in the Czech Republic

Šimon Pellar
Vice-President, DILIA
Chairman, RUO (Council of Czech Professional Artists' Organisations)
Vice-President, ECA (European Council of Artists)

Traditionally, lending from all libraries was summarily exempt from any remuneration for the authors, e.g. like in Italy and elsewhere. This was due partly to historical reasons because by the turn of the 19th century Czech language was spoken only among the lowest classes, both urban and rural, and quality literature in Czech was almost non-existent. Gradually, however, the Czech National Revival movement started changing the situation as the economic power of the ethnic Czech bourgeoisie grew and literature written in the native language was in the vanguard of the drive. The library, namely in the village, thus played a leading role in the dissemination of not only Czech literature but also in the national awareness. Modern Czech nationhood was thus largely associated with literature and libraries, and in terms of the number of the latter, the country became one of the most advanced in Europe. The library retained its key cultural role also after the rise of an independent Czechoslovakia when as a result of the Library Act of 1919, every community was bound by law to establish and operate a public library. Libraries received considerable funding even during the forty years of Communist rule.

Ten years ago when I first became involved in the PLR issue, the number of public libraries in a country with 10 million inhabitants settled around 6,140. Of this total, a mere 0.9 per cent were those run and financed by the state, i.e. the Culture Ministry and regional and/or district authorities, with more than 99 per cent of all public libraries being financed by municipalities and communities. However, as a result of the recent reform of the public administration, some 650 libraries have been closed down.

Still, the public library has always been thought of as a vital cultural institution and thus all efforts to establish a PLR scheme to the benefit of the authors were for long considered almost a sacrilege.

Even when it became clear that the Czech Republic would join the European Union, the state continued to oppose the PLR idea by a summary exemption of public library book lending, which later found its way even in the new Authors Rights Act of 2000. It was therefore only very slowly that the situation became to change after the country's accession to the European Union. Decisive in this respect were the various court actions on the part of the EC against some West European states. As a result, an amendment of the 2000 Authors' Rights Act was finally passed in April 2006, in which Section 37 on Book Licence in Paragraph 2 simply stipulates that

> *Authors' Rights are not infringed by [legal persons stated in Paragraph 1, i.e. libraries, archives, museums, galleries, schools, universities and other non-profit educational facilities] lending originals or copies*

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> *of published works, provided that the lender pays the authors remunerations due them as per the Appendix to this Act. The author, however, is not entitled to remuneration for the lending of published works on premises, or for the lending of originals and copies of published works effected by school and university libraries, the National Library of the Czech Republic, the Moravian Land Library in Brno, the State Technical Library, the National Medical Library, the Comenius National Pedagogical Library, the Agricultural and Foodstuffs Information Institute Library, the National Film Archives Library and the Czech Republic Parliament Library.*

The said Appendix then states under Paragraphs 9 and 10 that

Par. 9 *For legal persons listed under Section 37, Paragraph 1, the remuneration as per Section 37, Paragraph 2, shall be paid annually to the appropriate [i.e. licensed] societies of collective management of authors' rights by the state.*

Par. 10 *The lending remuneration fee is hereby set at CZK 0.50 per book loan.*

At present, CZK 0.50 amounts to € 0.0178.

The collection and distribution of the PLR remunerations to be paid to authors of the original text, translators, illustrators and editors is effected by DILIA which – being the Czech collective management of authors' rights for literary, dramatic and audiovisual works – has had its license appropriately extended by the Culture Ministry to cover also the collection and distribution of PLR remuneration.

Money collected under the PLR scheme will be first distributed in June 2008 and the initial payment will cover only the second half of the year 2006. The net amount to be distributed to all entitled private persons (individual authors) for a full year is expected to amount to some CZK 25 million, i.e. about € 893,000.

The expectation is based on a number of loans, which is to be specified by the National Library through an independent research organisation but which – after deduction of all loans that are exempt from remuneration – is at present estimated to amount to some 51 million annually.

Currently, DILIA is negotiating with the Finance Ministry to resolve the issue of VAT on the lending remuneration. In brief, the state through the Finance Ministry wants to deduct the VAT, currently at 19 per cent but intended to be increased to 22 by the present coalition government, from the sum due to the authors.

The whole issue of the lending remuneration fee is much complicated by the fact that it is set by an act of the Parliament, rather than a ministerial decree, which means that to increase the book loan remuneration fee would require another amendment of the Authors' Rights Act which does not seem very likely to take place in the immediate future.

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PLR IN ESTONIA 2007

Legal Status: Copyright Act (1992; PLR included in December 1999, enforced in January, 2000)
Secondary legislation: Government decrees passed in 2003, 2003, 2004, 2005.

The system started in March 2004.

Administration:
PLR is run by an independent, non- profit making foundation Autorihüvitusfond (AHF, Authors' Remuneration Fund).

Categories of authors entitled to receive PLR
* authors of the text: authors, translators, editors;
* authors of the visual form: graphic designers/illustrators, photographers;
* audiovisual and phonogram authors via collective management organisations;
* rightsholders: publishers, heirs etc.

Calculation: Each author`s share is calculated on the basis of
* number of loans;
* volume of illustrations in each book;
* number of authors/translators/illustrators of each book.

Application process: In order to receive PLR remuneration, authors and rightsholders must submit applications listing their publications.
Since 2006 the authors registered for PLR receive also reprographic reproduction remuneration on the basis of the adjusted "2 in 1" application forms. Applications can be submitted electronically or in a handwritten form. When previously ca 1/3 of the authors used the electronic option, then 2007 turned out with an opposite ratio – only ca 1/7 of the applications were handwritten. An electronic revolution like that enables to distribute remuneration very cost-effectively.

Perspectives:
* inclusion of academical libraries;
* extension of public libraries' sample; the current 12% sample will be extended upon results of statistical, technical and cost analysis;

Funding: Government allocation
2003: 600 000 EEK (38 000 EUR)
2004: 1 000 000 EEK (63 900 EUR)
2005: 2 500 000 EEK (159 800 EUR)
2006: 3 500 000 EEK (223 700 EUR; incl. reprographic reproduction remuneration, RRR)
2007: 4 500 000 EEK (287 600 EUR; incl RRR)
2008: 5 500 000 EEK (351 500 EUR; incl RRR)

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PLR in Greece

Theodoros Grigoriadis

Both as a novelist and a librarian in Serres Central Public Library and representing the Greek Author's Society-with some embarassement- I have nothing important to add since the last PLR conference. The libraries in Greece remain few and poor (they belong to the Ministry of Education and count up to 40 only) and the Greek Author's Society cannot actually function from the beginning a Collective Society to claim remuneration although the implementation of the Directive into our national laws has already been done.
At the moment there has been a proposition from the OSDEL (Greek Collecting Society For Literature Rights) to co -operate on behalf of the Greek Author's Society and claim money from the state and distribute it to the writers. OSDEL has been successfully functioning for some years now distributing money (deriving from copyrights) to its registered rightholders.
This proposition is under consideration and will be soon discussed at the newly elected Greek Author's committee.
I am presenting this issue here so I can have your own opinion and I would also propose PRL make a reference in the Resolution for the Greek case so it might be used as a means of enforcement towards the Greek State.

I would also read the questions imposed by OSDEL:
OSDEL would like to receive information in respect of the following issues:

a) *Does public lending cover the lending of books etc outside of the premises of the public library or does it cover lending within the premises ?*
b) *In countries where currently do exist public lending schemes, how is the rightholders remuneration calculated?*
c) *On what criteria is the remuneration distributed? Distribution is made both to national and foreign rightholders?*
d) *European Commission's action against Member States is only because of non implementation of the Directive into national law or also because of non enforcement of the respective national laws? (Greece's Copyright Act provides for an exclusive rental and public lending right, however this right has never been enforced up to now and the public authorities do not seem willing to respect it)*

Furthermore OSDEL, who administers the public lending right on behalf of authors of literary works and publishers, would like to be invited in any future conference or seminar in respect of PLR.

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Public Lending Right – Considerations of the Hungarian Legislator

Dr. Anikó Gyenge, counselor
Ministry of Justice and Law Enforcement
European Union Law Department

Text of the presentation held on the 21th April 2007 in the conference of the public lending right, organized by the European Writer's Congress (EWC), Public Lending Right Centre of UK and the József Attila Kör, supported by the Ministry of Education and Culture of the Hungarian Republic.

Dear Colleagues!
Honorable Ladies and Gentlemen!

First of all I would like to say thank you to the organizers for inviting me to this professionally important conference. I have to speak in the name of the Hungarian Government but what I say should not be considered as an official statement. Instead I would like to persuade everybody to think about the questions which I am going to talk about even after my speech. Because I believe that in my presentation there will be more question marks than full stops.

I think it would be useful to arrange the problems around some general viewpoints. Such a viewpoint could be for example: the dogmatic and functional features the public lending right has that make it different from other rights of the author. The other viewpoint is (which is in a very close relation with the first topic): the kind of problems that can arise in the process of implementation and acceptance in practice and enforcement. Furthermore we have to examine the reason of these problems.

The reason why these questions must be answered is that the Community wide harmonization was fulfilled by the Community Legislator with the second copyright directive. The 92/100/EC Directive was the second one in the row of directives accepted in the field of copyright. But in the Europe of 15 infringement procedures have been going on between the European Commission and several Member States of the EU ever since. It seems that the Member States who accepted the Directive have serious problems with the implementation thereof. I have to note that the Commission has not begun a procedure against none of the twelve new Member States, but it may only be a question of time.

Up till now the Commission has begun a procedure against Belgium, Portugal, Spain, Ireland, Luxembourg and Italy because the exceptions they apply in the case of institutions which are not obliged to pay any remuneration are too wide. So this legal institute is dead, the author hasn't got an active right because practically there is no person who will pay remuneration. The reason of the procedure against Denmark, Sweden and Finland is that their regulation is discriminatory. They benefit only the citizens or the authors who write in the national language or contribute to the national culture.

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De facto it means that 9 Member States are not willing to implement the directive originally accepted by 15 Member States. Of course it is only fair if we admit that the task of the implementation of the directive is not an easy one for Hungary either. That is why it would be useful to think together about the origins of the problems of the Member States.

After this short introduction we can go back to our first topic and think about the dogmatic and functional features of the public lending right.
The need to introduce the public lending right into the national law arose historically when the public lending activity reached such a level that it became one of the general, normal uses of the works. This goes back to the culture historical time when the public libraries were founded and they made the books accessible not only for the privileged, or for the friends or acquaintances of the family but for the wide publicity, for the people as well. This change brought a widening in the consumption of books, so the number of readers multiplied, although the number of sold books did not change or decreased.

From this point of view the birth of the public lending right is very similar to the creation of other rights of the author. The need of the author to license the reproduction of his work, goes back to the spread of printing and parallel with this the widening of the market. Authors have to say thank you for the video stores for the introduction of the rental right. The fixed public performance and the broadcasting right could become important acts with the spread of the cinema and the TV, with which the author wanted to get a licensing opportunity. So from a historical point of view the need to introduce a new right for the author arose after the emergence of the new markets of works. The result of this was the acknowledgement of a new right from the legislator's side. From this aspect the public lending right is the same as the other rights of the author.

But we do not have to think a lot about what feature makes the public lending right different from the other rights of the author. The typical user – who, on the basis of the logic of copyright, has to ask the author for permission for his act (for lending) and has to pay a royalty for it – normally or almost exclusively is not a normal market actor, but a state-founded library.

The typical user is an institution, which fulfills one of the most important duties of the State: ensures free access to culture. The library hasn't got the same function as a publisher, although the publisher can also fulfill a cultural mission. But the publisher as a market actor does not make his decisions on the basis of cultural values but on the basis of how to get more income. For a publisher the economic reason is the first and the cultural is the second one. The library procures books which are important from the aspect of the preservation of culture, of making possible the education, learning or from other important aspects, and the economic reason is only important to the extent of how much money the library can get from the State.

What makes the situation of the library even more difficult is that it cannot fulfill its obligations on the basis of economy: according to the Directive's definition public

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lending right is 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. It means that the library can act free or can demand a fee, which can cover only the royalties and the administrative costs. It is not a coincidence that the traditional market actors do not knock on the authors' doors to get licenses for this use.

We have to ask the question whether the human right to access the culture – which is acknowledged in more international treaties and constitutions – could be realized by the public lending right. Making practicable this human right is the duty of the State as well. The State is obliged to ensure the access to culture, which can be realized by founding libraries. From this point of view the library cannot be separated from the State, because it is a tool of the State. Therefore if the answer to the question is „yes", and the State can fulfill its cultural mission in such a way, formally it means that the State is obliged to pay the royalty for the authors.

Taking into consideration that the copyright cannot acknowledge cultural values, if we say yes to the question, the consequence is that the libraries (or instead of them the State) have to pay a royalty not only for the national books, but after every book which is offered in the library for public lending. Of course if the State pays for every book, it also pays for the books which have cultural values. This approach, interpreting the State's cultural function so wide, can lead to the thought ad absurdum, that the role of the publishers could be overtaken by the State as well, because the publishing of books is partly a tool of spreading the culture. But in a market economy it is not an acceptable point of view.

If we would like to answer the question in merit, we have to interpret the state's function in spreading the culture more narrowly. Reasonably we have to restrict the role of the state to support the books which cannot be sold on the market as bestsellers. The reason that these books cannot be sold is not because they are worthless but they either don't meet the mass demand or they meet only a narrower demand or they belong to the higher culture. Without state intervention or support the editing of these books would be not a rewarding investment for the market. This approach leads to the recognition of the fact that the public lending right is not an adequate tool for the support of the non-bestseller books. The reason of this is that copyright law is not able to make a difference between books: public lending right cannot be restricted to the culturally relevant or Hungarian books or which were written by Hungarian authors. But not only because the state does not have a good taste but because the neutrality of the copyright law makes it impossible.

It has to be mentioned that according to statistics the reader uses the library as a free bookstore, which means that they loan the books which can be bought on the market as well (although the first places of the top lists are not the same). It practically means that the author will get money from the state after those books that can be sold on the market as well, and he or she won't get money after those that attract less readers. Of course we can find countries that consider the PLR as a

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classical cultural supporting tool, but this is the reason why the European Commission has begun an infringement procedure against them.
Summarizing the above mentioned, we have come to the conclusion that the PLR is a right of the author which cannot be realized in a traditional market environment because the user (the library) must not achieve a benefit. Furthermore the practice of this right does not fit in the profile of the user, because we can not harmonize it with the library's basic function, to make the culture accessible for free. This contradiction could be solved if the libraries worked complementarily with the book market, not procuring books which can be sold on the market successfully.

Now let's see the second topic, the difficulties of implementation. If a Member State decides to fulfill it's duty and harmonizes it's national law with the Community law despite of the problems mentioned above and implements the Directive, numerous questions remain to be clarified because of which the national legislator faces some serious challenges.

Beginning with the question – which is in a very close relation with the above mentioned – who has to pay the remuneration? According to the logic of the copyright the library has to be the one, because the library realizes the use which is the public lending. But the library – as I have mentioned – *per se* doesn't exist so if we oblige the library to pay, practically we oblige the State. However it is possible to narrow down the role of the State to the role of the creditor, if we make the readers pay the money. But statistics suggest that it wouldn't be a lucky solution in Hungary, because the typical reader of the library is the pensioner or the student. Neither of them is the member of the society who would be easily obliged to pay. Regarding the students, we have to take into consideration the constitutional freedom of learning as well. So, from the point of view of constitution and the cultural policy this step would be a very difficult one.

A further question is what kind of act shall we attach the obligation to? If we follow the library procurements, the obligation will be attached to the possibility of lending, according to the logic of copyright. The disadvantage of this solution is that one must pay after books which are procured but not loaned. It is a sensible question whether the success of the book would have to be reflected in the remuneration paid for the author or not? The number of the books bought on the book market relates very closely to the number of the readers. If the number of loaning is not taken into account when the remuneration is determined, the usefulness of the book will not be reflected in the remuneration. Taking it into account wouldn't be unfair but it puts a very serious administrative load on the libraries.

Principles of the collection of the remuneration determines the principles of the distribution as well. If the remuneration is based on the procurement, it is clear that the procurement must be reflected in the distribution. If the remuneration is based on the loaning, the loaning must be reflected in the distribution. This solution as well means a load for the libraries because data about loaning numbers can be found exclusively in the libraries.

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A further question would be: for which books is it necessary to pay? Of course I would not like to repeat the aesthetic viewpoints mentioned above. For those books which are written after the law enters into force, or for those as well, which are procured after the law enters into force or for those which are loaned after the law enters into force? Those who argue to narrow the scope of the public lending right say that the remuneration should be paid only for the books that are written after the law enters into force, because the encouraging function of the copyright can be effective only in their case. Another thing is that the royalty paid for earlier works can inspire an author to continue creating art works. (From an extreme point of view only the inspiration can encourage the author to create art works, and not the money.)

If we connect the remuneration to the procurement, it seems logical to pay remuneration only for those copies that are procured in the future. If we connect the remuneration to the loaned books, it is necessary to have a correct register, or at least a regular random sample.

In connection with the distribution we have to mention the one who distributes the money among the right holders. Obviously, this issue only comes up if the exclusive right of the author is restricted to a remuneration. (If the author has an exclusive right for the public lending, it is obvious that there is no need for an intermediary organization, since every author negotiates with the libraries themselves. Perhaps it is not a coincidence that there is no country in the world, where this would be the functioning model.) For the distribution of such fees, the traditional institutional solution is a collecting society.

Finally the most important and most difficult question is: which categories of establishments may exempt from the payment of the remuneration. It comes from the case law of the European Court of Justice unambiguously: the phrase of the Directive that "Member States may exempt certain categories of establishments" cannot be interpreted in a way that most or all of the public lending libraries could be exempted, because it makes the public lending right empty and no author would get any money. Today in Hungary approximately 2500 libraries, the publicly accessible libraries, are exempted from having to pay remuneration on the legal basis of free use. It is very similar to the Belgian, Portuguese, Spanish, Irish, Luxembourgian and Italian model. This situation cries for a change.

In the name of the Ministry of Justice and Law Enforcement I can announce that taking into consideration all of these aspects, we hold a model regulation. This model is in harmony with the Community law and avoids the Scylla of discrimination and the Charybdis of too wide exceptions as well. Today the Hungarian Government fights for something which could be a real challenge even for Odysseus: we try to find the resources in the budget for the remuneration. This task may be the most difficult one…

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PLR IN IRELAND

ANTHONY P QUINN
Executive Committee and former Chair, Irish Writers' Union.

Ireland: Background, developments and proposed new laws.

Background: The Irish Copyright and Related Rights Act 2000 and related regulations implementing the relevant Lending & Rental Rights Directive, 92/100/EEC of 19 November 1992, recognised PLR in principle. The practical effect was negated as all public libraries were exempted and authors were not granted the alternative of equitable remuneration. As exempting all public libraries was too wide a use of derogations, Ireland breached the 1992 Directive's provisions on PLR.

The Irish Writers' Union, (IWU), at national and international levels, campaigned for an Irish PLR scheme. As IWU representative, I attended conferences of the European Writers' Congress, European PLR seminars and the International PLR network and made representations through the European Parliament.

Resolutions passed at European seminars in London 2003, Rome 2004, Madrid 2006 and at the EWC put pressure on national governments, including Ireland, to properly implement the 1992 Directive and introduce PLR schemes. Resolutions encouraged the European Commission to take a vigorous attitude towards defaulting Member States. European Court action was especially effective, although Ireland defended its policy in European Court proceedings, arguably in a waste of taxpayers' money which could have been spent on PLR.
The Irish government has delayed for a long time in introducing a PLR scheme. In exempting all public libraries, Irish officials referred to the relatively small lending pool for books, estimated limited benefits to authors and national cultural policy. The European Commission disagreed with the Irish official attitude to the Directive. The official excuses were weak because Ireland has a dynamic economy, a vibrant public library system and an exceptional literary tradition.

New laws proposed: The European Court decision in the Commission v Ireland, C-175/05,11.1.07, declared that Ireland was in breach of the Lending Rights Directive, 92/100/EEC and removed all excuses and defences relied on by the Irish Government. To meet the 1992 Directive's requirements, the Copyright & Related Rights (Amendment) Bill 2007, includes provisions for an Irish PLR scheme. Details will be included in regulations, rather than in the enabling primary legislation. The draft laws in the Bill provide that the statutory Library Council will administer the PLR remuneration scheme on behalf of the Dept. (Ministry) of Environment, Heritage & Local Govt which will be empowered to make detailed regulations. Bodies may be designated to administer the PLR scheme or part of it and reciprocal arrangements with other countries may be made. Central government, not the

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libraries, will pay for PLR. A general election may delay enactment of the proposed new laws.

Conclusion: After many set-backs and a long and persistent campaign, despite slow progress victory in the battle was achieved for authors' rights. The war is not yet won. We are still fighting against ill-informed media reports and attitudes of some officials and politicians. We co-operate with politicians and intellectual property officials. Irish writers want to be consulted about the PLR scheme eg in an Advisory Committee. The IWU will co-operate with public authorities and libraries (which promote local authors and buy our books) in implementing PLR. It's vital to maintain the momentum and keep-up the pressure at home and through international conferences.

Thanks to Hungarian hosts, Norwegian colleagues, Kopinor, Trond Andressen, the EWC, PLR networks, Dr J Parker, UK PLR Registrar, Janice Forbes, Dr Conor Kostick, Chair, IWU, and Samantha Holman, Executive Director, Irish Copyright Licensing Agency.

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PLR Developments in Italy
Ida Baucia

Important developments in the field of the application of PLR in Italy have occurred since the last 2006 PLR Seminar in Madrid.

By law of November 24th 2006, n. 286 (article 2 para. 132 and 133) (law-decree October 3rd 2006, n 262), a fund has been created at the Italian Culture Ministry in order to cover the payment of public lending rights. The budget consists of 250.000 euros for 2006, 2,2 million euros for 2007 and 3 million euros for 2008 and for the following years;

The fund is to be distributed by SIAE (Società Italiana degli Autori ed Editori) to the rightowners on the basis of what established by decree of the Italian Ministry of Culture, after hearing the advice of the permanent Conference for the relations between the State and the Italian regions and the associations of categories.

Said provisions are applied to the loans from libraries and video and record libraries belonging to the State or to public authorities. University libraries and school libraries are exempt.

The PLR concerns the following categories of works:
- printed copies of the works (sheet music excluded)
- phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, provided that at least eighteen months have elapsed since the first exercise of the right of distribution, or, in the case the right of distribution has not been exercised, provided at least twenty four months have elapsed since the realization of the above works and sequences of moving images.

The distribution of the fund among the three categories of carriers (books, phonos and videos) will probably be fixed after an investigation about the percentage of loans among the said categories of carriers in the Italian public libraries.

After the issue of the law 286, the Ministry of Culture began to hearing SIAE and the associations representing the different categories of rightowners. At the last meeting, which took place on April 11th, the Ministry invited SIAE and the most representative associations of writers, publishers, producers of videograms, audiograms, cinematographic and audiovisual works, original producers of television works and performers. In this occasion all the participants were requested to make proposals about the percentage of distribution among the several rightowners within the three categories of works.

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The Ministry is willing to issue the decrees, fixing the criteria for the distribution of the fund by SIAE, soon. In this way they hope to stop the procedure by the European Court against Italy for not having ensured the correct implementation of the directive into the national legislation.

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PLR in Lithuania

Jurga Braziuniene
Manager of our LATGA-A
Ageny of Lithuanian Copyright Protection Association

Dear colleagues,

Updating our PLR situation in Lithuania, I have to tell you, it's just like in a joke. I have two pieces of news for you: One bad, the other good. I will start with the good. The good news is that our Government last year added to us 20.000 LTL, approx. 5.700 EUROS. But the bad news is that in 2005 the Government allocated for us 30.000 LTL, approx. 8.700 EUROS. It means that last year we received less than the year before. It means that we still don't have any guarantee for the future.

Now we have PLR for five years. I would like to present the following information about budget funding for PLR: for the first year 2002 the State allocated 100.000 LTL,-approx.29.000 EU. In 2003 the State allocated 200.000 LTL, approx. 57.000 EU. In 2004 – 250.000 LTL, approx. 72.000 EU, in the 2005 the Ministry of Culture granted us 280.000 LTL – approx. 81.159 EU and in 2006 – 300.000 LTL, approx. 87.000 EU.
However, the question arises as to how this amount may develop in the future years, which is our main concern. In 2006 we got information from 38 libraries, which are now computerized. From the total amount of the remuneration finance coming from the state budget, 70% is distributed to authors and translators, 30% to illustrators. The royalties are calculated depending on how many times book was taken and coefficient which is ascribed to publications. Coefficients of the publication of the royalties are:

* Children's and juvenile literature – 8
* Fiction – 7
* Non-fiction – 6
* Art books – 6
* Fiction and children literature translations – 5

So we see that the biggest remuneration factor is set for children's literature and the smallest point is set for translations. Since we administer the PLR for five years already, we have noticed some imperfections in the Government Resolution regarding PLR. Some items of PLR regulation during these years have become irrelevant and should be revised. Our ultimate aim is to always get most of money granted by the Government to be distributed to the authors and to find an appropriate method for it, which would be included in our Government Resolution. Another essential thing that has to be done in accordance with PLR regulation is that we have to change coefficients of the publications. The PLR lump sum for the authors is understood as the means of cultural policy, supporting the original creativity and high quality level of domestic literature in Lithuanian language. And it is a big problem, since our domestic authors get a very small amount of money as compared to our translators.

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We have noticed that last year 65,65% of the sum which is distributed to the authors goes to translators and only 31,6% to domestic authors and 2,75% to illustrators. Every year we are putting forward proposals to the Ministry of Culture to change coefficient which is ascribed for translated literature, suggesting to lower this remuneration factor from 5 to 4 points.

There is still a lot of work to be done to improve our PLR scheme. Yet it is very important that a scheme has been established and started already.

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LUXEMBOURG REPORT

Jean-Luc PUTZ
President, LUXORR

1. PUBLIC LENDING RIGHT IN LUXEMBOURG

The legal foundation of public lending right in Luxembourg was introduced in 2001 as a new copyright act[3] abolished the outdated law from 1972[4] ; the latter did not rule lending rights at all. But the newly introduced article 65 only stated that authors and performers are entitled to an equitable remuneration, which is to be paid by public libraries, abandoning all further details to a Government regulation (*règlement grand-ducal*). By that time, LUXORR (Luxembourg Organization For Reproduction Rights) was not yet set up, and as far as we know, no efforts were undertaken to push the Government for regulatory action. It might be interesting to stress out that according to the Luxembourg tradition, the Ministry of the Economy is in charge of copyright issues.

One of the first undertakings and initiatives of LUXORR was to urge the Luxembourg Government to elaborate all necessary regulations in order to permit a concrete application of the copyright act, as almost all regulations mentioned in this act were lacking. Even today, six years after the promulgation of the law, numerous Government regulations still have to be drafted. Fortunately, a regulation on PLR[5] has been adopted on January 8th 2007 and published on January 25th 2007. Thus a usable PLR legislation exists in Luxemburg for only several months, which explains that we are unable to report a success story, but only the beginning of an adventure, which does not really start on a valuable basis.

Indeed, despite LUXORR being one of the main instigators of the PLR regulation, we have to regret not having been consulted during the elaboration of the drafting, and discovered its content just like any other citizen by reading the Official Journal (*Mémorial)*. More generally, we have the impression that the regulation has been taken without a large consultation of the concerned institutions. The copyright commission (*commission des droits d'auteur)* whose legal mission specifically is to assist the Minister in copyright issues, and which is composed of representatives of all involved bodies, unfortunately was not yet operative, and still isn't. The satisfaction for finally having a PLR regulation thus unfortunately is darkened by the poor quality of this legislation.

The "**equitable remuneration**" is due by the State or the districts (*commune)* for public libraries, and by the library itself for private libraries. It is not subject to any negotiation but fixed to a yearly lump sum of 2 Euros payable per user borrowing

[3] Loi du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données ; Mémorial A N° 50, 30.4.2001, p. 1041, modifiée par une loi du 18 avril 2004 ; Mémorial A n° 61, 29.4.2004, p. 942.
[4] Loi du 29 mars 1972 sur le droit d'auteur ; Mémorial A n°23, 12.4.1972, 809.
[5] Règlement grand-ducal du 8 janvier 2007 relatif à la rémunération équitable pour prêt public ; Mémorial A n° 3, 25.1.2007, p. 29.

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at least one item (books, newspapers, periodicals, electronic media) during the year.

The regulation stipulates that the remuneration is to be **collected** by the officially recognized Reproduction Rights Organisations (RROs). The law thus requires compulsory collective management of PLR.

At current state, only two RROs are likely to participate to the collect, i.e. LUXORR for written and pictorial works, and SACEMLUX for musical works. Due to the low revenues to be expected, the creation of a separate PLR entity is not a convenient solution. Therefore, it is probable that one of both RROs will collect the remuneration and, after deducing a handling fee, will continue part of it to the other RRO. Although no final agreement has been negotiated, the relationship between LUXORR and SACEMLUX feels way more collaborative than competitive, which makes us hope that we can join our efforts in order to take most possible out of the existing regulation.

The **beneficiaries** of the remuneration are, according to the regulation, the authors/artists and performers; publishers thus being basically excluded, which is contrary to the global LUXORR philosophy considering equally the authors and the publishers' commitment and investment in the genesis of a work. For the final distribution of the collected money to authors and performers, the regulation provides no tangible rules, except that the author and the performer of a work have to equitably share half of the remuneration.

Concerning more particularly the **distribution,** LUXORR will do to the author we represent, no final solution having yet been adopted. It will essentially depend on the available data whether we will be able to implement a meticulous 'per loan' calculation or a more summary approach, such as a 'per book' calculation or even more estimative approaches. The limited human and financial means will probably also dictate the choice, however the limited number of eligible authors will also simplify the proceeding, as no remuneration has to be paid by now to foreign authors.

A main hint in implementing the PLR regulation will be the limited **available data**. First meetings with the National library (*Bibliothèque Nationale*) have shown that only some major libraries are linked together in a powerful network able to deliver precise and tailored data. Although there is an abstract legal obligation to deliver to the RROs all data necessary to compute the PLR remuneration due, minor libraries will probably not be able to gather this information in their computer system or will even not have any computer system at all. An estimative approach will thus be unavoidable, although the regulation clearly favours an accurate distribution.

As we were told, the requirements of the Luxembourg authority for **data privacy** (*Commission Nationale pour la Protection des Données*) will further limit the available data, because all information on loaned books will have to be anonymous even in the library's computer system. This is particularly annoying, as the PLR

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remuneration is calculated on the number of individual persons doing at least one annual loan.

The main regret about the current PLR legislation is the **limited number of libraries** obliged to financially participate. Due to its small size, Luxembourg only counts a limited number of libraries. The 2007 regulation excludes all school libraries, as well as all academic and research libraries. Another regulation[6] excludes 36 more libraries from the payment obligation, without any specific justification. Finally, the PLR remuneration will essentially be due by the National Library and some local district libraries (*bibliothèque communale*).

The next step will be to establish an exhaustive list of the eligible libraries and do the necessary **information and persuasion work**, as the PLR remuneration will probably be perceived as an additional fee strangling the budget rather than as a due indemnity for authors in a common interest. Furthermore, the informative effort will not only concern the debtors, but also creditors, as nearly no author knows about his right, and it will be one of the main concerns for LUXORR inform local authors about their rights. By now very few local authors are represented within the LUXORR structure (by opposition the publisher's, who are broadly represented); the PLR remuneration might reveal to be a magnet for attracting more authors to LUXORR.

After theory, let us conclude by some **figures**. First very rough estimations let us expect an annual PLR revenue between 50'000 and 75'000 €. About 9'000 to 11'000 € will be due by the National Library; the rest will spread on local, non-scholar libraries.

Despite all its defaults, one advantage of the current system is that once it is set up and data collection has become routine, the administrative overhead will be very limited, as the calculation method is clearly fixed and leaves no room for negotiation and discussions. We remain confident to be able to bring more detailed information and report first successes on the next PLR conference.

2. PRESENTATION OF LUXORR

The idea of creating a copyright organization in Luxemburg following the example of the neighbouring countries existed for a long time in the mind of the founders. On the basis of the copyright act from 2001, and with the financial support of IFFRO (International Federation of Reproduction Rights Organizations) and the intellectual support especially of the French CFC (*Centre français du droit de copie*), LUXORR (Luxembourg Organization For Reproduction Rights) was finally set up on October 23th 2003. The choice was made for constituting a non-profit making **association** (*association sans but lucratif)*, whose first members were main representatives from the Luxembourg authors, press and book publishers. Pretty soon, LUXORR was able to establish an office in Luxemburg. After an intermediate period, the Secretary General, Mr. Romain JEBLICK, could also be employed on a

[6] Arrêté grand-ducal du 15 janvier 2007 désignant les institutions et établissements pratiquent le prêt exempts du paiement de la rémunération équitable pour prêt public, Mémorial B n° 5, 25.1.2007, p. 62.

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full-time basis by LUXORR. He is the only employee of LUXORR until today; as soon as the financial situation will permit, the staff must be increased, as there is a real need for.

As the Government regulation[7] on RROs was only completed in June 2004, the official ministerial **authorization**, which has to be renewed every three years, could only be obtained in February 2005[8]. Although a lot of preparation work was already done, this date marked the official start of LUXORRs activity in managing copyrights and PLR.

According to the copyright act, the official politic and the LUXORR statutes, LUXORR represents both **authors and publishers**. The guideline is to install a complete equality and balance between authors and publishers, especially concerning the decisional process and the distribution of revenues.

The statutes distinguish between two types of **membership**, i.e. the "full" membership and the simple mandate. Latter members have only to pay a unique entrance fee, but are not entitled to take part in the votes and decisions in the general assembly. LUXORR is represented by its president, which is elected for a period of two years on a rotating basis between either the authors or the publisher representatives. LUXORR is run by an elected board (*conseil d'administration*), which meets several times a year and is currently composed by 6 members. Basically the board members also should represent equally the authors and the publishers, but due to the current lack of representation of the authors, this goal could not be completely achieved.

According to its statutes and to the ministerial authorization, LUXORR represents author's rights both for **written and pictorial works**. Its main concern is to collect reproduction fees, although PLR revenues will also represent a significant part of the collected remuneration. In order to comply with the copyright act, the LUXORR statutes state that a certain amount of all collected revenues have to be reinvested in national cultural support and activities. LUXORR has no legal representation, but must collect individual mandates from the authors and publishers according to the principles of civil law. Except for collecting PLR rights, there is furthermore no legal obligation for right holders to valuate their intellectual property through an RRO.

Until today, LUXORR was able to collect **mandates** from all major publishers and representatives of the press. It is more difficult to collect the Luxembourg author's mandates, as the author's representative structures are not very well developed. One must know that you can count on your hand the Luxembourg authors living on their writing activity. On the international scene though, LUXORR was able to negotiate and conclude bilateral agreements with most sister organizations in Europe.

[7] Règlement grand-ducal du 30 juin 2004 concernant les organismes de gestion et de répartition des droits d'auteur et des droits voisins. ; Mémorial A n° 133, 23.7.2004 ; p. 1904.
[8] Mémorial B n° 17, 3.3.2005, p. 266, taking effect on January 1st 2005.

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On the national level, a **global contract** could be negotiated with the Government, including all local entities (*administration communale)* as well as the educational sector. In order to get moving, an estimated annual fee of 390'000 Euros has been offered; the contract and the fee have basically been approved by the competent Ministry but must still pass the Government. Negotiations are also pending with the European Institutions established in Luxemburg. In addition to several individual licenses which have been negotiated with larger companies, a global agreement has been signed with the association representing the banking sector (*ABBL – Association des Banques et Banquiers Luxembourg*). Due to limited means, but also the necessity not to ignore smaller structures in a tiny country, LUXORR generally tries to set up global agreements with sector representatives in order to negotiate common conditions and rules and be assisted by these structures in passing through the copyright message. Numerous federations and associations have already been contacted and have shown interest, such as the federation of commerce, of industry, as well as the federation of arts and crafts, and the chamber of solicitors and the chamber of accountants.

In its fourth year of existence, LUXORR is thus satisfied with the advancements achieved in many fields and hopes that a first distribution to the right holders can take place in 2008.

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The Norwegian Public Lending Right Scheme by 2007

The Norwegian PLR system emerged in 1947, as the Government's response to an initiative taken by The Norwegian Association of Fiction Writers (Norsk Forfatter-forening). By the new Act on Public and School libraries in 1947 it was decided to establish a Remuneration Fund for Norwegian authors. In the fiscal year of 1949-1950 NOK 35.000,- was allocated to the Authors Fund, «for the damage the authors say the public lending in libraries inflicts on them».

The present scheme is regulated by the Law on Public Lending of 1987[9], and ensures remuneration for works published in Norway and available for public lending, not for actual lending. The scheme is part of the Norwegian cultural policy on literature, language and artists. The Law on Public Lending states that remuneration be calculated by multiplying a specific agreed rate for each lending unit with the number of lending units in publicly owned Norwegian libraries. Lending units include books, electronic media, sheet music etc. Library statistics covering both public, school, research, special and prison libraries are collected annually from electronic data provided by the libraries.

The price per lending unit is decided through negotiations between the Government[10] and an elected committee representing qualified rights holders' organisations. There are also talks concerning which categories of media the remuneration is to be calculated from. Negotiations have been conducted since 1978, and agreements are subject to acceptance by Stortinget (the Norwegian Parliament). The remuneration is paid collectively to 16 funds managed by the rights holders' organizations, apportioned according to agreement between the organisations. The funds are paid out mainly as scholarships/grants. Any qualified rights holder is eligible to apply independently of organizational affiliation.

The present agreement on PLR remuneration between the Government and the 23 rights holders' organisations covers the period 2005-2007. As a point of departure the parties agree that the Norwegian scheme for PLR remuneration concords with the EEA obligations given in Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property. Should the issue come under scrutiny effecting disruption of that legal condition, the parties agree that the present agreement be terminated, and that the parties in that eventuality freely may discuss the new situation. The parties are presently engaged in negotiations towards a new agreement to take effect from 2008.

The PLR remuneration scheme enjoys broad political support, and is an important part of Norwegian cultural policy relating to artists and literature. This policy also includes a purchasing programme for contemporary fiction and non-fiction managed by the Arts Council Norway (totalling 10.3 mill. euro), exempting books from VAT, and exempting the book trade from certain parts of the competition act allowing publishers and booksellers to fix book retail prices. These measures

[9] See appendix for translated version.
[10] Care of The Ministry of Culture and Church Affairs.

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constitute an elaborate scheme providing Norwegian readers with a rich supply of literature.

The handlings of work in electronic format has previously been treated in seminars and will be further examined. In line with the EU Infosoc directive, which was implemented in the Norwegian Copyright act in 2005, the libraries may digitalize their collections. Further detailed regulations pertaining to this issue will probably be implemented before the Paris conference, and more information may be given there.

The present agreement covers the period 2005-07, and the price paid per unit is NOK 1,605 in 2005, NOK 1,655 in 2006, raised to NOK 1,71 in 2007. There has been a steady increase of the state remuneration for public lending over the past two decades, from approx. NOK 13 million in 1983, through NOK 38 million in 1993 to NOK 72,2 million (approx. 8,9 mill. euro) in 2007. The increase results from growth both of stock and of unit price. Negotiations in 2007 will be concerned *i.a.* with the development of the price per lending unit in the agreement period.

The table below shows the development in remuneration paid to rights holders since 1978.

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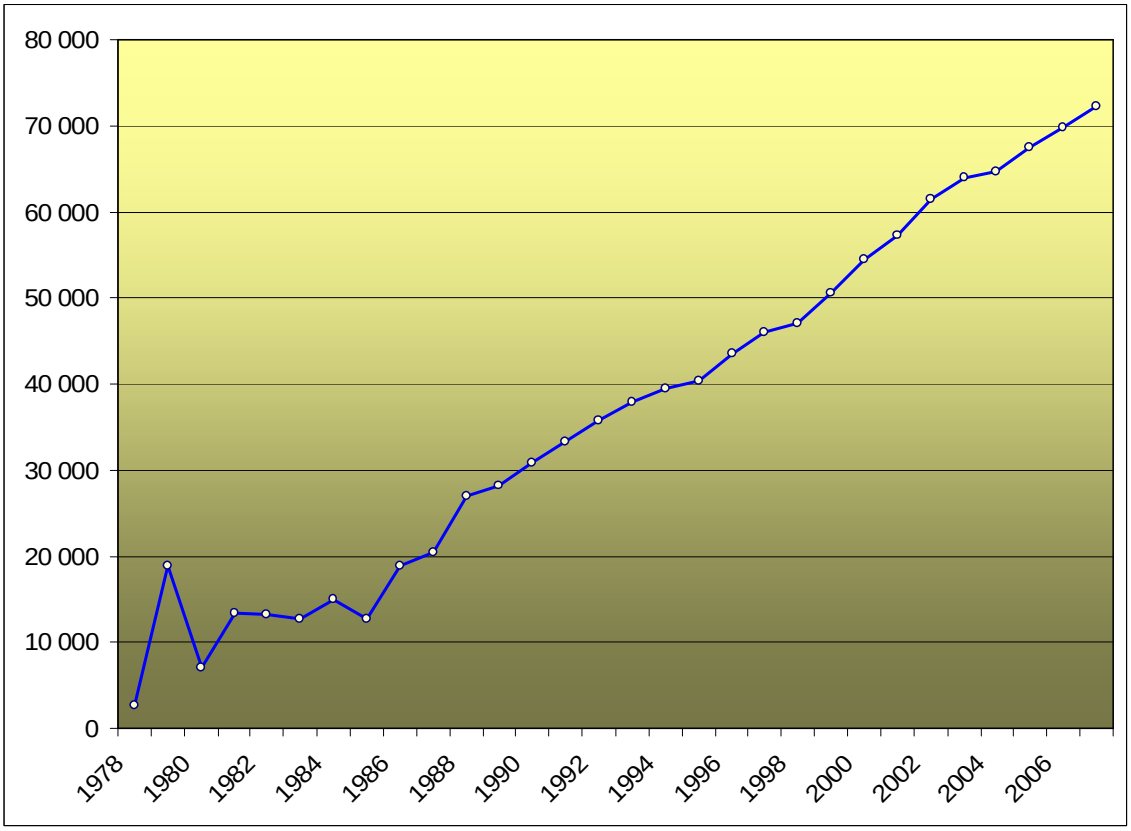

NOK 72,2 million ≈ € 8,9 million ≈ USD 11,8 million.

APPENDIX

ACT NO. 23 OF 29 MAY 1987 RELATING TO REMUNERATION FOR LENDING BY PUBLIC LIBRARIES

Cf. Article 4 of the EEA Agreement. Cf. in previous Acts § 12 of Act no. 12 of 12 December 1947, § 18 of Act no. 80 of 18 June 1971, and § 15 of Act no. 108 of 20 December 1985.

§ 1. Remuneration for lending etc.

Authors of works disposed of for lending by public libraries shall receive remuneration through annual Fiscal Budget appropriations. The remuneration shall be paid collectively, and paid into funds as mentioned in § 4 for the support of certain groups of authors.(1)

(1) See § 1 of Act no. 2 of 12 May 1961 relating to copyright in literary, scientific and artistic works, etc., with subsequent amendments, latest of 17 June 2005.

§ 2. Calculation of remuneration

Remuneration shall be calculated according to a fixed rate per lending unit.

Where books are concerned, the lending unit is one volume. The Ministry(1) may decide what shall otherwise be reckoned lending units. The basis for

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calculating the number of lending units is works published in Norway and available for lending at public libraries. The Ministry(1) may decide which libraries, collections etc. to include in the calculation.

The calculations shall be based on statistics showing the numbers of lending units available for lending at each individual library, and on the types of work(2) they comprise.

(1) The Ministry of Culture.
(2) See § 1 of Act no. 2 of 12 May 1961.

§ 3. Fixing of the rate of remuneration

The rate of remuneration (cf. the first paragraph of § 2 of the present Act) shall be fixed following negotiations with a joint body which has been recognised by the Ministry(1) and consists of organizations which represent a substantial proportion of Norwegian authors in the area in question.

If no agreement is reached on the rate of remuneration, either party may request arbitration according to more detailed rules laid down by the Ministry.(1)

(1) The Ministry of Culture.

§ 4.(1) Distribution to funds

The remuneration shall be distributed to funds managed by the authors' organizations in question. The statutes of the funds must be approved by the Ministry.(2)

The assets of the funds may be disposed of for the benefit of authors or for the benefit of objectives relating to the group of authors in question. In connection with payments to individual authors, no regard shall be had to membership of organizations. An annual amount paid to an individual author shall not exceed four times the National Insurance basic amount.(3)

The Ministry may issue more detailed rules relating to the distribution of remuneration and the use of the funds.

(1) Amended by Act no. 128 of 4 December 1992.
(2) The Ministry of Culture.
(3) See § 6-2 of the National Insurance Act and the note thereto.

§ 5. Entry into force

The present Act shall enter into force immediately - - -
From the same date, the following...are repealed - - -

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Brief information on the Developments of the PLR in Slovakia

Magdelena Debnárová
Slovakia

I was planning to inform you that the PLR matter in Slovakia has already been resolved, but the reality does not allow me to do so. I reported the concept of the PLR scheme on the PLR seminar in Madrid last year. This concept was the result of numerous negotiations which were carried out between LITA and the Slovak Ministry of Culture during past years. At that time the passing of this concept seemed to be real.

How did the proposal of the PLR scheme look like after these negotiations?
The amendment of the Library Act should have been passed and it should have created legal basis for signing the collective licence agreement between LITA and the Slovak National Library on behalf all public libraries in Slovakia. The Ministry of Culture should have issued a regulation which should have provided details of the PLR scheme, e.g.

- enumeration of libraries that should have been covered by the PLR scheme: all libraries accessible to the public which are financed by the state budget and local budgets, including libraries in educational and scientific institutions,
- enumeration of authors who should have been included in PLR scheme – authors of literary works, translators, authors of audiovisual works, illustrators and the other authors of visual art which are the citizens of Slovakia and foreign authors from the countries LITA has concluded reciprocal agreements with,
- form of licensing – there should have been the collective licensing contract concluded between LITA and the Slovak National Library which would cover all publicly accessible libraries in Slovakia,
- method for the calculation of remuneration; remuneration should have been defined as summary of all loans in public libraries within concerned year multiplied by the lump sum for one loan; these tariffs should have been raised with the increase of the subsistence rate provided by the law,
- procedure of the payment of the remuneration from the state budget,
- and finally the basic conditions of distribution of the remuneration, e.g. the ways of sampling and finding necessary information for distribution to the authors.

The amendment of the Library Act was passed in March 2007 and came into the force from the 1st of April. This amendment has extended the tasks of the Slovak National Library as followed:
The Slovak National Library

- shall conclude with the collective management organisation concerned the collective licensing agreement for dissemination of works by lending which will be realized via the library system of the Slovak Republic,

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- shall make payment of remuneration to the rightholders in the range of licence granted through the collective management organisation concerned; the Ministry of Culture shall regulate the form and amount of remuneration by a regulation.

The problem is that there has been no such regulation issued by the Ministry of Culture up till now. The regulation should have been prepared together with the amendment but the ministry failed to fulfil this obligation at that time. We have asked the Ministry of Culture about it and we received answer two days ago: the Ministry will initiate the formation of the working group which will deal with preparation of the regulation. Unfortunately, neither LITA nor the Slovak National Library should be members of this group.
In this situation I cannot reasonably judge the time when the ministry will have prepared the regulation which ought to solve the funding of this right. Moreover, if the funding is not secured, there is no money and consequently there is nothing. In other words, the right remains only the right without its real fulfilment and enforceability.

In order not to be so pessimistic: the Ministry of Culture granted 12 million Slovak crowns (it is about 353.000 €) for the PLR remuneration in last two years despite the lack of the PLR scheme. We will distribute this money in the third quarter of this year. The Slovak National Library provided us with some data: we have a sample of loans realized within a period of two months. At present we are preparing this data for the first distribution of remuneration in line with the distribution rules which will be passed by the General Assembly of LITA in May this year. Distribution rules are based on the frequency of loans and type of literature.

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PLR in Slovenia
Slavko Pregl

Ljubljana, April 2007
slavkopregl@hotmail.com

In the year 2004 a new PLR Implementation Regulations were issued by the Ministry for Culture in Slovenia, which brought two instruments, framing the methods of performing previously accepted legislation on PLR in the Law on Librarianship.

First one defines direct payments to the authors by saying:

- definitions, what is the basis of PLR (genuine and translated literary works, audio/video cassettes and CD's, DVD's),
- definitions, who is entitled to the payments (writers, translators, illustrators, photographers, composers and lyrics writers, movie directors, screenplay writers, photography directors),
- limits (lower and upper) of lending numbers

Second defines indirect payments (scholarships) to the authors.

The number of people, entitled to get paid, slowly grows (2004 – 995, 2005 – 999, 2006 – 1063). The writers are the biggest category among them (460).
Since PLR system in Slovenia is meant as a part of cultural policy (supporting creativity in Slovene language), only the authors, writing in Slovene language, are receiving PLR money. The number of all books lending in public libraries in Slovenia is app. 20 millions (10 per capita) annually; 7% of borrowed books are originally written in domestic language, so app. 1,350.000 lendings are the basis for the PLR figures.

The sum for PLR is agreed and guaranteed (in the budget) as 25% of the money, spent for public libraries purchases every year (till 2009), app. 650.000 EUR p.a. Half of the sum goes directly to the entitled authors (as per lending), half is divided among authors as scholarships.

The minimum limit for the writers is 800 lendings, the maximum is 20.000. Only 20% of everything over 20.000 is taken into account; there are 6 – 10 writers annually, having more than that (the highest – app. 65.000). The maximum payment in the year 2006 was 6.000 EUR, the minimum 174 EUR (before taxation – net payment was app. 20% less).

In the year 2006 there were 453 writers (0,21722 EUR per lending) , 293 translators (0,01919 EUR p.l.), 213 illustrators and photographers (0,07135 EUR p.l.) and 104 others (0,22001 EUR p.l.), receiving PLR money directly.

The scholarships are divided by professional associations. They create the rules of their own. One third of all scholarships go to writers, one quarter to translators, 20% to illustrators. In the year 2007 there will be 45 scholarships for writers in the

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three categories (working, educational, travelling) – 9.819 EUR (13) gross (net – 20% less), 4.912 EUR (15) and 2.458 EUR (17).

The Association of (Fiction) Writers forms special board (five members, in power for three years), responsible for the scholarships. The criteria is broadly discussed each year, everything is officially published and valued. The board gives points, following the elements:

- quality, public recognition and response, achievements and references, working plan.

Each of these chapters is precisely split into subchapters, etc. forming together 120 possible points achieved.

The basic problem for the time being, as much as the writers are concerned, seems to be the fact, that the most "borrowed authors" receive less money from direct payment than the authors, receiving (indirect) scholarships. Since the most "borrowed authors" mean the exception of the rule, their "case" will be handled separately and not by changing the whole (relatively reasonable) sistem.

The main goal on the PLR field in Slovenia (population - 2 millions) remains aspiration to increase the whole sum of money. Slovenian is a very small language among "huge worlds" and the state simply must recognize the need to support the creativity in the native language. PLR could be the way to overcome this (market) disadvantage.

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Brief Report on the Situation of Public Lending Right in Spain

CEDRO

1.- Introduction.- Historical.

As we all know Directive 92/100 establishes in its article 5 that:

" Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

2. When Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

All the states members should incorporate this Directive into their national legislation before the end of June 1994.

The Directive was transposed into Spanish law by Law 43/1994 of 30 December 1994 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (BOE No 313, 31 December 1994, p. 39504). That Law was amended by Royal Legislative Decree 1/1996 of 12 April 1996 approving the consolidated version of the Law on intellectual property (BOE No 97, 22 April 1996, p. 14369) ('the Legislative Decree').

As set out in Article 17 of the Legislative Decree:

'The author has the exclusive rights of exploitation of his works regardless of their form and inter alia the exclusive rights of reproduction, distribution, public communication and conversion which cannot be exercised without his permission except in circumstances laid down in this Law.'

7 Article 19 of the Legislative Decree is worded as follows:

'1. "Distribution" means making the original works or copies thereof available to the public by sale, rental, lending or by any other means.

4. "Lending" means making originals and copies of a work 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.

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It is understood that there is no direct or indirect economic or commercial advantage where the lending carried out by an establishment accessible to the public gives rise to the payment of a sum of money which does not exceed the amount necessary to cover its operating costs.

The concept of lending does not include the transactions mentioned in the second subparagraph of paragraph 3 above or those which are carried out between establishments accessible to the public.'

The exclusive lending right conferred on the author by Articles 17 and 19 of the Legislative Decree is subject to the following exception contained in Article 37(2) thereof:

'… museums, archives, libraries, newspaper libraries, sound recording libraries and video recording libraries which are public or which belong to non-profit-making cultural, scientific or educational bodies of general interest or to teaching institutions which are part of the Spanish educational system, do not need the rightholders' authorisation ***and do not [need to] pay remuneration for the lending which they effect****.'*

In a certain theoretical sense the remuneration coming from the public lending right had been incorporated into the Spanish legislation. But if this law is read more carefully, specially this last paragraph, we will realise that the list of establishments excluded from paying the remuneration is so long that the obligation does not exist, so there is no remuneration for public lending in Spain nowadays.

That's why on 24 April 2003, the Commission requested that the Kingdom of Spain provide it with information concerning the transposition of Articles 1, 2 and 5 of the Directive. The latter replied by letter of 1 July 2003.

In accordance with the procedure provided for in the first paragraph of Article 226 EC, the Commission sent the Kingdom of Spain a letter of formal notice on 19 December 2003 requesting that it adopt the measures necessary to comply with the Directive.

As it considered that those explanations were unsatisfactory, the Commission sent a reasoned opinion to the Kingdom of Spain on 9 July 2004 asking it to adopt the measures necessary to comply with that opinion within a period of two months from the date of notification.

In reply to that reasoned opinion, the Kingdom of Spain, on 13 September 2004, sent to the Commission a report drawn up by the Ministry of Culture in which, firstly, the arguments submitted by the Spanish authorities in the letter of reply to the formal notice were repeated and, secondly, the 'lack of available budget resources' was put forward.

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As it was not convinced by the arguments on which the Kingdom of Spain's position is based, the Commission decided to bring an action.

This action has finished on 26 October 2006 with a Judgement of the Euopean Court, (Chamber Three) declaring that Spain:

by exempting almost all, if not all, categories of establishments undertaking the public lending of works protected by copyright from the obligation to pay remuneration to authors for the lending carried out, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property"

2.- Current Situation

Finally the Spanish Government has decided to transpose this right in the fastest way. A new law on reading, books and libraries had been studied for several months by Government and the definitive draft was finally sent to the Parliament on 3 November 2006. As in that date the decision of the European Court was already unknown that draft did not include anything about this public lending right.

But the government has decided to get profit from this circumstance. When the discussion of the draft of this law on reading, books, and libraries had already begun at the Parliament, the socialist parliamentary group, that is the party that supports the Government, proposed the inclusion of an amendment in order to introduce this public lending right into the Spanish legislation.

A new disposition has been included in the text of this project that will change the intellectual property law of 2006 to introduce this remuneration coming from public lending right.

The transposition will be developed in two steps.

The complete regulation of the right will be done by a Decree that should be approved in a year after the law on reading, books and libraries comes into force.

But as an urgent measure this law modificates de Intellectual Property Law in order to set up the basis of the regulation of public lending right in Spain.

The basis of this provisional regulation are the following ones

1.- <u>Who must pay</u>: Public libraries, archives, musems etc, as well as those owning to non profit organisations focused on general scientific, educational or cultural purposes.

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When these establishments are integrated in the Spanish educational system or are located in villages of less than 5000 inhabitants these establishments won' t have to pay

The payment is supposed to be done by those institution owners or in charge of the management of these establishments

2 - <u>It is a right that is only recognised to authors</u> (including all kind of works)

3.- <u>Compulsory collective management:</u> there are four in Spain in charge of authour´s rights management.

4.- <u>How much to be paid</u> : the amount fixed in the above mentioned Decree, but till this Decree comes into force 0, 20 euros should be paid for each book, (record or DVD) bought to be lent.

Some problems arising from this regulation could be the following ones :

1) Who must pay: apart from the central government and the seventeen regional ones more than 3.000 local entities should pay in and individual way.

2) A remuneration based on the number of books bought to be lent does not look as fair as one based on the number of loans that have taken place, for example.

Apart from that, it is important to know the great media campaign against this remuneration. For example, many librarians has expressed their opposition to it, so that the collaboration between librarians and the collective management societies could not be, at least at the beginning, as close as we desire. A good relation between the societies and librarians is very important. We can get information and figures from official statistics but the collaboration of the librarians is a very important instrument to get a real and efficient development of this right.

Before ending, we must remember that we have explained the main profile of what is only a well developed project. After the formal approbation it is supposed that it will come into force at the end of this spring.

I am adding the latest version of the draft even though it has not been approved yet.

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SCHEDULE

TEXTO APROPBADO POR EL CONGRESO DE LOS DIPUTADOS EN SESIÓN CELEBRADA EL DÍA 29 DE MARZO DE 2007

Primera lectura: pendiente de su tramitación en el Senado y de su aprobación definitiva por el congreso de los Diputados

(….)

Disposición final primera. Modificaciones de la Ley de Propiedad Intelectual

El texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril, se modifica en los siguientes términos:

Uno. El apartado 4 del artículo 19 queda redactado en los siguientes términos:

Artículo 19. Distribución.

«4. Se entiende por préstamo la puesta a disposición de originales y copias de una obra para su uso por tiempo limitado sin beneficio económico o comercial directo ni indirecto siempre que dicho préstamo se lleve a cabo a través de establecimientos accesibles al público.

Se entenderá que no existe beneficio económico o comercial directo ni indirecto cuando el préstamo efectuado por un establecimiento accesible al público dé lugar al pago de una cantidad que no exceda de lo necesario para cubrir los gastos de funcionamiento. Esta cantidad no podrá incluir total o parcialmente el importe del derecho de remuneración que deba satisfacerse a los titulares de derechos de propiedad intelectual conforme a lo dispuesto por el apartado segundo del artículo 37.»

Dos. El apartado 2 del artículo 37 queda redactado en los siguientes términos:

Artículo 37. Reproducción, préstamo y consulta de obras mediante terminales especializados en determinados establecimientos.

«2. Asimismo, los museos, archivos, bibliotecas, hemerotecas, fonotecas o filmotecas de titularidad pública o que pertenezcan a entidades de interés general de carácter cultural, científico o educativo sin ánimo de lucro, o a instituciones docentes integradas en el sistema educativo español, no precisarán autorización de los titulares de derechos por los préstamos que realicen.

Los titulares de estos establecimientos remunerarán a los autores por los préstamos que realicen de sus obras en la cuantía que se determine mediante Real Decreto. La remuneración se hará efectiva a través de las entidades de gestión de los derechos de propiedad intelectual.

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Quedan eximidos de la obligación de remuneración los establecimientos de titularidad pública que presten servicio en municipios de menos de 5.000 habitantes, así como las bibliotecas de las instituciones docentes integradas en el sistema educativo español.

El Real Decreto por el que se establezca la cuantía contemplará asimismo los mecanismos de colaboración necesarios entre el Estado, las comunidades autónomas y las Corporaciones Locales para el cumplimiento de las obligaciones de remuneración que afecten a establecimientos de titularidad pública».

Tres. El artículo 132 queda redactado en los siguientes términos:

Artículo 132. Aplicación subsidiaria de las disposiciones del Libro I.

"Las disposiciones contenidas en el artículo 6.1, en la sección 2a del capítulo III, del Título II y en el capítulo II del Título III, salvo lo establecido en el párrafo segundo del apartado segundo del artículo 37, ambos del Libro I de la presente Ley, se aplicarán, con carácter subsidiario y en lo pertinente, a los otros derechos de propiedad intelectual regulados en este Libro.»

Cuatro. Se añade una Disposición transitoria decimonovena con la siguiente redacción:

"El Real Decreto a que se refiere el apartado segundo del artículo 37 del Texto Refundido de la Ley de Propiedad Intelectual deberá ser promulgado en el plazo máximo de un año desde la entrada en vigor de esta Ley.

Hasta que se apruebe el Real Decreto a que se refiere el apartado anterior, la cuantía de la remuneración será de 0,2 euros por cada ejemplar de obra adquirido con destino al préstamo en los establecimientos citados en dicho apartado.

Asimismo, en este período, el Estado, las comunidades autónomas y las Corporaciones Locales podrán acordar los mecanismos de colaboración necesarios para el cumplimiento de las obligaciones de remuneración que afectan a establecimientos de titularidad pública".

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