

Committee on Copyright and other Legal Matters (CLM)

THE IFLA POSITION ON PUBLIC LENDING RIGHT

(April 2005)

Introduction

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

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

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

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

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

What is Public Lending Right?

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

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

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

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

Further information on Public Lending Right

For background information on PLR, its current legislative framework and its implementation in various countries please refer to the companion **Background Paper on Public Lending Right**

IFLA's position on Public Lending Right

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

1. IFLA's Core Values include

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

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

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

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

In line with these established principles IFLA affirms that

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

Public lending is essential to culture and education and should be freely available to all. It is in the public interest that lending not be restricted by legislation or by contractual provisions such as licensing. While the cultural and social support for authors that most existing PLR schemes

provide is indeed laudable, the justification usually given for PLR - that the use of copyright works through public libraries detracts from primary sales - is unproven. In fact, lending by publicly accessible libraries often assists in the marketing of copyright works and encourages sales.

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

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

Recommendations concerning the introduction or modification of PLR systems

1. Funding principles

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

Justification

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

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

2. Developing countries

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

Justification

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

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

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

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

3. Legal framework

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

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

Justification

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

4. Legislative definitions

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

Justification

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

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

In another example, as EBLIDA, the European Bureau of Library, Information and Documentation Associations, reminded the Commission, the failure to provide an exhaustive list of categories of 'establishments which are accessible to the public' in the Directive, has contributed to the current dispute between the European Commission and certain Member States over which categories of establishment accessible to the public may be exempted from PLR. As EBLIDA pointed out, the later

harmonising [Information Society Directive 2001/29/EC](#) indicates that the categories of establishments that qualify as being 'accessible to the public' are in fact publicly accessible libraries, educational establishments, museums and archives, so these all potentially qualify for exemption. ([EBLIDA Statement on the infringement procedures over Public Lending Right, March 2004](#))

5. Consultation and involvement

- a. Librarians should lobby to ensure that, as is the usual practice in countries with established PLR systems, they as well as rights holders should from the very start be consulted about proposed legislation and the process of setting up and running the PLR system. Librarians also should seek to be invited to serve, together with rights holder representatives, on national advisory boards which develop policy, advise the PLR administrators and negotiate with rights holder organisations or collecting societies.
- b. Additionally, where a copyright licensing system operates rather than a cultural scheme, librarians need to ensure they are directly involved in negotiations with collecting societies to determine the terms and conditions and fees for their lending licences.
- c. Any legislation should be established in close cooperation with all stakeholders, including library organisations.

Justification

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

Mentioned Internet Sources:

Background Paper on Public Lending Right (<http://archive.ifla.org/III/clm/p1/PublicLendingRight-Backgr.htm>)

IFLA's Core values (<http://archive.ifla.org/III/intro00.htm>)

IFLA/UNESCO Public Library Manifesto 1994 (<http://archive.ifla.org/VII/s8/unesco/manif.htm>)

IFLA CLM: Limitations and exceptions to copyright and neighbouring rights in the digital environment: an international library perspective (revised 2004) (<http://archive.ifla.org/III/clm/p1/ilp.htm>)

The Public Library Service: IFLA/UNESCO Guidelines for Development, 2001 (<http://archive.ifla.org/VII/s8/news/pg01.htm>)

Universal Declaration of Human Rights (<http://www.un.org/Overview/rights.html>)

EU Directive 92/100/EEC (http://europa.eu.int/smartapi/cgi/sga_doc

?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31992L0100&model=guichett)

Information Society Directive 2001/29/EC (http://europa.eu.int/smartapi/cgi/sga_doc

?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0029&model=guichett)

EBLIDA Statement on the infringement procedures over Public Lending Right, March 2004 (http://www.eblida.org/position/PLR_Statement_March04.htm)