

Public Lending Right: A History of the Idea

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PUBLIC LENDING RIGHT—the idea that an author is entitled to be compensated for the multiple uses of his copyrighted books in libraries—has a relatively brief and recent history, especially when seen against the background of other protections of intellectual property, such as copyright and the public performing right. While some form of a public lending right is already a legal fact in ten nations, this has come about only over the past thirty-five years, and actual discussion of the principle cannot be said to have begun in earnest until shortly before 1920. Its history is primarily the story of the struggle by authors to gain acceptance for an emerging idea: that the borrowing of a copyrighted work from a library constitutes a use for which the author has a right to be compensated. Secondly, it is the story of the efforts to incarnate this seemingly simple idea in a form that would satisfy the practical requirements of the complex world of books and politics into which it was born.

Total agreement on the exact nature of the “right” has never existed, as may be seen from the fact that no one label has ever satisfied all interested parties. Sir Alan Herbert in 1959 coined the term *public lending right*¹ (after an analogy to the public performing right), and that phrase now enjoys the respectability of a subject heading in the English-speaking world. “Library compensation” is preferred in the Scandinavian countries² where among writers the payments are known as “author’s coin” or “library money.” Elsewhere, “library lending

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right” is widespread, and one occasionally hears of “library royalties” or “authors’ lending right.”³

The Place of the Idea in the Debate

The merest glance at the literature reveals the PLR debate to have been lively, emotional and sometimes testy.⁴ This is largely because the argument, at its core, has been concerned with an idea, a matter of moral principle: Is recognition of this right that the authors claim for themselves indeed a matter of simple justice? Or is it something less than that—a contrivance, or at best a sincere but misguided attempt to make a moral justification for doing something to alleviate the genuine economic hardships suffered by many authors? Novelist John Fowles underscored the centrality of the principle to the discussion when he ventured that:

The essential, surely, is to get the principle accepted....I believe that for novelists at any rate PLR is wanted almost as much psychologically as financially....[T]he granting of a PLR right, however inadequate to begin with, and the knowledge that both the public and the government have admitted that an injustice—not only to us but to the enormous contribution our art has made to our society’s life all through its modern history—has been done, will have as much a symbolic as an actual financial value. We want a token of national assurance and sympathy as well as a pay raise.⁵

For their part, the librarians (frequently cast as adversaries in this drama) saw that something more was at stake in the fray than simply a few more dollars for authors. The Canadian Library Association was representative of a large part of the profession when in 1976 its membership approved a resolution sympathizing with the economic difficulties of writers and calling upon the government to develop a system of increased financial rewards, but at the same time rejecting the PLR idea: “CLA makes these recommendations in recognition of the cultural contribution of Canadian writers and *not* in recognition of any legal entitlement to recompense for library use, i.e., a public lending ‘right.’ ”⁶ (Interestingly, few of the national laws providing library compensation to authors make any mention of a right at all.)

The opposition of librarians and many others to the new idea (once early fears that the financial and administrative burdens of PLR would fall upon libraries were allayed) had its roots in another strongly felt and (apparently) conflicting idea: the idea of a free public library, or what George Piternick has called the “public library right.” “The right of

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individuals to band...[together] to buy books and circulate those books freely among the members of the group has been unquestioned for centuries. Thousands of library incorporation acts and charters recognize this right in law."⁷

Proponents have placed even greater rhetorical weight on the idea in recent years. In its classic form, the argument for PLR has paired the moral/legal claim for the right itself (the idea) with the economic claim of deprivation of royalties. George Piternick and Samuel Rothstein synopsise fairly the two-pronged argument: "1. The author's proprietary rights in their own creations are being unfairly or illegally infringed upon by the libraries (chiefly public) which lend these books freely. 2. The effects of such infringements are so large as to deprive the authors of their livelihoods or at least significantly reduce the sums they would otherwise realize as royalties from private purchase of their books."⁸ Early on in the debate, proponents made much of the statistical proofs of authors' poverty.⁹ But as the discussion matured, the writers recognized that their greatest hope of success lay with the strength of the principle itself, and the appeal for sympathy was abandoned, even scorned.¹⁰ Claims of economic injury were still advanced, but not heavily leaned upon. "It would be irrelevant to pursue this line of discussion [that authors and publishers are in dire straits]," wrote J. Alan White, "because the case for Public Lending Right rests on natural justice: it is a claim to fair payment for use."¹¹

The writers have not been alone in insisting upon the principle. Their opponents have been diligent to point out elements of any PLR scheme that depart from the ideal. If such a right exists (or ought to), then logically it ought to apply equally and in all cases. L.J. Taylor has claimed an inconsistency, for example, in any PLR plan based (as all are) solely on public library loans:

Limiting the application or distribution of a lending right only to the use made of books through public libraries, however measured, represents a substantial modification to the principle upon which the Right is said to be founded....[If] the distribution of funds available to finance a lending right is to be made equitably between those authors whose books are in libraries the possibility of a different pattern of provision in other institutions which lend books must be taken into account.¹²

Other commentators have objected that any scheme excluding other creative or entrepreneurial contributors—translators, illustrators, composers, artists, performers, joint authors, publishers, etc.—whose works are lent by libraries constitutes an enormous compromise of principle.¹³

A similar allegation is made regarding plans that ignore books in reference collections, which are not lent but may be used more heavily than circulating books.¹⁴ Lord Goodman's reply to such objections is typical: "The suggestion seems to be that unless you can contrive a scheme of total Olympian justice, you should have a scheme of total Stygian injustice. That is total madness; nobody will be able to produce a public lending right scheme that is perfect. Nobody would be able to devise a scheme that does not involve injustice. But the authors are satisfied with this."¹⁵

The PLR Idea in its Context

The idea of a public lending right, as noted before, is a recent one, and remarkable for its rapid growth over the past several decades. It did not, of course, develop in a vacuum; it was not without its influences. Several sets of events already in motion by the turn of the twentieth century combined to provide it with a hospitable environment: (1) the development of lending libraries (especially public libraries), (2) expansion of the copyright umbrella, (3) increasing willingness of governments to provide money from public funds for the support of cultural affairs, (4) the rising awareness (in some countries) of the need to protect and nourish a national culture and language, and (5) a growing trend toward collective activism among individuals with an identity of economic interests.

Raymond Astbury has provided the fullest treatment of the British public library movement as it relates to PLR.¹⁶ He notes that the movement had its formal origins in 1850 with the Public Libraries Act, which was motivated by a paternalistic concern for the laboring classes, who were unable to afford the thriving subscription libraries which had been serving wealthier citizens since the seventeenth century. After World War II, however, public libraries had become the primary providers of books to middle-class readers, and the subscription libraries all but vanished. Astbury concludes that: "The existence of the public library has stimulated the publication of many minority-appeal books, fiction and non-fiction, which would not have been published without this guaranteed market. But, on the one hand, the economic factors governing modern publishing have produced a situation in which most authors earn a mere pittance for their labours."¹⁷

Other British writers, among them John Fowles, have tried to express the public library's impact statistically: "For every one copy of a book bought by a private buyer, eleven are now bought for lending by

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public libraries."¹⁸ By his own equation, Fowles calculates further that (taking into account an average number of readings for each library copy) "for every twelve copies sold we have a proportion of six readers to eleven hundred against a royalty proportion of one to eleven."¹⁹ Given this kind of figuring, it is not astonishing that authors should claim that "the purchase of a book by a library which may lend it hundreds of times is different in kind from the purchase of the book by an individual who, at most, might lend it to a few friends."²⁰

In a thesis entitled "Public Lending Right: Its History, Development and Machinery in Denmark and Australia,"²¹ Henning Rasmussen has examined the public library movement in those nations. Australia's first free public library opened in 1856, but the legislative foundations for public library service in the various states were not laid until the 1940s and 1950s.²² Denmark's public libraries had their beginnings in the early 1800s. The development of library services were influenced in the early 1900s by knowledge of the public library movement in England and the United States and, although public libraries were well established by 1920, "as in other countries, the greatest expansion has occurred in the last fifty years."²³ (The Danish experience is of particular interest because Denmark, in 1946, put the first PLR plan into effect.)

Paralleling the rise of the public libraries was the movement to broaden the scope of copyright to extend its protection both to more classes of intellectual property, and also to a wider spectrum of uses. The copyright entered statutory law in Britain in 1710 with the Statute of Anne, and in the United States in 1790. But not until the nineteenth century did prints, musical compositions, photographs, works of fine art, and translation and dramatization rights become protectible. More to the point, the right to public performances of musical works was guaranteed to the copyright holder in 1842 in Britain and in 1897 in the United States. Cooperative societies were formed in 1850 in France (and in 1914 in Britain and the United States) to monitor and protect the performing rights of composers.²⁴

The PLR idea is one that has been heavily analogical in its development, and it is with this subsidiary right to the copyright that the strongest comparison has been drawn. The most persuasive arguments for this parallel have come from two officials of the British Performing Rights Society, Michael Freegard and Dennis de Freitas. According to Freegard, "there are certainly good grounds for such a comparison, since the acts of performing such a work in public and of providing copies of it for public perusal both constitute forms of repeated use from

which the creator of the work is surely, in equity, entitled to benefit."²⁵ Moreover, de Freitas suggests, the lending right is not only similar in principle to the performing right, but like it in enough practical aspects to warrant seriously considering the adoption for PLR of a comparable licensing and monitoring mechanism.²⁶ But the parallels are not nearly so obvious to opponents of the idea, as R.S. Smith explains:

Analogies are never clinching, and the difference is immediately apparent between the embodiment of literary activity in an object which enters trade and which is then utilized by an individual without further intermediary and, say, sheet music which can, in some cases, be used privately but in most instances is realized typically by public performance. The strict analogy with musical performance would be public readings in the manner of Dickens, which are of course already protected.²⁷

(Curiously, perhaps, another question relating to multiple uses of copyrighted works, and alleged to have a bearing on reduced book sales, has not been brought in for comparison, and that is library photocopying.)

The changing sociopolitical context as a factor in PLR's development has been discussed only little by commentators, perhaps because it is all too obvious. Preben Kirkegaard, a Danish librarian, is one who has taken it into consideration. In a 1972 address to the Canadian Library Association, he expressed his view that "the social structure and the politico-social conditions of the Scandinavian countries are probably the factors most decidedly influencing the regulations we are practicing for allotting library royalties to authors as compensation for the public lending of their works."²⁸ He described the Nordic countries as "welfare states," characterized partly by economic regulations aimed at income equalization through taxing heavily the high incomes and raising the lower incomes. And authors are "probably among those who come off worst in a society which has a general increase in the standard of living as its political object."²⁹ While the label "welfare state" may be most apt for the five Scandinavian countries, it may also be applied more or less confidently to the other five nations with active welfare plans. In most if not all PLR countries, library compensation is only one element in an array of public grants, tax relief measures, and other encouragements provided for creative artists. The Norwegian government, for example, operates a unique program of book subsidies whereby copies of each book published by a Norwegian author are deposited in a thousand Norwegian libraries.³⁰

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Diana B. Mason, in developing a case for PLR in Canada in 1975,³¹ has taken this line of analysis one step further by proposing that (except in the case of Great Britain) each PLR adoption has been a positive action to protect an indigenous culture in danger of being eclipsed by larger neighbors. "Basically these countries are protecting their cultures from foreign (cultural) invaders by supporting native 'creators.' The movement for PLR may start out as compensation for book use, pure and simple, but there is no doubt that the end result is to protect and encourage their own people to make authorship more than a bread and butter proposition."³²

As Mason acknowledges, the one PLR country not "at bay" culturally is Great Britain, where "the most articulate and vociferous debate about PLR has taken place."³³ The primary contributing factor to this prolonged engagement (nearly thirty years) has been the perseverance of several writer's organizations (among them the Society of Authors and a splinter, the Writers Action Group) in keeping the issue alive. Their counterparts in other countries played similar roles. The work of the Danish Authors Association and the Australian Society of Authors, for example, is recounted in Rasmussen's thesis.³⁴ That such collective efforts by writers could be effective in producing so conspicuous a result as PLR was a notion given encouragement by the trade union movement (despite Fowles's bitter complaint: "We can't strike; we can only be struck"³⁵) and by the successes of the performing rights organizations, such as the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); and Britain's Performing Right Society (PRS).³⁶ Evidence that the authors drew inspiration from the labor movement is found in Michael Holroyd's statement of 1973:

[Authors] are discussing plans for the systematic picketing of libraries and for the confiscation, as in Sweden, of all books from certain libraries....For the first time we are establishing close ties with the printing unions and the National Union of Journalists—bodies that have considerable political power and that, I believe, will use it if necessary on our behalf....Governments may not tremble before a small band of authors, but minorities have humiliated governments in the past. We have watched their methods; we have seen their success, and we are prepared, if we must, to use such methods to achieve success ourselves.³⁷

Early Events in Scandinavia

It was into the ferment of these social movements and ideas that the suggestion of library compensation for authors was first introduced in

Scandinavia. Henning Rasmussen provides an account of these early stirrings.³⁸ The first PLR proposal he identifies was made by Danish author Thit Jensen. In 1918 she suggested that a tax of five øre (approximately 1.5 cents at 1918 exchange rates) be placed on each loan of a book by a Danish author. Over the next few years the issue was discussed widely among authors, librarians, booksellers and publishers, each group showing a surprising diversity of opinion on the matter. In 1919 the question was brought before the Congress of Nordic Authors, and in 1920 the Danish Authors Association went so far as to request a meeting with the Ministry of Education. From the very beginning of the debates the principle of free public libraries was strongly defended, and the idea of a direct fee imposed at the point of the loan was dropped in favor of a system of state funding. By the end of the decade, the questions of whether library loans affect book sales, and whether the legal rights of authors entitled them to continuing payment following the sale of their books, had been thoroughly debated. In fact, as Rasmussen pointed out, the articles appearing in the Danish press during this period contain nearly all the arguments that have since been set out on either side of the issue.³⁹ The fact that libraries enjoyed a book trade discount (at their expense, authors insisted) was given particular attention. And the knowledge was widespread that some French authors were successfully preventing their books from being stocked in subscription libraries. Awareness of this French practice may have precipitated the events that resulted in the first legal action affecting PLR principles, the *Nordkaper* case.⁴⁰

In 1929 the Danish explorer Peter Freuchen and his publisher Steen Hasselbach printed in Freuchen's new book *Nordkaper* a prohibition on the loan of the book without permission from the author. Permission, they suggested, would be given if a fee were collected for each loan from a library (public or subscription), or if the library paid double the purchase price of the book. The operator of a subscription library took up the challenge, and the case was brought to court. In its decision the court found that the plaintiff had a legitimate interest in preventing his book from being lent and was entitled to impose that restriction. Although their right to make use of their books in public libraries conditional had been thus affirmed, Danish authors did not press their advantage. Many of them were already receiving grants based upon merit, and it was feared that if they also accepted fees from publicly supported libraries, they might lose the sympathy of the government, who would view it as receiving a dual income from the state.

Discussions in the 1930s centered mainly on the negotiations of the Danish Authors Association, through which agreement was found on

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many important matters, including the principle of state funding. (During this period other Scandinavian authors also began making demands for library compensation; the Swedish battle cry was “two crowns.”) But not until 1941 did the Danish government announce its intentions, in a report which proposed payments with the dual purpose of improving the financial condition of authors and of giving them a “reasonable fee” for the library loan of their works.⁴¹ Complications associated with the German occupation of Denmark, however, postponed final enactment until 1946.

The four other Nordic countries produced plans over the next twenty years, beginning with Norway in 1947. (PLR schemes began in Sweden in 1954, in Finland in 1961—though not implemented until 1964, and in Iceland in 1967.) In a recent paper summarizing the provisions of all national PLR laws,⁴² Rudolph Ellsworth noted that there is one feature common to all the plans: writers receive payments from tax monies, but not from library operating budgets. Beyond that, systems vary widely. Even the Nordic countries, whose PLR laws developed in close proximity, have such dissimilarities that in 1968, after studying the matter for several years, their education ministers decided that fundamental differences made the application of unified regulations or reciprocity agreements impossible.⁴³

It is instructive to note one particular point of divergence, because it provides one useful way to classify types of national PLR plans. This is the matter of choosing the basis for payments. The Danish law provides that authors shall be compensated on the basis of the number of their books in library *stocks*. Sweden, on the other hand, bases its payments on an annual sampling of *loans*. Thus, the schemes of other nations are often characterized as following the “Danish model” or the “Swedish model.” In the other Nordic countries, though, the total amount to be paid out is calculated as a percentage of the annual government grant to libraries for the *purchase* of books. And in Norway and Finland, no direct royalty payment is made to authors; rather, a writers’ fund is established from which various kinds of social welfare payments are made. Iceland and Sweden provide both direct payments and social welfare assistance to authors from their funds.

Lending Right in Other Nations

The Netherlands and West Germany enacted laws in 1971 and 1972, respectively. The Dutch plan provides payments to authors of literary works, based on library purchases of their books. The German plan that followed is significant for two reasons. In the first place, it was the first

PLR law to be enacted by statute. (All previous schemes were the result of administrative regulations.) And it was the first time a lending right had been attached to copyright legislation. Under this plan an annual lump sum is distributed through four copyright societies to authors of copyrighted works, including (because the international copyright conventions require equal protection) foreign authors whose works are in German libraries. Austria in 1975 drafted a lending right law resembling West Germany's, but has not yet enacted it.

New Zealand in 1973 and Australia in 1974 put PLR laws into effect. Ellsworth has described the history and mechanics of New Zealand's plan, and Rasmussen and Robertson Cather each treat the Australian system in some detail.⁴⁴ Under both plans, authors receive individual payments based on library holdings. Australia's law has a unique provision that includes publishers in the payment schedule. Authors currently receive fifty cents and publishers twelve and one-half cents for each copy of a book held in libraries.

When Great Britain's lending right legislation received royal assent on March 22, 1979, nearly thirty years had passed since the idea first surfaced in that country. It is no surprise, then, that most of the available PLR writings in English are concerned with this nation's experience, and that accounts of its PLR history are numerous. Most chroniclers seem to come down on one side of the issue or the other, however, and there is not yet one single account that tells the entire story in detail. A complete picture of the events leading to 1979 must be pieced together from several sources. Three commentators writing in the early 1970s provide coverage of the two previous decades. Victor Bonham-Carter takes the view of a proponent and an official of the Society of Authors; William R. Maidment, a librarian, writes from the other point of view; and Alan Day is studiously impartial.⁴⁵ To bring the events up to date, the student should consult recent essays by Ellsworth and Cather.⁴⁶

The first person in Britain to suggest the establishment of a lending right was author and librarian Eric Leyland, who proposed in 1951 that subscription libraries pay an author a halfpenny each time his book was lent. Later that year another author, John Brophy, developed the idea further by recommending that a fee of one penny be levied on each borrowing of a book from a public library, with nine-tenths of the penny going to the author and the other tenth to the library to pay for the cost of administering the transaction. In his paper, Brophy, perhaps aware of the discussions in the Nordic countries, accurately anticipated most of the objections that would be raised against the idea.⁴⁷ His suggestions were discussed frequently in the 1950s, and underwent

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many modifications (most of them aimed at making them more acceptable to librarians and local authorities), but no legislation emerged. Brophy's proposal did have some effect, however. It gained the public's attention and gave PLR its first label in Britain: the Brophy penny.

Sir Alan Herbert and J. Alan White, along with others in the Society of Authors, initiated a major campaign in 1959. Sir Alan's 1960 memorandum outlined the PLR case, "arguing that the 'freedom' of the public library service was out of date, and drawing a parallel with Public Performing Right."⁴⁸ That same year, Sir Alan introduced a bill that would have linked a lending right to copyright legislation, but it was dropped when it was realized that, under the international agreements, foreign authors would be entitled to payments and (as yet) no other country had been willing to reciprocate.

A Working Party of the Arts Council in 1967 produced a report recommending a program of lending royalties paid to authors and publishers from central government funds and based upon an annual stock sampling. The report rejected a purchase scheme and considered a loan scheme to be too complicated to be practicable. Partly in response to objections from the Library Association, the Working Party in 1970 presented a revised report to the new Conservative administration. Lord Eccles, the minister with responsibility for the arts, rejected the proposal, which now called for payments figured as a 15 percent one-time royalty on each book purchased; and instead, appointed a new working party to study how the copyright law might be amended to accommodate a lending right. Its report, delivered in 1972, offered a plan with distinct similarities to the public performing right as administered in Britain. It entailed a system of blanket licensing administered by a lending rights society that would grant licenses to libraries in return for an annual fee calculated on the basis of their annual book expenditures. The Society of Authors welcomed the report, not because it was perfect, but because it was at least something. However, a number of authors disagreed strongly with its major provisions. They maintained that, to be effective and true to principles, PLR must be centrally funded and based upon loans. The Writers Action Group (WAG) was the product of this schism. Under the leadership of Brigid Brophy (daughter of John Brophy) and Maureen Duffy, WAG soon became PLR's most vocal and energetic advocate.

Finally in 1976 a bill was produced, but had to be abandoned in the face of a filibuster, and another bill the next year did no better. But by 1979 both political parties were committed to PLR, all effective resistance had melted away, and the legislation was approved. The govern-

ment is now developing a plan to implement the law, and expects to make the first payments in 1982/83.

The law established a right parallel, but not linked, to copyright. Authors will receive payments from a central fund of fixed size, currently envisioned as £2 million (approximately US\$4 million). Payments will be apportioned on the basis of loan samples taken from a small number of library service points (originally set at seventy-two, but now, because of the costs involved, reduced to perhaps as few as forty-five). Payments to authors from other countries with PLR plans are provided for, but that feature, too, is being reconsidered. No money will go to publishers, illustrators, authors of noncirculating books, or more than three joint authors.⁴⁹

It seems likely that the PLR movement still has momentum, but predicting its next manifestation is difficult. Its successes in the ten countries with existing lending right plans may have exhausted its greatest potential. On the other hand, there are signs of interest elsewhere. Canada has had discussions for years, and writers' groups in the United States are taking a close look at the PLR experience in other countries as well as the financial situation of American authors. (The Authors Guild Foundation has recently commissioned a Columbia University study of the economic condition of writers.)⁵⁰ It is almost certain that existing PLR schemes will be modified as pressure grows to fatten royalty payments, to expand the protection to more classes of creative artists, and to make even more fundamental changes in the way entire systems are structured. One thing is clear, though, from the history of the movement: there is hardly a feature imaginable for a PLR plan that has not already been tried, or at least suggested and thoroughly studied. Newcomers will need not start from scratch.

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