



**The 5th European Public Lending Right Conference Proceedings  
2008  
Bucharest 19-21 September 2008**

European Writers' Congress 2008  
Fédération des associations européennes d'écrivains A.I.S.B.L.

Edited by  
Myriam Diocaretz



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**The 5th European Public Lending Right Conference Proceedings 2008  
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**The International PLR Situation:  
Where we are Now and What are does the Future Hold?**

Dr Jim Parker

Registrar of PLR in the UK/Co-ordinator of the International PLR Network

These are the proceedings of the European Public Lending Right conference held at Vernescu House, Bucharest 19-21 September 2008.

PLR is now a legal right that authors enjoy under European law. Governments in 28 countries internationally have set up PLR systems, the earliest (in Denmark) dating from 1946. The payment is a recognition of the pleasure and enlightenment that authors' books bring to millions of library users. A library may buy only one copy of an author's book but will then lend it out to thousands of readers free of charge. A payment to the author is only fair. But despite a European Union Directive in 1992 requiring every Member State to set up a PLR system, there are still European countries that have not met their legal obligations in this area.

This conference – the fifth of its kind in recent years – was convened to discuss progress towards wider recognition of PLR across Europe. The conference was hosted by the Writers' Union of Romania (WUR) and administrative support in organising the event was provided by the European Writers' Council and the PLR office in the UK. Financial support for delegates' travel and hotel costs and for translation and other conference facilities was generously provided by Kopinor and the Norwegian Non-fiction and Translators' Association (NFF). The Writers' Union of Romania also provided hospitality for delegates at the WUR offices and at Vernescu House.

Delegates from over 20 nations reported on PLR developments in their own countries. There was also a report from the European Commission on current EU policy on PLR. Additionally, the conference provided a forum for discussions on the PLR situation in Romania and on the prospects for future progress in this area. The texts of a number of these presentations can be found in the Proceedings.

Trond Andreassen, General-Secretary of NFF, who was unfortunately unable to attend the conference, emphasised the importance of the conferences as follows:

'As each year passes more countries recognise the fairness of the basic PLR concept: if your book is borrowed from a library you have a right to receive payment. But we will not rest until every EU country has a PLR system making equitable payments. These conferences are important steps towards achieving this goal.

As has become the norm at these conferences, delegates passed a Resolution pressing for further action in Europe to ensure that all Member States meet their obligations under the 1992 Lending Right Directive and establish PLR systems. The Resolution is included in these Proceedings.

## **Opening Speech**

Professor Nicolae Manolescu  
President of the Writers' Union of Romania (WUR)

Dear guests, dear colleagues, the Writers' Union of Romania is glad to host this European conference on Public Lending Right. As a professional, non-governmental organisation, WUR defends the rights of writers in Romania. According to the Romanian legislation, WUR cannot involve itself directly in collecting and administering funds (there are several organisations set up with that end in view), but it is vitally important that the legal provisions should be complied with. The Romanian Copyright Law explicitly mentions PLR. Unfortunately, because the law provision has been badly worded, allowing the generalisation of an exception, therefore the respective provision has not been put into operation.

I do not want to broach the main subject of your debates. We are here – Irina Horea, WUR Secretary for International Relations, and I, President of WUR – to listen to you and learn from your experience. I do hope that the present conference, to which we have invited Romanian specialists in copyright, PLR, and library science, may exert a beneficial pressure on the Romanian authorities responsible for issuing, amending and putting the law into force.

On behalf of the 2,000 or more WUR members, I welcome you here and wish you success in these two days of debates, from which, hopefully, Romanian writers will also benefit.

## Opening remarks

Jardar Seim  
Norwegian Non-Fiction Writers' and Translators' Association (NFF)  
Kopinor, the Norwegian Reproduction Rights Organisation

Dear friends,

We are assembled in a venerable and beautiful Romanian building, the Vernescu House, a real mansion. It is situated in one of the main streets of old Bucharest, Calea Victoriei, the "Victory Street". It got its present name in 1878 after the Romanian war of independence. The purpose of our conference is not to stage a war. Nor is it to declare a state of peace whereupon nothing can be changed. We might rather say that the purpose is to continue a peaceful struggle, a struggle for better and more widespread Public Lending Right systems, a struggle that had its first victory in a neighbouring country of mine, Denmark. That happened in 1946 when Denmark got a law that introduced compensation to writers for the free lending of their books from libraries. Norway followed suit one year later, in 1947. After that many other countries have introduced similar arrangements. They are not identical, and they should not be. The circumstances around libraries, the conditions for authors and book production, and the national traditions of a cultural policy differ too much from country to country to consider entirely uniform schemes. However, it is not any more up to each European government to decide whether it should have a PLR system or not. The 1992 EU Directive on Lending Right requires all member states to set up PLR systems. The directive also applies to the non-EU members of the EEA, the European Economic Area, that is Norway, Iceland and Lichtenstein.

I attend this conference as a representative of the Norwegian Non-Fiction Writers' and Translators' Association (NFF), founded in 1978, where I chair the International Committee, and of Kopinor, the Norwegian Reproduction Rights Organisation, founded in 1980. We are happy to being able to contribute to the funding of this conference, like what we have done at earlier PLR conferences. It is important also for countries with long traditions with PLR, like Norway, to see the growth of it all over Europe. The more consolidated it becomes everywhere, the more difficult it will be to remove it or depreciate it in single countries. The PLR way of thinking is – I would say – an ingenious way of combining authors' rights with a cultural policy fostering a country's linguistic and literary heritage – and future.

We are looking forward to learning of the experiences of the countries represented here, and we hope that the conference will serve as an inspiration for those countries now establishing their PLR schemes. And as a background not to be forgotten: May the public libraries in all our countries get the necessary governmental funding to serve as one of the main cultural infrastructures of any civilized country.

Pe Internet am răsfoit programul “Zilelor Bucureștiului”, care se desfășoară astăzi și mâine. Cu toată că seminarul nostru nu este inclus în mod formal în acest program, seminarul poate fi interpretat într-o perspectivă similară, ca o unealtă pentru valorificarea culturii, în cazul nostru a culturii literare, și pentru ocrotirea limbii.

Ne aflăm într-o țară cu tradiții literare importante, prin nume ca Eminescu, Creangă, Caragiale, Rebreanu, Eliade, Petrescu, Voiculescu, Preda, Blandiana, Cărtărescu – și mai departe. Pentru noi, în această sală astăzi, este însă la fel de important că scriitorii din România au o uniune puternică. Vreau să mulțumesc Uniunea Scriitorilor pentru găzduirea seminarului. După ce seminarul la început era planificat să aibă loc într-o altă țară, Uniunea Scriitorilor din România a preluat sarcina cu un talent de organizare deosebit. Vă mulțumesc.

Thank you.

On the Internet I took a look at the program of the “Bucharest Days”, which are taking place today and tomorrow. Although our seminar is not formally included in that program, the seminar may be interpreted in a similar perspective, as a tool for the valuing of culture, in our case the literary culture, and for the protection of the language.

We are in a country with important literary traditions, with names as Eminescu, Creangă, Caragiale, Rebreanu, Eliade, Petrescu, Voiculescu, Preda, Blandiana, Cărtărescu – and so on. However, for us, in this room today, it is equally important that the writers from Romania have a strong union. I would like to thank the Writers’ Union of Romania for hosting the seminar. It was originally planned to take place in another country. When that proved impossible, the Writers’ Union of Romania took over the task with a great talent for organizing.

## European Commission Report on the European Directive on Lending Right

Conal Clynych<sup>1</sup>

DG Internal Market and Services, Copyright and Knowledge-based Economy Unit

Thank you for inviting the European Commission to this Conference and please accept my apologies for not being able to join you in person in Bucharest.

This report includes a short general introduction on PLR at the European level, and gives an update on the work of the European institutions in recent years.

### 1. General Introduction

Directive 92/100/EEC "on rental right and lending right and on certain rights related to copyright in the field of intellectual property" is a key Directive in the copyright and related rights harmonisation process. This Directive aims at providing for a balance between the different rights and interests.

This Directive has been codified as **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 updating the text of an old directive, but does not affect the content of the directive.

For PLR, the main provisions are as follows. Under **Article 3 (ex Article 2)** of the Directive, PLR is granted to authors, performing artists, phonogram producers and film producers. If the Member States exclude phonograms, films and computer programs from the application of the exclusive lending right, **Article 6(2) (ex Article 5(2))** states 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 relate to all public establishments and this limited number of establishments must be clearly identifiable.

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 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 concluded that Belgium complied with the Directive in principle. National courts are now competent to judge any alleged incorrect application of the national legislation.

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<sup>1</sup> Administrator in Internal Market and Services Directorate General, Copyright and Knowledge based Economy Unit.

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.

## **2. The state of play for PLR in the EU**

The Commission produced 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.

Because of the findings of this report, 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 that of incorrect or non-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].

All of these 9 Member States have now implemented PLR or are in the process of doing so, having made the appropriate changes to their legislation.

The most recent of these changes concerns the case that the Commission lodged 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 amended its legislation in law number 16/2008 of April 1 2008 and hence the Commission has closed this case.

### **2.1. Nordic cases**

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] which would be contrary to article 2 of the EC Treaty.

The directive obliges Member States to provide for remuneration in favour of authors if their works are subject to public lending. It was alleged that these Member States do not apply the criterion of nationality but another criterion that can be fulfilled by nationals only (e.g. in Denmark: authors who publish books in Danish or translators who translate books into the Danish language).

With regard to the Danish case 2003/2194 and Swedish case 2003/2193, the Commission decided that these cases be closed because the pursuit of these cases is not a major priority for developing copyright policy in the internal market. It is felt that appropriate balancing needs to be maintained between the fundamental principle of non-discrimination on the basis of nationality and the principle that Member States should be supportive of national and regional diversity by setting up funds to promote local culture or language.



The per capita payments that right holders in other Member States would receive if there was non-discriminatory distribution of the remuneration payments would be de minimis i.e. in the order of 200 Euros per year and hence official action would not be a proportionate response. These cases were ex-officio ones which resulted from a report on the functioning of the public lending right in the Member States, rather than a complaint. The Commission therefore has discretionary power to decide not to pursue them, based on considerations of public policy.

With regard to Finnish case 2003/2196, the Finnish authorities notified the Commission of a new law which entered into force on 1 January 2007 and which puts the Finnish national legislation in compliance with Community law, and hence the case was closed. The Finnish legislation required amendment as it exempted all public libraries from payment of remuneration.

## **2.2. Other legislative issues**

One issue which has been debated relates to the distinction between rental and lending as defined in article 2 of the Directive and which is also covered by recital 11. The interpretation of the term "indirect economic or commercial advantage" when applied to the lending of schoolbooks by educational establishments has become an issue in some Member States.

## **3. New initiatives**

The Commission is not working on any new initiatives which relate specifically to the public lending right. There are a number of initiatives which relate to libraries in general however, which may be of interest:

### **3.1. Copyright Green paper**

DG Markt has published a "Green Paper on Copyright in the Knowledge Economy". The Green Paper focuses on the role of copyright in fostering dissemination of knowledge for research, science and education. The Green Paper is intended as the starting point for a structured debate on the long-term future of copyright policy in these fields. Copyright policy has increasingly emerged as a transversal issue, involving not only the internal market and cultural policies but also information society, competition and consumer interests. The Green Paper is an attempt to organise this debate and point to future challenges in fields that have not been a focal point up to now, e.g. scientific and scholarly publishing, and the role of libraries, researchers and the persons with a disability.

The Green paper can be accessed at:

[http://ec.europa.eu/internal\\_market/copyright/copyright-info/copyright-info\\_en.htm#greenpaper](http://ec.europa.eu/internal_market/copyright/copyright-info/copyright-info_en.htm#greenpaper)

It includes a call for comments which should be sent by 30 November 2008. We would like to encourage participants of this conference to send us your comments as we wish to have an inclusive and forward-looking debate on these issues. A hearing on the Green Paper is planned for 2009 also and we would encourage interested parties to attend that also.

### **3.2. High Level Group on Digital Libraries**

This is an initiative which was initiated by DG Information Society and Media in 2006 and which addresses such areas as Digital Preservation, Orphan Works and Out-of-Print Works. A final report on these issues has been produced and a "Memorandum of Understanding on orphan works" was signed by representatives of libraries, archives and rightholders.



Further details can be found at:

[http://ec.europa.eu/information\\_society/activities/digital\\_libraries/experts/hleg/index\\_en.htm](http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/index_en.htm)

#### **4. Conclusion**

The last few years have seen Member States amend their legislation to comply with the requirements of the Directive. This has resulted in a more harmonised system of public lending in the EU. The Commission is committed to ensuring that this important right continues to play a part in the remuneration of authors for their work and hence to encourage literary and artistic creativity in the European Union.

Thank you very much for your attention. I wish you all a productive and successful conference.





## THE BUCHAREST 2008 PLR RESOLUTION

### 5<sup>TH</sup> European Public Lending Right Conference Bucharest 19-21 September 2008

This Conference brought together representatives of authors' organisations and other agencies from over 20 European Union member and candidate states. The meeting was organised under the aegis of the European Writers' Council (EWC-FAEE AISBL). The Conference reviewed the progress of Member States in implementing the PLR provisions of Directive 92/100/EEC on Rental, Lending Rights and Piracy (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) during the year since the Conference's last meeting in Budapest in April 2007.

The Conference deplores the continuing failure or delay of several Member States, in particular Cyprus, Greece, Hungary, Italy, Poland, Portugal and Romania, to fully and effectively implement the PLR provisions of the 1992 Directive so that authors may receive their legal and material remuneration. We also call on non-EU countries like Switzerland and EU candidate countries such as Croatia to implement PLR schemes for their authors.

The failure of these countries to meet their legal obligations and introduce PLR systems is in marked contrast to the situation in other Member States where PLR is now a great success story and where PLR remuneration provides vital support for authors' creativity and for their livelihoods. These include the longer-established PLR systems in the Scandinavian countries, Germany and the UK, but also the newer PLR systems in countries like France, Slovenia and Estonia where PLR is now making a real difference to authors' lives.

We are therefore disturbed that the report of the European Commission<sup>2</sup> suggests that no further action is needed on PLR, in spite of the fact that not all countries have satisfactory operational schemes. We call upon the Commission to undertake in 2009 a review of the Directive's implementation, and to renew its efforts to ensure that the Directive is fully complied with in every member state.

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<sup>2</sup> Report prepared for the Bucharest PLR Conference by Conal Clynych, Administrator in Internal Market and Services D1 Directorate General, Copyright and Knowledge-based Economy Unit.



**Organisations Represented at the Conference**

European Writers' Congress – "EWC-FAEE A.I.S.B.L."  
NFF - The Norwegian Non-Fiction Writers' and Translators' Association  
AELC - Associació d'Escriptors en Llengua Catalana  
ALCS - The Authors' Licensing and Collecting Society  
CEDRO - Centro Español de Derechos Reprográficos  
Czech Association of Professional Artists' Organisations  
Czech Translators' Guild  
Czech PEN  
DILIA - Authors' Licensing and Collecting Society  
European Council of Artists  
The Irish Writers' Union  
LATGA-A, Agency of Lithuanian Copyright Protection Association  
AKKA/LAA - Latvian authors' society  
HLACS - Hungarian Literary Authors' Collecting Society  
Norwegian Authors' Union  
Slovene Writers' Association  
Swedish Writers' Union  
Writers' Union of Romania  
Authors' Remuneration Fund of Estonia  
SNS - Sindacato Nazionale Scrittori  
SPA - Sociedade Portuguesa de Autores



## The Present Situation Regarding Public Lending Right in Romania

Rodica Parvu, Director-General, ORDA

The Directive 2006/116/EC of the European Parliament and of the Council on December 2006 on the terms of protection of copyright and certain related rights (the codified version of Council Directive 92/100/EEC) provides in Art.3 par.1 that the exclusive right to authorise or prohibit rental and lending shall belong to the following:

- (a) the author in respect of the original and copies of his work.

Taking into consideration the provisions of the European Community aquis in the field, since the entering into force of Law 8/1996, the framework law in the field of copyright and related rights, Romania has transposed in its legislation the Community's provisions. In this regard, art. 13 letter e) stipulates the distinct and exclusive economic right of the author to authorize or to prohibit the public lending of his/her work. Art. 14<sup>4</sup> regulates the legal framework for public lending and art. 123<sup>1</sup> para. (1) letter b) stipulates the mandatory collective management.

According to art. 14<sup>4</sup> para. (1) the making available for use of a work should be done with the author's authorisation, for a limited period and without direct or indirect economic or commercial advantage and through the agency of an institution allowing access of the public for this purpose.

Furthermore, art. 14<sup>4</sup> para. (2) regulates the exception concerning public lending through the agency of libraries, stipulating that such lending does not require the author's authorization, but entitles him to an equitable remuneration. This disposition is in accordance with art. 6 of Directive 2006/116/EC.

But Art.6 para.1 of the Directive also provides 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 remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives." Using that option, the Romanian legislator within para. (3) of art. 14<sup>4</sup> of the Romanian copyright law provides for an exception to the exception when public lending is made through the libraries of educational establishments as well as through public libraries with free access, which means in fact that all libraries are excepted and not for "certain establishments" as the Directive allows. For all the indicated libraries there is no necessity for the author's authorisation nor the payment of any remuneration. In addition, there are several conditions, namely that lending should be free of charge and made for cultural or educational purposes which don't change the situation.

This provision therefore deprives of content the exclusive right of the author and is not in compliance with the terms of 2006/116/EC Directive which mentions in art. 6 para 3 that "Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2".

Art.14<sup>4</sup> para. (4) and (5) points out that the lending of particular works incorporated in sound or audiovisual recordings shall only take place after six months after the first distribution of the work, respectively the lending right shall not be exhausted with the first sale or first assignment of



ownership over the original or copies of a work on the market, made or agreed by the right holder or with his/her consent.

Other exceptions refer to the objects covered by public lending and shall not apply to constructions resulting from architectural projects; originals or copies of design works or artworks applied to products intended for practical use; originals or copies of works, created with the purpose of communication to the public or for which use a contract exists; also to reference works designated for immediate consultation or for lending between institutions; and to works created by the author under a contract of employment, if the works are used by the author's employer during common activity.

With regard to the methodologies, at present, based on the general exception provided for by the law, in Romania the negotiations could not be finalised, and for this reason there is not an agreed methodology on public lending right agreed between the collective management organisations and the users (libraries). As a result, the collective management organisations have not collected remunerations based on the use of works through public lending.

In 2006, based on the request of COPYRO, ORDA has established the Negotiation Commission for the Methodology and Tariffs on the use of written works through public lending by libraries. This Commission is formed by representatives of COPYRO on one side and of the National Association of Librarians and Public Libraries from Romania as well as the Bucharest Metropolitan Library on the other side. The parties have not established the methodology and tariffs in this regard yet, the libraries being exempted under the law in force from the payment of the right under discussion.

Concerning the liability, it should be underlined that the violation of the public lending right gives the author the right of a civil action, and the violation is not sanctioned as a contravention or a criminal offence. At present, no such cases have come before the courts.

On account of the fact that the text of the law, respectively art. 3 of art. 14<sup>4</sup> is not in accordance with the European Directive in this field, ORDA has submitted to the competent bodies a proposal for modification of the text of the above mentioned regulation as follows: "Equitable remuneration provided for under paragraph (2) shall not be owed, if the lending is made through the libraries of pre-university educational establishments."

The draft proposal was submitted to the Minister of Culture and Religious Affairs in Romania, who has responsibility for the law in this field, in October 2006.

## **The Role of the National Library of Romania in the “Book Chain”**

Nicole Rahme  
National Library of Romania

According to its mission and mandate, the National Library of Romania is actively involved in the process of “making books” and is a fundamental link in what we could call the “book chain” near authors, translators, editors, booksellers, teachers and others.

The National Libraries are considered to be powerful institutions symbolizing man’s efforts to preserve knowledge, culture, and wisdom and transmit it to future generations. Without any reserve, we should mention their major contribution to access, dissemination and preservation of our cultural heritage. In this regard, the National Library of Romania is no exception in providing an effective way to promote and expose our national cultural material, which is fundamental for the current and future European cultural environment.

To carry out the essential mission of ensuring quality access to its collections both for today and future generations - for research, study or information - the National Library of Romania (NLR) has a responsibility to acquire, process, capitalise and preserve all kinds of documents as part of the national heritage.

The “book chain” starts with the NLR, through its ISBN-ISSN-CIP Center. Therefore we should underline the importance of assigning the ISBN and ISSN codes, as an effective way to ensure the security and preservation of the bibliographic records, the intellectual property and providing a better perspective on our cultural and scientific heritage. As this database is further integrated into other international databases, the books and, consequently, the writers are better promoted and well known all over the world. The CIP (Cataloguing in Publication) program is a free service offered to publishers by the National Library of Romania to provide a bibliographic record for a book before it is published. Afterwards this record is added to the National Bibliographic Database, which provides advance notice of new publications to libraries, booksellers and the general public. Also, NLR generates the National Bibliography, without affecting the intellectual property and providing a useful tool for authors and publishers.

Providing seamless access to information (as contemporary libraries are dealing not only with books but also with knowledge in other formats) and to culture remains the library’s mandatory mission, as stipulated in IFLA (International Federation of Library Associations and Institutions) principles and core documents. The libraries have always supported, encouraged and promoted culture, especially its national values, the writers and their books. Also they play a major role in educating users, stimulating the best reading practices. All those concerns provide a better perspective on the involvement of the library as a fundamental link to the publishing industry and authors. Users should be educated by the libraries, not only about how to manage books or information, but how to respect books and preserve them, and to understand how important it is to respect intellectual property, copyright and related rights.

In order to support PLR in Romania, the broader public library community and especially the National Library should provide statistics generated from the library software based on how many times a book has been taken out of a library or made available for consultation. But in the absence



of any such technology that could facilitate the collection of this data from libraries, a well-run PLR scheme cannot function. Another issue relates to the absence of a regulatory framework and means of funding which makes libraries liable to pay authors for every book in their collection or on the basis of their eligibility criteria. Until now the legal framework is governed by Law nr. 8/1996 on copyright and connected rights.

Our position is underlined by the IFLA statement that "...It is important that funds for payment of public lending right should not be taken from libraries' funds for the purchase of materials. However, public lending right, if separately funded, does provide support for authors without affecting public libraries' budgets. Librarians should participate in the development of public lending right schemes to ensure they are not financed from library budgets. (The Public Library Service: IFLA/UNESCO Guidelines for Development, 2001 (p17 para 2.3.3)."

PLR is a useful means of cultural recognition and economic support for authors as long as it does not come from library budgets, but from the State budget, with libraries functioning as a trusted intermediary.

Also relevant here is the current process of digitizing cultural resources and the creation of the Digital Library of Romania following the Recommendation of the European Commission and the Council. The Romanian Digital Library, coordinated by the NLR, comprises only 5% of documents free from copyright and related rights and includes documents not related to copyright.

In the future, the public library community could be promoted as a more integral part of PLR, by becoming a front end of the process, actively encouraging the national creative talent, and in accordance with its mission to serve the public and guarantee free unlimited access by citizens to the full spectrum of humanity's recorded knowledge and information.



## **Public Lending Right in Ireland**

Brendan Teeling  
Irish Library Council

### **Legislation**

PLR came became law in Ireland on 4th December 2007, when the Copyright and Related Rights (Amendment) Act 2007 was signed by the President.

The Act enables the Minister for the Environment, Heritage and Local Government to establish a Public Lending Remuneration Scheme and also enables him to designate An Chomhairle Leabharlanna (The Library Council) as the body to administer the scheme.

The PLR Scheme will be modelled on the UK Scheme and will provide for payments to be made to authors (and illustrators, etc.), resident in the EEA, in respect of the loan of their books by public libraries.

The Act specifies that the payments will be made 'out of moneys voted by the Oireachtas (parliament) for the purpose'.

The Department of the Environment, Heritage and Local Government is drafting the regulations which will govern the scheme, and it is expected that these will be published by the end of the year.

### **Administration**

In expectation of the issuing of the regulations, the Library Council has been asked to establish a PLR Scheme.

As the Irish scheme will be based on the UK one, the Library Council has negotiated with the Registrar of PLR in the UK for the provision of computer services. It is hoped that the first part of the computer system, the loans data processing module, will be delivered before the end of 2008.

The Library Council and the Department have briefed the chief public librarians on the proposed scheme and each library authority has nominated a staff member as its PLR liaison officer. The Library Council has begun the process of collecting loans data from the library authorities, and it is expected that collection of live data will begin by the end of 2008.



## Public Lending Right in Italy

Tiziana Colusso  
SNS - Sindacato Nazionale Scrittori

The PLR situation in Italy has improved since the last conference in Budapest, but full implementation of the Lending Right Directive in Italy has not been completed as yet. As you may know, in order to pay for PLR, a fund was created by the Italian Ministry of Culture in 2006 and it consists of 2, 2 million euros for 2007 and 3 million euros for 2008 and subsequent years. Payments are to be distributed by the Societa Italiana degli Autori ed Editori (SIAE).

By a decree of June 18, 2007, the Italian Ministry of Culture determined that payments should be distributed among the various categories of rightsholders as follows:

- printed copies of works (sheet music excluded): 50% to authors and 50% to publishers;
- phonograms and videograms: 60% to be equally shared between authors and publishers, 40% to be equally shared between producers and artists/interpreters.

By a further decree of December 10, 2007, after an investigation undertaken in public libraries, the Ministry determined that funding should be divided among the different categories of media as follows:

- printed copies of the works and audiobooks: 83%;
- phonograms: 5%;
- videograms: 12%.

The decree fixing the rate of commission due to SIAE for the management of PLR has not been issued yet. In any case, the percentage of commission will be based on the kind of activity SIAE is entitled to carry on. A working group may be created by the Ministry to establish this, as happened with the resale right. A specific feature of the first of these decrees is that the rightsholders can assign their royalties, through the associations of categories, to purposes of general interest such as initiatives promoting reading.

AIE, the main Italian publishers' association, is presently requesting the Ministry to obtain, from SIAE, the whole share of the PLR funding allocated to publishers in order to use it for social and cultural purposes. AIE has been mandated by its members to propose this. AIE is also requesting that SIAE should not be responsible for distribution of the publishers' share of PLR. However, the law states that SIAE should distribute payments to ALL rightsholders, publishers and authors. Furthermore, it is SIAE that is to conduct a survey of book lending in Italian public libraries and will therefore have all the loans data, including the names of their publishers and the fees due to them.

The correct implementation of the Directive in Italy should allow all eligible rightsholders to obtain their rights unless they renounce to them. In any case, the payment to foreign publishers also



through their respective collecting Societies ought to be assured. Finally, were payments to be made only to authors, the administrative costs would fall heavily on this category of rightsowners who would then be penalised disproportionately. The payment of fees to the associations could be accepted as regards phonograms and videograms only, taking into consideration the minimum share reserved to these media and the difficulties in paying very small amounts to a number of subjects.



## Public Lending Right in Spain

Susana Checa Prieto  
CEDRO - Centro Español de Derechos Reprográficos

The current regulation for Public Lending Right in Spain is included in a law passed in 2007 regarding books and libraries (LEY 10/2007, de 22 de junio, de la lectura, del libro y de las bibliotecas). This was the fastest way that the Spanish government could find to incorporate the 1992 Lending Right Directive into national law. But the transposition process has not been completed as it includes two steps: the complete regulation of the right will be included in a Decree that should have been passed within a year of the date when the law came into force (that is, before July, 2008). But as an urgent measure, this law modifies the Intellectual Property Act in order to set up the basis of the regulation of Public Lending Right in Spain.

The main points in the provisional regulation are as follows:

A.- Who must pay: Public libraries, archives, museums etc, as well as those owing to non-profit-organisations focused on general scientific, educational or cultural purposes.

Exclusions:

- establishments incorporated into the Spanish educational system, or
- establishments located in villages of fewer than 5,000 inhabitants

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

B.- It is a right that is only applicable to authors (and includes all kind of works)

C.- Compulsory collective management: there are four collective management organisations in Spain in charge of authors' rights management.

D.- How much to be paid: the amount will be fixed in the above mentioned Decree, but until 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 central government and the seventeen regional governments, more than 3.000 local entities are expected to pay for themselves.

2) Remuneration will be based on the number of books bought to be lent out. This does not look as fair as a system based on the number of times a book has been lent out, for example.

CEDRO received last March the first payment for Public Lending Right from the Ministry of Culture.



## Public Lending Right in Portugal

Vanda Guerra  
SPA - Sociedade Portuguesa de Autores

Back in the 1990s, the adoption of Directive 92/100/EEC, of November 19<sup>th</sup> 1992, on Rental Rights and Lending Rights and on certain rights related to copyright in the field of intellectual property, would change the prevailing trend up to that moment. Indeed, the extended struggles carried on by authors aiming at the recognition of their right were replaced by a new approach where the impetus came from above from the political superstructure of the European Union requiring all Member States to implement PLR.

In the preparatory working papers of the Directive, the Commission gave the following explanation as to the economic need to regulate Public Lending Right:

“One can not accept that, in the internal market, authors and neighbouring rights holders receive remuneration for the use of their works in one part of the market, for example, in a Member state, having, thus, the financial resources to keep on creating, and that the same thing doesn't happen in other parts of the internal market.”

Directive 92/100/EEC of November 19<sup>th</sup> 1992, on Rental Right and Lending Right and on certain rights related to copyright in the field of intellectual property, was transposed into the Portuguese legal system by Decree-Law 332/97 of November 27<sup>th</sup>.

When transposing the Directive, the Portuguese Government made use of the exemption possibility, foreseen in Article 5 (3) of the Directive, which allows the State to exempt certain categories of establishments from the obligation to pay remuneration to authors for the public lending of originals and copies of their works.

As the Community Directive is not restrictive regarding the type of establishment that can benefit from such exemption, under article 6 (3) of Decree-Law 332/97, of November 27<sup>th</sup>, “public libraries, school and university libraries, museums, public archives, public foundations and non-profit private institutions” are exempted from the obligation to pay remuneration for public lending.

The Government defended the wideness of the group of establishments covered by the exemption, arguing that the country's cultural development level, and the need to encourage reading, made it advisable to make broad use of the exemption. The Government has been strongly supported by the Book and Library Portuguese Institute and by the Portuguese Association of Librarians, Archivists and Documentalists.

SPA has always considered that the Government had made an excessive use of the exemption provided in Article 5 (3) of the Directive, by extending the exemption to such a wide range of establishments. It is hard to find in Portugal an establishment which carries out the public lending of protected intellectual works not being included in the categories stated in the Law.



Although sensitive to the Government's arguments, SPA's position is, as it always has been is that access to culture and its promotion can never be done by failing to protect the author and the author's rights. Otherwise, there's the risk of accomplishing precisely the opposite.

The active role of the European Commission in monitoring the Directive's transposition by the different countries, as well as the fact that the Directive's previous implementation was a prerequisite for the admission of new member countries, is a significant sign of the importance given to this issue.

Within the scope of this monitoring, and as widely disseminated, the European Commission considered the Directive's transposition by the Portuguese government as inadequate. Thus, it brought action against the Portuguese Republic at the European Court, seeking to obtain a declaration that Portugal had not correctly transposed some provisions of the Directive to the Portuguese legal system with the result that the exemption of Public Lending Right to an unacceptably large number of establishments. We would like to highlight the fact that action was also brought against several other countries, namely our neighbour Spain, on the same grounds, in particular, the choice of the type of establishments that would be exempt from the obligation of Public Lending Right payments.

Succinctly, the Commission's position was that that Article 5 (3) of the Directive allows Member-States to exempt "certain categories" of establishments from payment of remuneration normally guaranteed by Article 5 (1), by way of derogation from the exclusive public lending rights provided in Article 1. Nevertheless, Article 6 (3), of Decree-Law 332/97, exempts all public libraries, school and university libraries, museums, public archives, public foundations and non-profit private institutions. Therefore, the derogation covers all State central administrative services, all bodies which are part of indirect State administration, such as public establishments and public associations, and all local administrative services and bodies. There is also scope for all private-law legal persons carrying out functions of a public nature, and even private schools and universities, and all private non-profit-making institutions. This list includes all the establishments which lend free of charge, thus, all bodies that practise the "public lending", under Article 1 (3). An exemption that exempts all is not an exemption, but the annulment of the underlying obligation. The transposition of article 5 of the Directive, carried out by the Portuguese Republic, implies that no establishment practising public lending is obliged to pay the remuneration foreseen in article 5 (1). This is breach of the exclusive public lending right and of the protection granted by the Directive.

As we all know, within the scope of this case, and after the conclusions of Eleanor Sharpston, Advocate General, presented on April 4th, 2006, who was "of the opinion that the Portuguese Republic has failed to fulfil its obligations under Article 5 (1), in conjunction with Article 1 of the Directive", the Court of Justice (Third Chamber), in a judgement given on July 6th, 2006, declared that "the Portuguese Republic, by having exempted all categories of establishments from the obligation to pay remuneration to authors on public lending, has failed to fulfil its obligations under Article 5, in conjunction with Article 1, 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".

During the transposition process of Directive 2004/48/EC – the so called Enforcement Directive – the Portuguese Government took the opportunity to also change the wording of article 6 (3) of Decree-Law 332/97, of November 27th, thus allegedly complying with the judgement of the European Court of Justice.



Aiming at reducing the number of institutions benefiting from the exemption of payment of the said remuneration, the law only exempts public libraries, school and university libraries. The decision to exempt public libraries was justified as a measure of cultural policy, with the goal of assuring the widest possible access to cultural assets, education and information.

Heard by the respective Parliamentary Committee, SPA had the opportunity to express its disapproval of the exemption of all public libraries when it is for the State itself to make clear that the promotion of culture and access to it should not be sacrificed at the expense of authors themselves and their rights.

The new law having been approved and entered into force, SPA, representing its members (all of those who have the original or copies of their works made available, through Public Lending Right, such as writers, translators, illustrators, composers and others), could, theoretically, start collecting PLR.

However, this is only in theory as, unfortunately, the Portuguese Law, contrary to most countries, and even Spain whose transposition process was similar to ours, does not lead to any practical working model of Public Lending Right. This is regrettable for two different reasons: firstly, there is no tradition in Portugal of applying this right; secondly, there is an enormous variety of models adopted internationally.

The fact that public libraries continue to benefit from this exemption doesn't allow the practical implementation of a solid PLR system. In fact, public libraries, integrated in the National Network of Public Libraries, are the main agents of book and other media lending to the public with private libraries being few in number and generally do not practice public lending.

## Public Lending Right in the Czech Republic

Šimon Pellar

DILIA - Authors Licensing and Collecting Society  
Czech Association of Professional Artists' Organisations  
Czech Translators' Guild  
Czech PEN  
European Council of Artists

A PLR Bill was adopted by the Czech Parliament on 5 May 2006 as an amendment to the Authors' Rights Act incorporated into the Czech legislature as Act 216 of the 2006 Statutes. This legislation came into force as of 1 June 2006, with DILIA (Theatre, Literary, and Audiovisual Authors' Licensing and Collecting Society) licensed to distribute the proceeds to the entitled authors.

The authors, however, are not entitled to remuneration for the lending of published works on public library premises, or for the lending of originals and copies of published works effected by school and libraries of institutions of higher learning, 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. These are legally exempt.

Paid by the state through the National Library section of the budget of the Culture Ministry, DILIA distributed the first PLR remuneration in June 2008. The total sum was CZK 9,306,710 (i.e. approx. EUR 390,628 as of 1 July 2008) but it must be considered that it only covers the period, 1 June – 31 December 2006, i.e. after the Act became legally valid.

The 2007 loans were remunerated at CZK 17,633,617. However, as DILIA is obliged to pay a 19% VAT charge on the sum (i.e. CZK 2,815,467) the sum to be actually distributed will amount to only CZK 14,818,249. DILIA is appealing against the imposition of VAT and the case is still pending. The payments will be distributed by 1 July 2009 and then by the same date each following year. It is difficult to say, however, what the sum collected in CZK will represent in EUR, for while the Czech Crown has steadily risen in relation to the EURO in the past, its future development is questionable and the current government seems to be set on the Czech Republic's joining the Eurozone as late as possible.

According to law, it is only loans of books taken out of library premises that are eligible for payment under the PLR scheme and the payments go to eligible authors, translators, illustrators and photographers and heirs thereof. Editors/compilers do not receive any remuneration.



## Public Lending in the Slovak Republic

Magdalena Debnarova  
LITA - Society of Authors

Public Lending Right is included in the Copyright Act No. 618/2003 which was adopted on the 4th of December 2003 and subsequently came into force on the 1 of January 2004. This act was amended in March 2007.

Under the Copyright Act, lending is defined as a temporary abandonment of an original or a copy of a work for use by a facility accessible to public without direct or indirect economic advantage.

Authors, performers, phonogram producers and audiovisual producers have an exclusive right to authorise the use of their works, performances etc. by public lending. The Copyright Act provides an exemption only for the needs of the handicapped.

In March 2007 the Library Act was amended by the amendment of the Copyright Act. New regulation has extended the tasks of the Slovak National Library as follows:

The Slovak National Library shall:

- conclude with the collective management organisation concerning a collective licensing agreement for dissemination of works by lending via the library system of the Slovak Republic,
- through the collective management organisation concerning pay remuneration to the rightholders in line with the licence granted; the Ministry of Culture shall regulate the form and amount of remuneration by regulation.

The regulation was adopted by the Ministry of Culture on the 21 of December 2007 and took effect on the 28 of December 2007. The regulation has just two articles:

1. Rightholder's remuneration for dissemination of subject matters of protection by public lending via the library system of the Slovak Republic shall be settled by cashless transfer.
2. The amount of remuneration according to Article 1 in the calendar year concerned shall be a multiple of the tariff for one loan and the number of loans for the previous calendar year; the tariff for one loan shall be the most a 0,50 Sk (that is circa 0,015 €).

In accordance with this regulation LITA and the Slovak National Library concluded the collective licensing agreement to authorise public lending in 2007. As the agreement was signed on the 29 of December 2007 in order to realise payment of remuneration, LITA was forced to accept a tariff of 0,20 Sk (that is 0,006 €) per loan. The total amount of remuneration in 2007 was 174.709 € inclusive VAT, that is 146.814 € for distribution to authors. Moreover, the administration costs will shorten this amount. At the time of the agreement we drew the attention of the Ministry of Culture to the fact the tariff of 0,20 Sk is too low and LITA will not agree with a similar tariff for the next period.



LITA and the Slovak National Library started negotiations of the new collective licensing agreement in the beginning of this year. The agreement has not been signed up to now whereas we have not agreed with the tariff per loan. The Slovak National Library requires an unchanged tariff, LITA claims a tariff of 0,50 per loan. This matter will be solved in cooperation with the Ministry of Culture, because it funds Public Lending Right from its budget and seeks the additional sources of funding e. g. from the municipalities.

We hope that the prolongation of negotiations will not make LITA sign a new agreement with less favourable conditions for the authors again.

Now LITA prepares a distribution of remuneration in line with the distribution rules which are based on the frequency of loans and type of literature. The distribution will be carried out up to 30 September 2008.



## Public Lending Right in Hungary

Anna Menyhért

HLACS - Hungarian Literary Authors' Collecting Society

In November 2007, the ten writers' organisations of Hungary jointly founded the Hungarian Literary Authors' Collecting Society (HLACS). HLACS was registered as an NGO in March 2008. In Hungary, the optimal method of creating a collecting society is to establish an NGO that is later registered at the Ministry of Culture and Education as a collecting society. This registration is subject to the fulfilment of specific requirements that are stipulated under copyright law. These requirements amongst others are as follows: the collecting society has to represent a significant number of the rightholders; has to have employees with expertise in the given field and has to have databases the rightholders. At present, HLACS actively campaigns amongst writers for increased membership (we have about 130 members). After a difficult period of negotiations, we have an agreement with the Ministry of Culture and Education so that they will support HLACS's running costs this year with a donation of HUF 5 million (around EUR 20 000). Unfortunately, the system is very slow and we will only receive the contract at the end of July. The moment we receive the money we will only then be able to hire employees and start to build up the databases.

PLR has to be included in the copyright legislation. Throughout 2008 there were negotiations between the affected ministries, the Ministry of Culture and Education, the Ministry of Justice and Law Enforcement and the existing collecting societies of Hungary. We were also invited to some of the meetings largely because there were many other changes in copyright legislation planned by the Ministry of Justice, amongst them the liberalisation of the field of collective rights. The big collecting societies opposed this, and because of this, the bill has not been submitted to Parliament. We are trying to influence this process by involving the media in order to put pressure on the ministries.

Originally, the ministries planned to enforce the new copyright law by January 2009. It would have meant that, in 2009, we could have collected the relevant data on loans and in 2010 we could then have made the first payments. Unfortunately, the Ministry of Culture and Education now, at the last moment, find that they don't have the money in their budget of 2010 for the payments. According to their plans, it would be between HUF 200-300 million (around EUR 80 000–120 000). We are now trying to lobby to convince the ministry to provide this amount for 2010 and to provide the running costs of HLACS for 2009.



## Public Lending Right in Croatia

Vesna Stilin

State Intellectual Property Office of the Republic of Croatia

The Republic of Croatia has harmonised its national legislation with eight EU Directives in the field of copyright and related rights and particularly with the Council Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Directive 92/100/EEC).

The Croatian Parliament adopted the Copyright and Related Rights Act in 2003 (Of. Gazette, 167/03) and amendments in 2007 (Of. Gazette, 79/07). The Copyright and Related Rights Act, in compliance with the indicated Directive, under Article 33 states 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. Furthermore, an author may not renounce the right to remuneration.

Beforehand a collective rights management association shall apply for authorisation to be granted by the State Intellectual Property Office of the Republic of Croatia (hereinafter: SIPO), for performing collective management of rights. Such an 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 (Of. Gazette, 72/04). SIPO has granted authorisations for the collective management of PLR to the following collective rights management associations:

- (1) Croatian Writers Association, CWA (temporary authorization), for the representation of writers (in July 2008)
- (2) Croatian Composer's Society, Service ZAMP: HDS-ZAMP, for the representation of authors and composers of musical works (in September 2004)
- (3) Croatian Association for the Protection of Performers' Rights, HUZIP, for the representation of performers, for musicians, singers and actors (in June 2004)
- (4) Association for Protection, Collection and Distribution of Phonogram Producers Rights, ZAPRAF, for the representation of phonogram producers (in December 2004).

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

In October 2005 the Government of the Republic of Croatia accepted a document prepared by the SIPO with the title: "National Strategy for the Development of the Intellectual Property System of the Republic of Croatia 2005 – 2010" which enables collective management associations in 2007 to collecting remuneration for public lending of copyright works. This didn't happen because CWA applied for authorisation for PLR before SIPO in January 2008, obtaining recently a temporary authorisation for PLR because it had failed as a condition of the Copyright and Related Rights Act



to establish any reciprocal agreements with foreign association. It is significant that in the period of one year CWA submitted reciprocal agreements with foreign associations before SIPO. According to the "National Strategy...." The next step is that the Ministry of Culture looks into the possibility of solving this matter (funding) directly, in the form of a general collective agreement, with the National and University Library, as a central institution of the Croatian library system. SIPO will assist CWA and National and University Library in the negotiations process and elaboration of the legal issues of such an agreement.



## Public Lending Right in Greece

Theodoros Grigoriadis  
Greek Authors Society

Both as a novelist and a librarian in Serres Central Public Library and representing the Greek Authors' Society I have to admit that no serious steps have been taken towards the establishment of a PLR system in Greece 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 with, additionally, some dozens of Municipal Libraries). The Greek Authors' Society cannot actually function as a collecting society to claim PLR remuneration although implementation of the Directive into our national laws has already taken place.

There has been a proposal from the OSDEL (Greek Collecting Society For Literature Rights) to act on behalf of the Greek Authors' Society and claim money from the State and distribute it to authors. OSDEL has been successfully functioning for some years distributing money (deriving from copyrights) to its registered rightholders. This proposal has already been discussed at the newly elected Greek Authors' Society committee and has been favourably received but there has not been any formal announcement yet.

Once again I would propose a reference in the PLR Conference Resolution to the Greek case so it might be used as a means of bringing pressure to bear on the Greek government.

And finally, we are very concerned about digital rights questions and how authors' rights can be protected.



## Public Lending Right in Poland

Michael Bleszynski  
ZAIKS

As provided by Article 5.3 of the 1992 Directive on Rental and Lending Right, Member States may exempt certain categories of establishments from the payment of PLR remuneration. This exemption has been incorporated into Article 28 of the Polish Copyright Act which provides, that:

“Libraries, archives and schools shall be allowed:

1. to provide free access to copies of disseminated works within the scope of their statutory objectives,
2. to make or order preparation of copies of disseminated works, in order to supplement, preserve or protect their collections,
3. to provide their resources for exploratory or cognitive purposes with the use of informatic system terminals (terminal) within the territory thereof.”

As a result PLR is not payable in Poland for the use of authors' works in the libraries, archives and schools covered by the legislation. The main reasons for this were: providing access to culture and the costs of a PLR system to the State budget.



## **Public Lending Right in Turkey**

Erkin Yilmaz  
Ministry of Culture, Turkey

The Turkish Copyright Law (the Law on Artistic and Intellectual Works) dated 1951 has been amended several times since its adoption by taking into account the dynamic structure of the intellectual property system and the requirements of international law.

According to Article 23 (part.I) of the Copyright Law, the author has the exclusive right of distribution. Public Lending Right has been regulated within the scope of distribution right. Additionally, under Article 80 performers, phonogram producers and film producers have the exclusive right to authorise or prohibit the distribution of the original or copies of the fixations of their performances, phonograms and films.

The right of distribution shall be exhausted where the first sale takes place in the territory of Turkey. The lending right shall not be exhausted by any sale or other act of distribution of originals and copies of copyright works and other subject matter.

The enforcement of a PLR system has not taken place yet in Turkey.

According to Article 23 (part III) of the Copyright Law, the rules and procedures regarding the Lending Right shall be regulated with a by-law to be issued by the Ministry of Culture and Tourism.



## About the Introduction and the Implementation of PLR in Switzerland

Francesco Miceli  
Nicole Pfister Fetz  
AdS Autorinnen & Autoren der Schweiz

The introduction and the implementation of PLR is a long standing postulation of the Swiss writers association (AdS) and of Suisseculture (the umbrella organisation of all culture organisations of Switzerland).

Of course, the access to books on all educational levels and the situation of the libraries are of a great importance. It is undisputed that the libraries play an important role in mediating literature, education and culture. But this cannot be a justification for not remunerating the authors. In fact, all the different players should be paid for their contribution. The works of the authors actually create the basis for all activity of lenders and libraries. But at this time the authors receive no remuneration at all for the loan of their works. There is no good reason for this because the Swiss copyright law holds the principle that each use of a protected work or service – paid or nonpaid - should imply an equitable remuneration to the rightholder.

The Swiss libraries support a PLR scheme but only under the condition that there will be no financial burden for them and that their budgets for the acquisition of books and other media in particular will not be reduced. It must be the state who compensates for the legitimate costs of PLR (divided amongst Federal Government and the cantons - following the German scheme which divides the costs amongst the Federal Government and the states). The scheme could allow for special rates for school and university libraries as it is already done in the field of reprography.

There is of course the question of whether the user should financially contribute to the incidental costs. It is not easy to give exact figures on the yearly amount of payments which will be due. Looking at the present situation and comparing with external experiences it can be estimated to be 3 to 4 million CHF for the lending activities of libraries. If one takes into consideration that the turnover of all public libraries in Switzerland is around 300 million CHF a year the payment of 3 million make only 1 percent (The Swiss copyright law, Art. 60 URG, allows for a maximum of 10 percent for the expenses).



## Public Lending Right in Belgium

Benoît Proot  
Reprobel

The European Directive relative to the lending right was implemented into the Belgian law in June 1994 (European Directive 92/100/EC of 19 November 1992).

Articles 23, 47, 62 and 63 of the Belgian Copyright Act 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 one society has to be entrusted with the collection and distribution of fees for public lending.

It took a long time before the Belgian federal government promulgated the required implementation decrees. An Authors' organisation complained to the European Commission in 2000 and the Belgian government was taken to court for failure to implement the European Directive. Finally, the legislation was implemented properly by the Royal Decree of 25 April 2004.

There was a great deal of disappointment amongst several Reprobel members, since neither the way the Royal Decree was set up nor the amount of the remuneration matched their expectations.



The Royal Decree set forth very low tariffs, i.e. 1 Euro per year per adult borrower and 0,5 Euro per minor borrower. Moreover, a lot of lending institutions were excluded from paying the lending right: educational or scientific and caring institutions as well as f.i. libraries for the deaf and blind people. When a person borrows in more than one library, the fee only has to be paid by one library.

The Royal Decree makes it possible to collect public lending right remunerations in a decentralised way from every individual public lending institution, but stipulates 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.

The Royal Decree of 7 April 2005 entrusted Repobel temporarily with the management of public lending rights. At the end of 2006, Repobel was recognised for indefinite duration.

Repobel is the Belgian reproduction rights organisation (RRO). It represents 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).

Repobel 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 its activities and the forms and documents designed for the debtors. Auvibel stands in Belgium for authors, producers and performing artists of sound and audiovisual works. Auvibel's Members of the Boards signed an agreement whereby Auvibel mandated Repobel on the management of lending right.

### **Collection**

As far as collection is concerned, Repobel strove for a centralised collection per Community. The Belgian Federal State has three Communities. They are based on the "language". So we talk about the Flemish Community (Dutch-speaking, 58% of the population, 313 public libraries), French-speaking Community (41% of the population, 559 public libraries) and the German-speaking Community (1% of the population, 36 public libraries). These Communities organise and subsidise the public libraries.

Specific meetings with the three Ministers in charge and/or their representatives started in 2004 and were concluded successfully in 2006. Each Community signed an agreement with Repobel in order to pay the public libraries fees for the years 2004, 2005 and 2006.

In 2006, the first lending right remunerations, relative to the year 2004, were collected for a total amount of 1.280.471 Euros (vat excl.). In 2007, Repobel collected 1.531.240 Euros (vat excl.) relative to the year 2005. The collection relative to the year 2006 is ongoing. There are payment problems with the French-speaking Community.

Meanwhile, Repobel started to negotiate with the Flemish and German-speaking Communities in order to agree on newly centralised payments from 2007 onwards. The French-speaking Community decided not to renew the central agreement, because of the payment problems relative to the year 2006. As a result of this, Repobel has to contact the French-speaking public libraries separately.

In 2008, Repobel also started to identify and contact a series of specialised libraries that are not covered by one of the Communities in order to notify them separately. This process is ongoing.



## **Distribution**

The primary distribution scheme as negotiated with Auvibel (the rightholders society for the authors, producers and performing artists of sound and audiovisual works) provides that 16.5% of the collected amount has to be distributed to the latter. 83.5 % of the collected amount goes hence to Repobel. 70 % is distributed to the authors, 30 % is distributed to publishers. Both authors' and publishers' societies started to set up a distribution scheme for their individual members. 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 to the individual rightholders.

## **Conclusion**

Rightholders can be satisfied that the European Directive has finally been implemented into Belgian law. They also appreciate that the Communities accepted a centralised collection for the period 2004 - 2006. However, they consider the tariffs as set forth by the federal authorities as clearly insufficient and unfair. Therefore Repobel and the rightholders continue to lobby in order to obtain tariffs in accordance with the equitable remuneration and they both strive for the cancellation of the many exemptions provided by the Royal decree.

## Public Lending Right in France

Christian Roblin  
SOFIA

In the fall of 2007, Sofia began distributing PLR royalties to authors and publishers, starting with compensation collected in 2003 and 2004.

- For the period from August 3, 2003 to December 31, 2004, PLR royalty payments totalled €10,772,208.

This figure was calculated to account for Sofia's operating expenses (11.6%) and the pension fund, both of which are deducted from the total (~€600,000). Payments were made to 11,241 eligible authors and 1,183 publishers, representing a total of 55,000 books.

The price per book sold to a public library was €229, divided equally between authors and publishers. For example, the author of a book that was bought 1,000 times would receive €1.14 x 1000. Authors and publishers receive payment only for books that are registered with an EAN13 code and covered under a publishing agreement.

Authors who are members of Sofia and other French organisations that collect funds receive their royalties directly. In most cases, however, payment is passed on through the publisher, which has the authors' addresses. This also applies to co-authors of a book when both authors are not members of Sofia. Authors can visit our website at [www.la-sofia.org](http://www.la-sofia.org) to see if their books are affected by Public Lending Right.

Money is redistributed only if a minimum of 15 copies of a book have been sold to libraries. This minimum threshold was adopted to keep Sofia's payment costs reasonable. Earnings of less of €17.20 will be paid out according to an agreement drawn up by the Sofia Committee board. Small sums will be carried forward into subsequent years until 2005 and will be paid out once they reach the minimum of 15 copies sold.

- A second round of PLR payments was made in May 2008, covering the 2005 year. These royalties totalled €13,599,604, and were paid out according to the same rules adopted by the Sofia General Assembly in April 2007. The price per book purchased by a library was €2.23. Sofia's operating expenses represented 11.06%. 44,954 authors were eligible to receive a payment, along with 1,329 publishers.
- Sofia intends to distribute payments for the 2006 year in the fall of 2008. The rules for distribution will be reviewed during the next General Assembly by authors and publishers who are associates of Sofia.

Sofia has also agreed to pay authors who live abroad through the fund-collecting organisations in their own countries, and will sign reciprocal agreements to that end. Conditions will include:

- 1) European residency for authors registered with the fund-collecting organisation



- 2) 1st publication in the country of books eligible for royalties
- 3) Author's permission for the organisation to handle PLR royalties on his/her behalf for all books
- 4) Detailed list of EAN13 numbers for each author's books

All of these conditions will be specified in a reciprocal agreement with a fund-collecting organisation, but funds will only be distributed in this way for authors of one book and co-authors who belong to the same organisation.

Since the system began operating in 2003, PLR royalties have contributed significantly to the earnings of authors and publishers. Sofia is also attempting to roll out the system to illustrators starting next year.



## **Public Lending Right in Estonia**

Ainki Valjataga  
Authors' Remuneration Fund of Estonia

In 2008, 294 new libraries were successfully added to our library sample; it was surprisingly painless, both technically and financially, to match the relevant IT databases; and it is not unthinkable, therefore, that in the near future Estonian PLR remuneration will be calculated upon full information on loans.

This year we distributed 185,000 Euro to 1,000 authors; the maximum of 2,900 Euro was received by two applicants - an author and a translator. The average remuneration was Euros 167 and median was Euros 55 indicating that a few applicants (in our case mostly translators and cover designers of popular fiction) benefit the most from the PLR distribution. The upper limit is set at 4 average monthly salaries from the previous year but has little effect.



## Public Lending Right in Slovenia

Slavko Pregl  
Slovene Writers' Association

The PLR system in Slovenia was introduced in 2003 and the first payments were made in 2004. The money is provided by the Ministry of Culture and is provided for in the State Budget. It is based on 25% of the sum which goes annually from the State Budget for the purchase of books for public libraries. Local communities are also financing public libraries (60 in Slovenia), but their money does not affect the sum for PLR. The data on book lending from public libraries is collected by COBISS, a statistical agency, which includes all general public libraries (and some others) in the state, and provides precise monthly data (book titles, authors, and libraries) on book lending.

Slovenia has a population of 2 million. In recent years people have been borrowing 10 – 12 books annually per capita from general public libraries (they buy only 2 annually). There are around 7% - 8% of books written by Slovene authors in the Slovene language, with around 1.5 million loans of Slovene books.

The sum paid for PLR in 2007 for the year 2006 was 773,793 Euros, compared to 856,934 Euros, paid in 2008 for 2007 (an increase of 10.75%). There were 846 beneficiaries in 2007 and 874 in 2008. The average sum paid in 2007 was Euros 444. This year it is Euros 480. PLR in Slovenia is considered a part of cultural policy to promote and develop creative works by authors in the Slovene language. Half of the sum is paid directly to authors; the other half is distributed as scholarships.

Payments for book loans are subject to limits: an author gets everything up to 20.000 loans but only 20% of what is above this limit. The highest number of loans in Slovenia in 2007 was 68,612 and the author got 6.500 Euros "in exchange". The lower limit for payment is 800 loans which provides 175 Euros for the author (writer).

There are three issues that have emerged from the operation of the PLR scheme which I would like to discuss further. First, the system treats loans of young children's books and very thick novels in the same way. Second, it seems ridiculous to some people that "the most borrowed" authors receive less in comparison with the highest scholarships awarded as these authors are saying that they have the right to get more and should not to be forced "to ask" for a scholarship; they say that it is their money. And, thirdly, we are asking for more money to be put into the PLR system. We in Slovenia have an excellent system of school libraries with many loans. The loans figures are not collected. If we had that data too, the authors would be entitled to get more money.

Among the people entitled to receive PLR money there are 450 writers (41%). Translators represent 28%, illustrators and photographers 21%, film makers and composers 9%. There is a difference between being entitled and actually really receiving a payment since authors must apply to be considered for payment. Payments work out as follows:



- writers receive 0,22 euros per borrowed book,
- translators get 0,02 euros per borrowed book,
- illustrators get 0,07 euros per borrowed book,
- filmmakers, composers get 0,23 euros per copy

The majority of scholarships go to writers. The money is allocated by the Slovene Writers' Association. A special group of the Association created a very strict list of principles (covering nearly 150 different questions) to determine how scholarships should be awarded. There are three kinds of scholarships - working scholarship, travelling scholarship, educational scholarship. The first type goes up to 10.000 Euros annually. The second and third go up to 5,000 and 3,500 Euros. You can only receive the highest one every three years. There are no limitations on the other two.

One could say that as far as PLR is concerned, Slovenia is a happy state. But we are a very tiny language among big nations (we are less than 0.5% of all the people living in the European Union). In such a small country very special care should be taken of its language and its creativity in general.



## Public Lending Right in Latvia

Reinis Norkarkis  
AKKA/LAA - Latvian authors' society

Latvia introduced its PLR system in 2004 but it was only in 2006 that Latvian rights holders received their first PLR payments. According to the Latvian Copyright Law authors, performers, phonogram and film producers are eligible to receive remuneration for the public lending of their works. Special Regulations adopted by the Government provide the procedures for the calculation and distribution of remuneration for public lending (present Regulations in force since August 2007). The funding is determined as a certain percentage of the amount of money spent by the State and local government on library purchases in the previous year (9% since 2007, expected to be raised to 10% in 2011) and is provided by the State via the Ministry of Culture. The system is administered by AKKA/LAA – a multi-repertoire collective management organisation authorised to collect and to distribute PLR remuneration to authors (including the writers, translators, illustrators, compilers and literary adaptors), producers and performers according to the lending data annually gathered by public libraries. The most recent distribution of PLR remuneration took place in December 2007, when the amount of 381 346, 56 LVL (542 608, 69 EUROS) was paid out to 1426 authors. The sum of 2216, 93 LVL (3154, 41 EUROS) was transferred to organisations representing neighbouring rights holders for further distribution.

