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Public Lending Right

PERRY D. MORRISON
and
DENNIS HYATT

Issue Editors

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If one were to ask the "average" American librarian what public lending right (PLR) involves, he or she would probably mutter something about censorship and intellectual freedom. Actually, although PLR is marginally related to those issues, the term refers specifically to schemes in place in some ten countries, and under consideration in a number of others, whereby authors are compensated in some way by virtue of the fact that their works are used by library patrons.

Whether or not public lending right is actually a right inherent in copyright law, or merely a means of subsidizing authors employing library use as a convenient rationale, is hotly debated in the pages of this symposium. Also at issue is whether an author's potential income is really affected by the presence of his works in libraries and by circulation from them. In virtually all cases, PLR payments to authors do not come directly from library budgets; nevertheless, an economic issue is involved. In theory at least, libraries could be given the subsidy money to buy more books and thus benefit both authors and library users. Also at issue is the matter of whether the presence of a book in a library results in the patron borrowing it instead of buying it (the alternative hypothesis being that a library's possession of a book publicizes it and results in additional sales to book-oriented people, and thus more royalty to authors).

Perry D. Morrison is Professor of Librarianship and Coordinator of Library Research, and Dennis Hyatt is Assistant Professor and Associate Law Librarian, University of Oregon, Eugene.
Most authors, but not all, who are involved in the PLR question have a different view of the matter. They contend that PLR is an extension of the principle of performance rights in copyright law—that they are, indeed, entitled to benefit from each use, as well as each purchase, of a book.

The authors of the following articles also pay considerable attention to the remarkable variety of ways in which existing, and proposed, PLR programs are structured. Some plans reward authors on the basis of circulation of his or her books in a sample of libraries; others, on the extent to which copies are held in libraries. The former schemes tend to benefit best-selling authors; the latter are deemed better for beginning or specialized writers. Some plans do not benefit authors directly as individuals but rather are "social security" schemes, the funds going to pensions and subsidy payments based on need or other criteria. And so it goes. The details compose this issue of Library Trends.

The structure of this collection of reviews is simple. First, various aspects of the subject are explored; then developments in various parts of the world are discussed in detail. In such a plan, it is inevitable that a particular fact may be treated from different points of view—from author to author, and from topic to topic. Similarly, as this is an international symposium, styles of writing and subtleties of treatment vary not only by occupation of author but also by country. The editors have been careful to preserve this diversity rather than trying to homogenize the treatment. Differences in the approach of, say, an American professor of journalism and that of a Danish inspector of libraries, are perhaps as revealing of the variety of situations in which authors and librarians interact as is the subject matter actually discussed.

The reader may well note the absence of any professional writers from the roster of contributors. This absence has not resulted from any lack of effort on the part of the editors to recruit one. Rather, it stems from the same underlying tenet that motivates authors to campaign for PLR—i.e., writers who write for a living should be paid for what they produce. Scholarly publications like Library Trends, on the other hand, exercise reward systems which do not pay authors directly for contributions to the literature. An impasse results. However, the editors are confident that readers will find that Jack Hart—a writer, but in the scholarly, rather than the commercial, rewards system—has done an outstanding job of presenting the case of authors by means of interviews with a selection of them. Also, the reader will note that some of the librarian-contributors are sympathetic to the authors' position; others have assumed a neutral posture; while at least one strongly believes that
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financial assistance to authors should not be via PLR plans. (Indeed, not all professional authors are pro-PLR.)

Obviously, this symposium comes to no consensus about this relatively new issue both in librarianship and—although it is of somewhat longer standing there—in authorship. The very diversity of approaches to what seems, on first encounter, to be a simple issue may well be the only common thread. In smaller countries, such as those of Scandinavia, the desire to stimulate and reward producers of indigenous literature has markedly shaped PLR. In large heterogeneous societies like the United States, serious discussion has begun only recently. Somewhere in the middle stands England, which is having difficulty implementing its scheme despite the closely knit concentrations of authors and librarians there.

Finally, there is an issue of information availability involved in dealing with PLR in Library Trends at this time. There are probably American librarians who would rather let this issue sleep for now—they have enough “awake” ones as it is. Similarly, although a majority of authors wish to raise public consciousness of PLR, Library Trends might perhaps not be their medium of choice. The choice of the editors is clear: to present as comprehensive and multifaceted a view of the subject as possible. The editors are neutral as to whether or not the effect of PLR is, or might be, favorable to particular interests. In short, we contend that the library community, and the public in general, has a right to know about public lending right.

As this issue of Library Trends was about to go to press, news came of the death on November 1, 1980, of Rudolph Charles Ellsworth, who was to have contributed the article on the situation in Canada and the United States. The issue editors hereby dedicate this symposium to the memory of Mr. Ellsworth, who served on the staff of the Douglas Library of Queen’s University, Kingston, Ontario, from 1967 to 1978, when he became Librarian for the Metropolitan Sanitary District of Greater Chicago where he served until his untimely death. The following statement was contributed by Katharine A. Benzekri of the Writing and Publication Section, the Canada Council:

Mr. Ellsworth was one of the strongest advocates and authoritative voices on the question of public lending right, and he contributed numerous articles on the subject to Canadian and international periodicals. Of course, the greatest tribute to Mr. Ellsworth and others who have promoted the principle will be the implementation of a system of compensating authors for the library use of their works.
This issue is the richer for the body of Mr. Ellsworth's published work to which the various authors refer so frequently, but the poorer because his own contribution never reached the editors. (There is evidence that he had completed the manuscript, but it could not be located.) All of us shall be also the poorer henceforth for lack of what he would have contributed had he lived.

Reference

1. Formerly, in certain situations in the Federal Republic of Germany, "library royalties" were chargeable to the institution making the loans, but this responsibility was transferred to the regional governments in 1975. See Dörnfledt, Siegfried. "Der Gesamtvertrag zur Bibliothekstantieme," Buch und Bibliothek 27:648-56, July/Aug. 1975.
Public Lending Right: A History of the Idea

THOMAS STAVE

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 (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 countries where among writers the payments are known as "author's coin" or "library money." Elsewhere, "library lending

Thomas Stave is Head Documents Librarian, University of Oregon, Eugene.
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. 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.

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.' " (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 synopsize 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. 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."

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. 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."

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. 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." 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
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which the creator of the work is surely, in equity, entitled to benefit. 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. 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. (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.” 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.” 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.
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Diana B. Mason, in developing a case for PLR in Canada in 1975, 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. 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. 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.

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. 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, 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.

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. 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 studiedly impartial. To bring the events up to date, the student should consult recent essays by Ellsworth and Cather.

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. His suggestions were discussed frequently in the 1950s, and underwent
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.” 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.

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.) 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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41. Ibid., p. 19.
THOMAS STAVE


Legal Aspects of Public Lending Right

DENNIS HYATT

The relationship of public lending right (PLR) legislation to the law of copyright is the central legal issue in the development of the PLR concept. Parties to the PLR debate cannot be clearly divided by how they view this relationship; however, most proponents of a public lending right contend that PLR legislation is an integral part of copyright law, while opponents maintain that PLR legislation is hardly a consideration of copyright law at all. In only one of the ten countries to enact PLR legislation has the statute been made a part of copyright law. In the nine other countries, proponents have, in effect, won the PLR battle but lost the main legal point on which they based their attack. In short, regardless of the apparently unconvincing legal basis of their position, advocates of PLR have nonetheless gained support in these countries because the concept addresses the perceived problem of lending library activities undermining the livelihood of the authors who create the books loaned.

Two approaches are used to solve the problem of whether PLR legislation is appropriately considered a part of copyright law. The first approach is analysis of the basic theoretical framework of copyright law and the relationship of PLR to that framework. The second approach is analysis of the practical consequences of deciding that PLR is an integral part of copyright law. The theoretical and practical analyses are reviewed here in recognition of the double-sided dilemma confronting the PLR adversaries. One one side of the dilemma are the proponents who, to enhance the acceptance of PLR legislation, point to the insep-
rably close relationship of PLR to two underlying principles of copy-
right law. Their theoretical arguments are not without merit. However,
the linking of PLR legislation to general copyright law, as a practical
consequence, in fact diminishes or defeats some of PLR's major social
aims in the country in which legislation is enacted. On the other side of
the dilemma, opponents of PLR legislation, in denying the relation-
ship of PLR to copyright law, have not thereby convincingly argued
that PLR legislation as a practical matter is unwarranted or unneces-
sary. The history of the legal development of PLR, therefore, is a story of
slow acceptance of specialized social legislation passed in recognition
that lending libraries in the latter half of this century may be affecting
the compensation authors receive for their writings, but without a
responding acceptance of the major legal principle on which that
legislation is premised.

National Differences in Copyright Laws

In the closing chapter of his treatise on U.S. copyright law, Melville
Nimmer noted:

The subject matter of copyright under most foreign copyright laws is
largely the same as the subject matter under the United States Copy-
right Act. Thus, all members of the Universal Copyright Convention
undertake to provide adequate and effective protection for "literary,
scientific and artistic works, including writings, musical, dramatic
and cinematographic works, and paintings, engravings, and sculpture." Similarly, the "literary and artistic works" protected under the
Berne Convention are said to "include every production in the literary,
scientific and artistic domain, whatever may be the form of its
expression...."

He also stated: "The rights protected under most foreign copyright laws
are in broad outline quite similar to those which may be claimed under
the U.S. Act. That is the rights of reproduction, adaptation, distribu-
tion, and performance, as recognized under the U.S. Copyright Act, all
have counterparts in foreign copyright laws."2

However, as Dr. Adolf Dietz stated in the introduction to his
detailed comparative study of copyright laws in the nations of the
European Economic Community (EEC): "It must be remembered that
these copyright laws display not only considerable structural differ-
ences, attributable to only a small extent to their different ages, but also
that the matters regulated by these laws are not the same in all cases. For
example, the copyright laws of some countries refer to matters that are
regulated in other countries by other means than copyright law, or are
not regulated at all. Furthermore, in assessing the interpretation of an EEC treaty provision, Dietz, scientific consultant at the Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law, somewhat grudgingly acknowledges that consideration must also be given to the concept that "copyright cannot be evaluated separately from its culturo-political ratio legis." Indeed, perhaps "the culture industry also can be comprehended only on the basis of the interdependence of culturo-political and economico-political objectives," which vary from nation to nation.

The basic concepts of copyright law are sufficiently broad to permit their generalization without regard to national differences, and they are sufficiently complex in application to reveal myriad national variations when subjected to closer scrutiny. Nimmer and Dietz do not disagree on the nature of copyright law; rather, they do not share the same lens in their focus on the question of national differences.

For the most part, proponents and opponents of the PLR concept have contested the question of the appropriate relationship of copyright law and PLR legislation on a theoretical level well above the necessity of examining national differences in copyright law. For this reason, these differences will not be explored in this review, and the salient features of copyright law mentioned later can be applied more or less equally to all the nations in which the PLR debate is being waged.

The fact that the PLR adversaries have debated the issue of PLR in the context of a law of copyright which transcends national differences does not mean that the cultural, economic and political differences to which Dietz refers are not important elements for consideration. The varieties of proposed and enacted PLR legislation reflect national differences not only in their existing legal structures, but also in their social problems, goals and objectives. Furthermore, it is the cultural and economic differences in nations which perhaps provide the impetus for successful PLR legislative campaigns in some countries, while the same arguments fail in others. For example, in the United Kingdom development of an efficient, heavily used library system is presented as a significant factor contributing to the plight of British authors: "During the debate on the Public Lending Right bill in the House of Commons, in 1973, figures were quoted to show that in 1971 in Holland 18 books were borrowed for every 12 bought, in the United States 13 for every 14, and in the United Kingdom 38 for every 4." As Arthur Jones notes in his article, the difference in the Scandinavian countries is the relatively small population which provides a limited market for authors writing in the vernacular who must compete with the use of translations and
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second-language publications. Thus, while PLR proponents advocate legislation based on an argument in copyright law which transcends national differences, they have pressed for reform in those countries where the relevant social differences are greatest.

Natural Justice in Copyright Law

Advocates for PLR contend that the concept is closely related to the underlying principles which form the basic theoretical framework of copyright law. One principle to which they point is the source of copyright law as a precept of natural justice—specifically, that a creation belongs first to its creator:

Our whole law relating to literary and artistic property is essentially an inheritance from England. It seems that from the time "whereof the memory of man runneth not to the contrary," the author's right to his or her manuscript was recognized on principles of natural justice, being the product of intellectual labor and as much the author's own property as the substance on which it was written....[A]ges before Blackstone, an Irish king had enunciated the same principle in settling the question of property rights in a manuscript: "to every cow her calf." 6

This underpinning to the copyright law has an important corollary: the right of literary ownership is not one conferred to authors by virtue of legislative enactment. Statutes and regulations have developed from the necessity of establishing limitations on the use of literary property by persons other than the owner. In 1710 the Statute of Anne became: "the first statute of all time specifically to recognize the rights of authors and the foundation of all subsequent legislation on the subject of copyright both here and abroad." 8 However, by 1710 the English Parliament already recognized the wisdom of limiting the exclusive right of publication to a term of years in order to cultivate a body of knowledge which would enter the public domain. The Statute of Anne limited authors or their assigns to the sole right of publication for fourteen years with the privilege of renewal for an additional fourteen years if the author were living at the expiration of the term. In other words, the exclusive right of ownership did not last in perpetuity, and the first embodiment of the principle of natural justice of ownership of literary property had struck a balance with a conflicting social objective.

All copyright legislation since the Statute of Anne represents additional responses to cultural change and technological development. The older, more widespread, and more universally accepted the responses have become, the more they have taken on the character of
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being a part of the embodiment of natural justice in copyright law. Indeed, the right of exclusive reproduction, now considered the heart of copyright legislation, could not have been a serious issue until the development of moveable type allowed reproduction of works in relatively large quantity.  

Neither side in the PLR debate offers much more than assertion and denial in answering whether PLR is a matter of natural justice. Using the art of nomenclature alone, those favoring the idea have seized the initiative. "Public lending right" is the popular designation for the concept of author compensation for library lending which is used by friend and foe alike, even though statutory language generally omits this terminology. Proposed legislation elevated to the importance of protecting a right may produce an initial predisposition to recognize the proposal as a part of natural justice.

The foundation for any notion of natural justice is the concept of fairness, and an appeal for fairness not only gives validity to intuitive reaction to the problems addressed by the PLR idea, but also provides a contextual basis for presentation of detailed factual information. Proponents of PLR ask for legislative support simply as a matter of fairness to authors. Opponents claim that fairness is not so simply discerned when other segments and interests of society are considered. There is no monopoly of fairness in the PLR debate; and factual detail is not conclusive in establishing the economic plight of authors, or the ways in which libraries contribute to their economic predicament, or the royalty scheme best suited to provide recompense.

Appealing to a sense of fairness has marked the downfall of the natural justice argument that public lending right is appropriately a part of copyright law. Whereas the question of whether PLR is a natural right of the owners of literary property must be answered either yes or no, the question of fairness need not be answered so absolutely. Many legislative schemes can satisfy the call for fairness to authors without the necessity of amending copyright law. This fact helps resolve the seeming paradox that, in those nations which have enacted PLR legislation, the copyright laws have not been amended even though the theoretical basis for the legislation is argued on principles of copyright. Conversely, opponents of PLR are faced with the discomforting prospect of winning the theoretical legal arguments but still losing the legislative battle on less esoteric grounds.
Protection of Tangible Expressions in Copyright Law

Not all aspects of ownership are included in the theoretical framework of copyright law. Thus, the principle of ownership in natural justice which provides that the author is the first owner of his artistic creations must be tempered with a second principle which identifies those aspects of ownership specifically within copyright protection. This second principle of copyright law extends protection to the author only for the tangible expression of his ideas: "Copyright protection subsists...in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

Copyright law does not protect against the use of an idea, but rather protects the expression of that idea in a tangible form:

The principle of non-protectability of ideas, long recognized by the courts, has been expressly adopted in the current Copyright Act. To grant property status to a mere idea would permit withdrawing the idea from the stock of materials which would otherwise be open to other authors, thereby narrowing the field of thought open for development and exploitation. This, it is reasoned, would hinder rather than promote the professed purpose of copyright laws....Indeed, it has been said that copyright protection is granted for the very reason it may persuade authors to make their ideas freely accessible to the public so that they may be used for the intellectual advancement of mankind."

The U.S. statute states: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

Once an idea is fixed into a tangible medium of expression, copyright law grants to the creator or his assigns the exclusive right to reproduce copies for a term fixed by statute: "In any new Copyright Act it might be possible to start by defining copyright as a right subsisting in relation to all original works, meaning by the word 'original' the product of some person's skill and/or labour, if fixed so that they can be reproduced." As part of the bundle of rights which inhere in copyright, the owner has the exclusive right not only to reproduce, but also to derive from, distribute, perform, or display the copyrighted material. In continental Europe there are additional rights, known as droit moral (moral right), which include the right to withdraw a publication if it no longer expresses the views of the author, the right to be known as the
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author of a work and to prevent others from claiming authorship, the
right to deny authorship which has been falsely attributed, and the right
to prevent alterations to the work. The *droit moral* has received little
attention in the United States, and was not included in the 1976 Copy-
right Act. All countries provide some limitations on the exclusive rights
of the copyright owner. The United States, for example, has developed
the judicial doctrine of “fair use” to enable some copying which would
otherwise be an infringement of the copyright owner’s exclusive rights.

Each copyright owner has the exclusive right to produce copies of
the work, a copy being the material object in which the work has been
tangibly expressed. Using the limited monopoly position afforded by
copyright, the author is free to exploit his position commercially with
the sale of copies to others. Sale of a copy of the work conveys no
copyright interest to the buyer, and under existing law the author has
exhausted his economic and legal interest in that copy once it has been
sold.

The lines of argument are clearly drawn on the question of whether
PLR is appropriately a concern of copyright law based on the principle
of ownership rights which are traditionally protected. Both sides in the
controversy acknowledge that authors currently have no legal claim to
compensation for the use libraries make of copies of their works unless
there is specific statutory authorization for compensation, since there is
no copying involved and the author has no residual ownership interest
in the copies purchased by libraries. Opponents of the idea of incorpor-
ating a public lending right into copyright law assert two major points:
removing the necessity of copying from the conceptual framework of
copyright is an unwarranted step; and, altering broad social legislation,
such as copyright law, to correct a specific economic imbalance as may
exist between libraries and authors, is an inappropriate blunt means of
achieving a relatively subtle end.

In addressing the claim that the nature of copyright law necessarily
involves the exclusive right of reproduction and distribution, propo-
nents of PLR legislation point to compulsory licensing statutes, such as
those sections of the Copyright Act which cover phonorecords, retrans-
missions by cable television systems, and jukeboxes. “Essentially, a
compulsory license is one conferred by statute...[which] enables others
to use a copyright work, by copying, performing, displaying, or other-
wise, without infringement when the user has fulfilled specified condi-
tions, including the payment of royalties.” In short, copyright law has
already altered the exclusive right of reproduction and distribution with
compulsory licensing statutes, and no new conceptual framework is
established by including compensation for authors in a similarly arranged PLR scheme. Furthermore, the proponents maintain that there is no functional difference between the multiple loaning of a single copy from a library and the copying of protected works.

Copyright statutes are no longer just the embodiment of broad principles of copyright law, and the 1976 Copyright Act is an example of the trend in copyright legislative development: “Where previously the statute had too little to say in many vital copyright areas, it may now be argued that it says too much. I for one regret this departure from the flexibility and pristine simplicity of a corpus of judge-made copyright law implanted upon a statutory base consisting of general principles. This has now been replaced with a body of detailed rules reminiscent of the Internal Revenue Code.”¹⁷ One of the provisions of the new act is devoted to library photocopying.¹⁸ Not only are copyright statutes increasing in complexity with the willingness to attempt fine-tuning of conflicting social interests, but also the U.S. statute has already addressed the issue of the impact of library activities. Those who advocate the inclusion of PLR in copyright law could argue that the more detailed the copyright law becomes, the more appropriate additional detail becomes.

Those seeking to adjust the balance of interests between libraries and authors might disagree that the task is a minor one. It is a “societal policy (funding of ubiquitous lending libraries) that alters the workings of the copyright scheme.” Indeed, “the trouble is caused by an activity of government—the establishment, funding, and staffing of public libraries—in a degree so great that the micro-economic balance of the copyright scheme rewards is interfered with....”¹⁹ These remarks from Exemptions and Fair Use in Copyright by Leon Seltzer, director of Stanford University Press, are presented to suggest that a PLR scheme is sufficiently important and related to the theoretical framework of copyright principles and legislation that its incorporation into the copyright statute is appropriate, as most PLR proponents contend. However, in concluding his analysis of the issues surrounding PLR, Seltzer suggests that any scheme should be outside the scope of copyright.

Tactical and Practical Considerations

There is no agreement among scholars or PLR adversaries on the appropriate relationship of PLR legislation to copyright law. Equally valid jurisprudential arguments support opposite conclusions. Furthermore, those favoring PLR legislation do not necessarily recognize
its close relationship to copyright law. Conversely, opposition to PLR legislation does not necessarily indicate opposition to a close relationship. Nonetheless, there are tactical reasons for, and practical consequences of, asserting that the relationship should appropriately be considered a particular way. The quandary confronting all parties in the PLR debate is the perverse way in which tactics and practical consequences conflict.

As a tactical matter, supporters of a PLR concept advocate that it is an element of copyright law. There are three main reasons for their viewpoint. First, being a part of copyright law gives the PLR concept an additional legitimacy to the claim of authors who might otherwise be accused of seeking mere social welfare legislation. Second, each nation which acknowledges PLR legislation as a part of copyright creates pressures for other countries to do the same as a matter of reciprocity agreements and copyright treaty. Thus, as an international movement, passage of PLR legislation becomes progressively easier even if documentation of the economic condition of authors becomes more difficult in the separate country. Third, once incorporated into a system of copyright, a PLR scheme would be more difficult to repeal than it would be as a free-standing piece of legislation.

There are two tactical disadvantages to claiming that public lending right legislation is an integral part of copyright law. First, the impetus to revise or amend one of the fundamental laws of a nation may take years to generate action. (The experience of the United States in revising the Copyright Act of 1909 is a case in point.) On the other hand, specialized legislation can be urged and enacted at any time. Second, as a practical consequence of PLR legislation enacted as a part of copyright law, nations are bound by treaty obligation to extend the same rights of protection to foreign authors from all other nations that are treaty signatories. This result is so significant that some advocates of PLR legislation disclaim the relationship of public lending right to copyright law on this basis alone. In Scandinavian countries with PLR legislation, the drain of lending right royalties to foreign authors might actually worsen the condition of vernacular writers rather than help them if the PLR schemes were part of copyright. In nations of the European Economic Community, the movement to harmonize the copyright laws could also aggravate the purposes of public lending right schemes which are considered a part of copyright.

In the United States the doctrine of federal preemption may prove a special disadvantage to asserting that PLR legislation is a part of copyright protection. The U.S. Constitution empowers Congress "To
promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." It also provides that the "Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land." These two constitutional provisions are the source of the doctrine of federal preemption, a doctrine which may prevent states from enacting legislation in areas of law occupied by the exercise of powers delegated to the federal government. Thus, the protection for works in their tangible expression afforded by the Copyright Act of 1976 could preclude individual states from enacting a PLR scheme if it is asserted to be a part of copyright law. Whether any type of PLR legislation can be enacted by an individual state is problematical because of the preemption doctrine. The problem is explored in more detail later.

In an effort to discourage the passage of any type of PLR legislation, opponents generally maintain that there is no relationship between copyright law and authors' royalties statutes. In general, their arguments have been successful, even in those countries where PLR legislation has been adopted. Whether a public lending right is a conceptual extension of the rights of copyright law will continue to be debated. Whatever the outcome of the theoretical arguments, the idea of payments made to authors for public library use of their works "reflects a sense that the author's appropriate expectations of reward for his work are not properly taken care of by the ordinary economics of the copyright scheme, that somehow the nature of libraries themselves—at least as they have come to be developed in some countries—unacceptably dilute[s] those expectations."24

Public Lending Right in the United States

A bill introduced in Congress in 1973 requesting a study of the PLR concept died in committee without a hearing, and thus ended the first legislative test for authors' royalties legislation in the United States.25 Investigation of a similar European concept which has met with greater acceptance in the United States may indicate how some elements of the PLR controversy will likely be received in the lawmaking process.

In some respects the idea of a public lending right is an extension of an older European concept, the droit de suite (art proceeds right), which requires the payment of royalties to artists for the resale of their works. The first droit de suite legislation was adopted in France in 1920, and similar legislation later gained approval in Germany and Italy.26
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Although there are differences in the royalty schemes of each country, the principle of each law is the same—artists should be compensated for each resale of their original works. This compensation is justified not only to promote the arts, but also to protect artists from economic exploitation by dealers, galleries and collectors. As noted by Monroe Price, the notion of protection from economic exploitation is "a vision of the starving artist, with his genius unappreciated, using his last pennies to purchase canvas and pigments which he turns into a misunderstood masterpiece."27

In 1976 the California legislature enacted the Resale Royalties Act28 and became the first state to require the payment of royalties to artists. California remains the only state with droit de suite legislation, although similar legislative proposals have been examined in Florida, Iowa, Maine, Minnesota, New York, Ohio, Rhode Island, and Texas.29 Under the California statute, whenever a work of fine art is sold, the seller must pay 5 percent of the sale price to the artist provided that the sale price exceeds $1000, the artist is alive, and the seller is a state resident or the sale takes place in California. Provision is made for the royalty to be placed with the California Arts Council if the artist cannot be located. "Fine art" is defined by the statute as "an original painting, sculpture or drawing."30

The California statute has been criticized for its technical flaws, such as its vague yet narrow definition of fine art and for the difficulty of enforcement, as well as for the oversimplification of its underlying premise of supporting the arts by marketplace participation in some transactions. However, in Morseburg v. Balyon,31 the first court test of the statute, dealers based their refusal to pay the royalty primarily on the assertion that the federal Copyright Act preempted California law. Federal District Court Judge Takasugi disagreed and, in his decision upholding the California law, concluded:

Not only does the California law not significantly impair any federal interest, but it is the very type of innovative lawmaking that our federalist system is designed to encourage. The California legislature has evidently felt that a need exists to offer further encouragement to and economic protection of artists. That is a decision which the courts shall not lightly reverse. An important index of the moral and cultural strength of a people is their official attitude towards, and nurturing of, a free and vital community of artists. The California Resale Royalties Act may be a small positive step in such a direction.32

The decision was affirmed in the Ninth Circuit Court of Appeals, where the court based its preemption decision solely on the Copyright Act of
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1909, since the transactions in question occurred before the effective date of the 1976 act.33

In Royalties for Artists, a research monograph prepared for the Oregon Legislative Administration Committee, Allan Green, director of legislative research, notes that those who favor artists' royalties legislation argue that: "The California law sets an important precedent for support of artists. State legislation will encourage Congress to provide royalties for artists on the national level."34 In fact, federal droit de suite legislation was first introduced in 1965, but the bill languished in committee without a hearing through both sessions of the 89th Congress. In recent years federal royalties legislation has been introduced more regularly, perhaps encouraged by state activity.

The droit de suite and PLR are similar concepts. Both provide economic rewards to artists on the basis of transactions in which they no longer have an ownership interest in the material item which is the subject of the transaction. The droit de suite and PLR provide economic protections in addition to those afforded by the general laws of copyright. Because an author has a greater set of comprehensive protections under the federal law of copyright, there is a greater chance that PLR is preempted from state involvement. However, the reasoning of the courts in Morseburg applies equally well to the encouragement of authors as to artists.

Conclusion

As in European countries, the concept of a public lending right does not fit neatly into the principles of copyright law in the United States. Nonetheless, PLR legislation does address the growing social concern of the economic impact of libraries on the livelihood of authors. And, if the brief but successful legal development of droit de suite legislation in California is an indication, PLR is a workable concept in the U.S. legal structure.

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8. Latman, op. cit., p. 3.
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Practical and Economic Considerations

ARTHUR JONES

Public lending right (PLR) is a right to receive payment in respect of the lending of books (or possibly other materials) to the public. The right, which is usually accorded by law, is most commonly thought of as being appropriate to authors, but publishers have sometimes claimed an equal interest. Lending is usually understood to mean lending for use off library premises, but use within the library need not be ruled out. The public is most often understood to mean the cross section of the population which uses public libraries, but the term might logically be applied to the group of clients served by any library, however restricted or specialized its membership. Three arguments have been put forward at different times in support of the concept of PLR.

Compensation

It has been alleged that the lending of books by libraries reduces the number of copies purchased, and hence the income which authors receive in the form of royalties. The argument is a difficult one to sustain, though there is some evidence of correlation between high book borrowing and low book sales. Against this, however, the shop window provided by a well-used public library provides a valuable stimulus to book buying, the effect of which cannot be quantified. There is little doubt, either, that the purchase of some types of material—notably first novels and some expensive specialized works—would be considerably less without the assured market which libraries provide, and many of these would therefore not be published at all if it were not for libraries.

Arthur Jones is Senior Library Adviser, Office of Arts and Libraries, London.
Natural Justice

Whatever the effect on an author's income from royalties, runs this argument, the repeated use of a copy of his work by means of borrowing from libraries ought to be acknowledged by some additional financial reward. "We are not asking for 'subsidies' on charitable grounds for indigent authors or meritorious but struggling publishers. No means test is applied to composers, authors, or music publishers who draw fees from Performing Right. We simply ask in the name of natural justice for better business terms.'

Cullis and West have pointed out that, in strict logic, an author should be rewarded by his publisher with a lump sum payment instead of a royalty, since his work is completed before a single copy can be sold. Additional sales do not involve him in additional work. The existence of the royalty system represents a compromise, necessitated by uncertainty as to likely sales and hence the economic value of the author's work. On the other hand, it may imply a tacit acknowledgment by publishers or readers that the author is entitled to payment in relation to the satisfaction he provides for his readers: "A fee for service of this kind, already paid to composers, lies at the heart of any argument on public lending right." Without this, many of the authors who bring pleasure and other benefits to their readers will be unable or unwilling to continue to do so because of the scant financial return.

This argument implies a notional link between lending right and copyright, though no copy of the publication is in fact made. Against this is the argument that libraries—and particularly public libraries—are provided at the expense of large numbers of people who join together to purchase a collection of books in common, instead of each buying one book and lending it around. Publishers, it may be said, should recognize their right to do this, and should reward authors by paying adequate royalties even if this does mean increasing by a small amount the price of all books sold, whether to libraries or to individuals. Cullis and West point to the operation of the secondhand book market as further evidence of the implausibility of arguing that "single" reading is a norm against which the abuse of authors by libraries can be assessed.

Protection of Vernacular Literature

Countries which have a small population, a living language and a literary heritage, but which are now heavily dependent on the use of translations and second-language publications, may find in PLR a means of assisting and encouraging native authors for whom the
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limited home market might not otherwise provide an adequate income. It is no accident that the earliest examples of what has become known as PLR occurred in Denmark and Sweden precisely for this purpose.

Eligible Authors

If PLR is founded on the idea of compensation or natural justice, it should in fairness be applied in a uniform way to any living author whose books are borrowed from libraries. But its use to encourage or protect native authors writing in the vernacular language demonstrates that things are not necessarily so simple. If PLR is recognized in law as a facet of copyright (as it is, for example, in the 1973 amendment to the copyright law of the German Federal Republic), it is subject to international copyright conventions; if not, countries are under no obligation to extend the right to authors who are nationals of, or even commonly resident in, another country. The law on this point is unclear. Among countries of the European Economic Community, moreover, the treaty of Rome protects certain rights regardless of nationality, and there are also conflicting legal opinions about its applicability to PLR. Schemes established without a statutory basis would be free of any such obligations, even if PLR were subject to international copyright conventions. Methods of giving effect to PLR by extending copyright law were studied by a government-appointed working party in the United Kingdom in 1972, but this method was not in fact adopted.4

The possibility of limiting PLR to authors within the home country could be an important financial consideration even in a country which did not need to protect its vernacular writers. This option, therefore, is likely to be widely practiced, perhaps with exceptions in the case of writers from countries which are able to offer reciprocal rights. Small countries which are heavily dependent on books by foreign authors would find a reciprocal arrangement of this kind a considerable financial burden. For this reason, Danish authors have shown interest in a possible arrangement in which books by foreign authors would be included in PLR schemes on a reciprocal basis, but their accumulated payments would be credited to the fund available for distribution to home authors. Such an arrangement, however, offers no benefits under a scheme where the total amount to be distributed is predetermined annually.

Librarians are accustomed to recognize that artists, photographers, cartographers, and other "creators" may fall within the genus "author" if they contribute significantly to the contents of a publication, and
there is no reason why they should be treated differently in regard to eligibility for PLR. Payment by means of royalties rather than a fee may provide a useful means of identifying eligible contributors in all categories.

Common sense suggests that PLR, like copyright, might be limited to the lifetime of the author, and perhaps a period of fifty years after his death. If PLR is based on an author's registration of his right in a title, it follows also that the author must be alive when the right is first claimed. The registration system might allow an author to transfer all or part of the benefits of PLR in a particular work to another person or institution during his lifetime, just as he can transfer royalty payments. He might wish to do this from motives of charity or benevolence, or for tax purposes. If PLR payment is to continue for a period after the author's death, it must be regarded as a property which can be bequeathed or inherited, and the author's heirs or assigns must also be enabled to transfer this property to another beneficiary during the period of its currency.

Eligible Publications

The principle of PLR could be applied to any objects which are repeatedly lent for use by different individuals. It has been applied particularly to books because of the notion that it should benefit not the manufacturer or the retailer, but the artistic creator of the work; a creator, moreover, whose only other financial benefit, in the form of royalties on copies sold, has been represented as often being inadequate. There is, therefore, a close analogy between PLR and the right of playwright or composer to a fee for the public performance of a play or musical composition. Books, moreover, are lent—as musical works are performed—on a sufficiently large scale to justify the setting up of collection procedures.

Individual books may be categorized as eligible or ineligible for PLR on grounds of either principle or practicability. The limitation of PLR to books written in the vernacular language, or to works of imaginative literature, would be on grounds of principle; limitation to works by single authors or not more than three joint authors, or to publications of not less than forty-eight pages, would be on grounds of practicability. The latter would be designed to reduce administrative costs and avoid the fragmentation of payments into small amounts.
Eligible Libraries and Users

The term *public lending right* has inevitably become associated with public lending libraries. This is not necessarily the extent of its applicability, since the use of books by a large number of readers, whether inside or outside the library premises, is a characteristic of libraries of all kinds. Moreover, vagueness as to the boundaries of library premises in some institutions makes the distinction between lending and reference use not only meaningless, but impossible.

The effect of extending the scope of PLR to include libraries other than public libraries is closely related to the method of funding. If the money to be paid to authors is to come from the users themselves—either individuals or institutions—or is to be paid on a predetermined rate per loan, then obviously the wider the net is cast, the greater will be the benefit to authors in general. But if the total sum of money to be paid in any one year is predetermined in a more arbitrary way, the only effect of extending the range of libraries from which use information is collected is to change the way in which this limited fund will be distributed. For example, the inclusion of academic and industrial libraries in addition to public libraries might be expected to increase payments to authors of standard and specialized nonfiction, and to reduce those to writers of fiction and children's books. In practice, the problems of data collection are greatly increased by attempting to extend PLR into these areas, and to create a stratified sample on the wider base would be extremely complex and expensive. For these reasons, public libraries provide a convenient and, arguably, a sufficient area for at least the initial establishment of a PLR scheme.

Although there is no logical reason to distinguish, for PLR purposes, between uses of books on library premises and elsewhere, the familiar problems of measuring the use of books on library premises are enough to discourage, and probably to prohibit, any attempt to apply PLR to reference use. The effect of this is likely to be different in different countries and in libraries of different kinds. Where home reading is the norm, books consulted on library premises in all but the largest libraries are likely to consist mainly of quick-reference volumes, most of them not by named authors and therefore not eligible for PLR. In total, therefore, the effect of applying PLR only to books used for home reading is unlikely to be significant.
Problems of Measurement and Recording

The application of PLR involves making payments to authors which are related in some way to the use of their books in libraries. Since large numbers of authors, books, loans, and libraries are involved, there is no simple way each library can be made directly responsible for transmitting money to authors, whatever funding system may be adopted. Two quite separate processes must therefore be accommodated within a PLR scheme: (1) the collection of information from eligible libraries about the use made of eligible books by eligible authors; and (2) the determination of the cash entitlement of each author, and payment of the money due. This second process requires a registry or clearinghouse, in which a register of eligible books and authors can be maintained and returns from libraries aggregated.

Measuring Library Use

Borrowing

Whatever the theoretical basis for PLR may be, the payments to which it gives rise must logically be related to the use of books in libraries, and the most relevant measurement of use is clearly the number of times each eligible book is borrowed during the review period (which here will be assumed to be a year). The majority of copies of each eligible book in a public library can probably be expected to be borrowed at least once a year, and many will be borrowed over and over again—perhaps up to twenty or thirty times, in the case of a popular novel. This method of measurement, although it produces a figure strictly related to use, requires the recording of a very large number of transactions (eligible bookstock × average issues per volume). As already noted, this method cannot easily record the use of books on library premises, if that is considered to be desirable. For these reasons, two surrogate methods of measurement have sometimes been found attractive—"stock" and "acquisition" measurement methods.

Stock

Each eligible book in stock, whether on the shelves or on loan, might be counted only once each year. The total count by this means is much lower (eligible bookstock × 1), but the result is a measure of availability for use rather than of actual use. A seldom used book will score as highly as a very popular one, and this will tilt the scales in favor of the author of a specialized scholarly work and against the best seller. In effect, therefore, this method is rather more generous toward authors.
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who cannot expect a large income from royalties, but for that reason it is a departure from any logical concept of PLR. Although there are considerable difficulties in recording by nonmechanical means the number of eligible books held in stock each year, these difficulties mostly disappear when stock records are computerized.

Acquisition

To count eligible books only once, at the time of their acquisition by the library, is a relatively simple task. If the size of the stock is assumed to remain constant, with a steady rate of acquisitions year by year, the number of transactions to be counted annually \((\text{eligible book-stock ÷ average shelf-life per volume})\) is by far the lowest of these options. Moreover, the task of recording at a limited number of acquisition points is likely to be less onerous than in either of the alternative methods, and further simplification may be possible if use can be made of the computerized records of library book suppliers. One seemingly attractive alternative would be to insert in all books a tear-out label carrying a machine-readable ISBN. Then, in the case of books purchased by libraries, the labels could be removed and sent in periodic batches to the clearinghouse. This possibility, however, has been found to be prohibitively expensive. Some libraries might instead be able to provide details of acquisitions as a by-product of their own computerized procedures. Whatever method of recording is adopted, however, the result is again a measure of availability, not of actual use; availability, moreover, is assumed to be the same for each book acquired, whereas even the stock-count system allows for the varying lengths of time the books are actually available on the shelves. A further disadvantage is that a newly introduced system on this basis cannot take into account books already in stock at the time of its inception. In spite of these shortcomings, this rough-and-ready system has the considerable merit that its administrative costs are relatively small, thus ensuring the maximum benefit to authors from any limited PLR fund.

Sampling

None of the methods of measurement described above need be applied to 100 percent of eligible libraries. The point has already been made that if PLR payments are to be made from a limited fund, the purpose of measurement is merely to determine the way in which this will be shared. This can be done by sampling, which reduces both administrative costs and inconvenience to libraries. Similarly, if pay-
ment is to be made at a predetermined rate per loan, averaging from a sample is likely to be acceptable. Full collection of data would be necessary only if money were to be collected from individual libraries or their members in proportion to their use of publications eligible for PLR.

If the pattern of use in public libraries (or any other category deemed eligible for PLR purposes) were consistent and predictable, sampling would be an easy matter, but this is clearly not so. Use fluctuates over time, and is affected by locality characteristics, individual preferences, size and scope of libraries, and buying policies of librarians. The selection of a stratified sample must reflect these differences, and its size must achieve a balance between a high degree of accuracy and low administrative costs.

An exercise carried out by the Department of Education and Science (DES) Technical Investigation Group in the United Kingdom classified 6235 public library service points in thirty-six "strata" according to geographical region, hours of opening, and type of authority. Seventy-two service points (a little over 1 percent of the total) were randomly selected, two from each stratum, and from these information was collected about the use of 140 books by a varied and carefully selected range of authors. The results indicated that with such a sample, an author whose correct payment should be £100 could expect that, over a period of years, two-thirds of his annual payments would be within 4 percent, and only one in twenty would be outside 8 percent, of the amount due; over a long enough period, these fluctuations could be expected to even out. On the other hand, variations in patterns of borrowing due to geographical factors could give a two-thirds chance of a bias exceeding 32 percent. This could be avoided by rotating the sample at predetermined intervals. In the United Kingdom scheme, administrative costs are to be kept down by adopting a sample of forty-five public library service points, changed every five years; but the pattern and extent of variation—and hence the required sample size—will be different in different countries.

The Issue-based Scheme Further Considered

The collection of data about borrowings of eligible publications from library service points involves two processes—the recording of borrowings, and the transmission of information to the clearinghouse or registrar. These processes can be carried out most conveniently using machine-readable records and a lightpen or other form of electronic recording.
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reading device. Information which is to be usable by the registrar must be in a standard form, or capable of being converted to a standard form, probably involving the identification of each publication by its ISBN, or, in the case of pre-ISBN publications, by a standard pseudo-ISBN allocated by the registrar. In a library with computerized issue records but using other charging symbols, a conversion file to ISBNs may be required.

If a library included in the sample does not already use a computerized issue system, the most satisfactory solution will probably be to install simple electronic recording equipment for the period during which it forms part of the sample. (Although some choices are possible in devising a stratified sample, it would probably be an unreasonable distortion to select only computerized issue points.) The bookstock of such a library needs then to be given machine-readable ISBNs, and all other eligible books lent through it during the sample period need to be processed in the same way. Experiments in several libraries have suggested that a team of four could insert labels bearing machine-readable ISBNs at an average rate of 650 books per working day. In libraries where the normal book-issuing process is not computerized, the additional work involved in recording loans for PLR purposes by the use of light pens is likely to take about eight minutes per 100 books.7

Nonmechanical methods of data collection and transmission are likely to be more tedious and expensive, subject to error and open to possible abuse. The simplest would be the removal and forwarding of completed date-labels on which the numbers of issues were recorded. But these are not available in all issue systems, and in any case they contain information about use which librarians might wish to retain.

Strictly speaking, there is no need to record the use of books title-by-title for PLR purposes. Payment will be made to authors for the use in libraries of all the books for which they have claimed PLR, and differentiation will not usually be necessary. However, it is possible that an author may not choose to claim PLR on every one of his titles, or may in some cases allocate his right to someone else; there are dangers of confusion between authors with similar names if titles are not recorded; and there is likely to be some interest in the information about library use of specific titles which can become available as a result of data collection for PLR purposes. The DES Technical Investigation Group, having considered the alternatives, concluded that there was “likely to be a clear cost advantage in favour of using ISBNs and that they would also provide a more flexible system in enabling future changes to be made to the scheme.”8
The Clearinghouse

Distribution of money to a large number of authors on the basis of information obtained from a large number of libraries involves many operations which are best carried out by a central clearinghouse or registry. Whether this is thought of as a society acting on behalf of its author members (like the Performing Right Society) or a disinterested agency concerned only with ensuring the fair and efficient operation of the scheme (like the administrative office envisaged in the United Kingdom PLR scheme) does not significantly affect its role. The duties might even be divided between two or more agencies if that seemed expedient. In one way or another, however, provision must be made for the following:

1. to receive and validate applications by eligible authors for PLR in respect to specific titles, to take note in appropriate cases of the author’s instructions regarding the allocation of pecuniary benefits to other persons or groups, and to continue such a record from the date of registration until PLR lapses at the predetermined date (perhaps fifty years after the death of the author) or earlier if the current beneficiary so requests. In due course it will be necessary to weed out these records, partly perhaps by requiring authors or their beneficiaries to reregister after a period during which no payments have been payable;  
2. to obtain periodically records of the use of books subject to PLR from the libraries participating in the scheme. Since the individual libraries will usually have no means of knowing which of their books are subject to PLR, they must be expected to supply records of use of all books in their stock, and from these the clearinghouse will have to extract those which relate to eligible books. The numbers of borrowings of each title from all participating libraries must then be aggregated and, if necessary, grossed-up from a sample or represented as a percentage of total eligible borrowings, depending upon the method by which payment will be made; and  
3. to calculate at predetermined intervals the PLR fee earned by each title, to aggregate the amount due to each beneficiary, and to make payment.

The manipulation of data for these purposes must clearly be automated: relevant information about each eligible author or other beneficiary (each identified by a number) and title (represented by ISBNs) will be recorded in computer files. Information received from libraries will also usually be in machine-readable form, but if not (if, for example, it
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consists of date labels removed from books), it will be converted to machine-readable form on arrival at the clearinghouse. The processes of relating use records to titles, titles to beneficiaries, and beneficiaries to cumulated periodic payments are performed by a simple computer program.

The clearinghouse is also the natural home for the administration of the scheme itself. This includes establishing working relations with participating libraries, defraying their running costs, and if necessary, arranging for the sample of libraries to be changed periodically. Methods of recording loans have to be kept under review, and any equipment supplied specifically for that purpose serviced, moved as the sample changes, and in due course replaced.

Since public money and conflicting interests are involved, it goes without saying that accounts and methods must be fully open to scrutiny. Disputes are bound to arise, regarding both the administration of the scheme (the responsibility of the registrar) and its scope and funding (which are likely to be beyond his control). Policy on such disputable matters as the definition and treatment of joint and multiple authors therefore needs to be carefully defined and scrupulously adhered to. Studies in the United Kingdom have indicated that for all these purposes, a clearinghouse for a loan-based PLR scheme, using a sample of seventy-two library service points and handling 50,000 initial registrations by authors, might require a staff of thirty-five to forty people.¹⁰

Sources of Funds

There are three methods of funding a PLR scheme: (1) by a levy on the actual users (i.e., individual borrowers); (2) by a levy on the intermediary institutions (i.e., libraries); and (3) by a grant from a central source (e.g., the central government).

A levy on users is the most logical method, and the simplest in concept, but it is by far the most difficult and expensive to administer. There could, for example, be no question of sampling: book borrowers in every eligible library would have to pay their fee every time they borrowed an eligible book. The identification of eligible books in every eligible library would present more problems than the blanket collection of data about all books borrowed in a sample of libraries for later comparison with a list of eligible titles, which is possible with other methods. It would be possible to commute individual fees for a subscription or season ticket, merely to provide a fund for distribution on a use-sample basis, but this would be a departure from the principle of
PLR and would bear unfairly on readers with a taste for reading
nineteenth-century novels or other ineligible works. There would be
additional costs and administrative problems, too, in transferring
money—as well as records of use—from each library to the central
clearinghouse. However, the most serious objection to the method of
direct payment by users is that it is bound to discourage some people
from using books and to influence the reading patterns of others.

A levy on libraries, if calculated on a fairly “rough-and-ready” basis
(related perhaps to total use of the library or its current expenditure on
books), need present no great administrative problems. But an attempt
to relate the levy to use of eligible books would be much more difficult.
The method, however, is open to objection on much more serious
grounds—namely, that any fee exacted from a library and charged to its
budget is unlikely to be matched by additional income. Instead, it will
have to be compensated for by reducing expenditures elsewhere, and
this will often mean reducing expenditures on books.

A central government grant, although it removes from users the
responsibility for payment, is in all other respects the simplest and least
objectionable system: it has no unfortunate side effects, and collection
of money from a large number of sources is avoided. It has already been
noted that the method by which PLR is funded has a significant effect
on other aspects of the scheme. If funding from a central source consists
of a fixed total amount rather than a predetermined payment per loan,
the scheme must be concerned with distributing this amount, regardless
of the number of authors or the number of loans involved. In the other
two methods, the size of the fund would increase in proportion to the
number of borrowings recorded or the number of institutions partici-
pating in the scheme, and payment would most logically be made on the
basis of a fixed amount per loan.

**Payment Per Loan**

The payment which might reasonably be made to an author whenever
a book is borrowed from a library under a PLR scheme cannot be
related with any precision to his likely income from royalties or to any
other measure. If the scheme is financed by central government grant,
the size of the grant—and hence of individual payments—will in prac-
tice be influenced by the authors’ view of what is reasonable, the govern-
ment’s view of what is practicable, and ultimately, by public opinion as
to what is fair. In the United Kingdom, where over 600 million borrow-
ings from public libraries occur each year, each million pounds avail-
able for distribution would provide rather less than 0.2p. (£0.002) for each borrowing, if all books borrowed were subject to PLR. In fact, many of the books borrowed would be ineligible for reasons already discussed, and no reliable estimate of an author’s likely income per loan is available.

Once a book is deemed to be eligible for PLR, a standard rate of payment per loan would be the most obvious and simplest system to administer, and the most likely to be adopted. But other possibilities merit consideration. It may seem unjust that a pamphlet of some fifty pages or a slim light novel should earn the same PLR fee as a major work of scholarship of five hundred pages. The author’s royalty is related to the cost of publishing his book, and it could be argued that PLR should be treated in the same way.

PLR, strictly interpreted, requires the distribution of payments to authors as nearly as possible in proportion to the use of their books in libraries. But such a pure application of the PLR philosophy is likely to prove administratively cumbersome and socially unacceptable. On the one hand, a great deal of the money available would be dissipated among the large number of authors whose few issues a year earned fees too small to justify the cost of their payment; on the other hand, the best-selling authors, already well rewarded by royalty payments, would reap a second harvest from the use of their books in libraries. There may therefore seem to be advantages in stipulating upper and lower limits of use, beyond which payments would not be made. An author who fell below the cutoff point in any year might be allowed to carry forward his recorded PLR loans until he reached the payment level in a subsequent year. The possibility that payments might be made to authors via their publishers was considered by the DES Technical Investigation Group, but was discounted because of the complications which would result.

**PLR Costs Reviewed**

To provide a sum of money annually for distribution among authors in recognition of the use of their books in libraries is administratively a simple matter. To provide a basis for distribution which is precisely related to the amount of use which each book receives is complex and costly. The cost of collecting use data can be reduced by compromising on accuracy. Economies can be effected by accepting statistics relating to purchases or stock instead of actual use, or by collecting data from a sample of libraries, or by a combination of the two. In distributing payments to authors, there can be no substitute for a
carefully programmed, fully computerized operation. Additional costs will be incurred if the income for the scheme is also to be collected on the basis of use, whether by individual users or by institutions.

The United Kingdom PLR program will consist of payments from a centrally provided fund, distributed to an undetermined number of authors on the basis of issue data collected from a sample of forty-five libraries (1 percent of the total of eligible service points). The total administrative costs of this scheme, including payments to libraries to cover the cost of data collection, are expected to be £280,000 per annum, or 13 percent of an initial fund of £2.2 million per annum. The cost of administration will not, of course, increase in step with any future enlargement of the fund.

The Introduction of a PLR Scheme

There are differing views as to the desirability of PLR in general and the practicability of any particular scheme. Some of the skeptics or outright opponents may be among those whose active cooperation is needed if a scheme is to work successfully. Preparation must therefore be thorough and systematic, and must include a considerable public relations program to ensure the maximum degree of acceptance, interest and enthusiastic participation. Preliminary discussions should cover the principles underlying the scheme, reasons for preferring the methods actually proposed, and the detailed operations which will need to be carried out. The clearinghouse must be established early in the set-up period and all staff concerned in the scheme, both in the clearinghouse and in participating libraries, must be trained in their tasks. Authors themselves must be satisfied that the scheme is the most satisfactory that can be achieved, and—at a second stage—must be given adequate opportunity to register their publications. Some physical preparations will also be necessary in the participating libraries. All this takes time:

On the basis of information at present available and in the light of experience elsewhere in introducing novel and complicated administrative procedures it seems reasonable to assume that the time that will elapse between the determination of the scheme to be used and the start of the recording period will be about 2½ years for a loan based scheme. This may be reduced to two years if outside contractors are employed, for example, to help with the design of the scheme. In a purchase based scheme where library authorities would not need to label existing bookstocks it might be possible to shorten these timetables by up to six and three months respectively.
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In the United Kingdom, legislation authorizing PLR was passed in March 1979. The proposed scheme was outlined in a consultative document\textsuperscript{13} issued toward the end of that year, and it is likely that the scheme will come into operation in 1982.

Possible Consequences of PLR

A PLR scheme is capable of being weighted to provide benefits wherever they may be thought desirable: the use of such a system to assist authors writing in the vernacular language is a case in point. But the straightforward scheme, however welcome it may be to authors in principle, is open to the criticism that it provides appreciable benefits only to those who least need them. Authors whose books are extensively used in libraries are usually the ones who also have a considerable sale in bookshops. They may well find not only that their royalty income is supplemented by PLR, but also that issues of their books from libraries continue in some cases at a sufficiently high level to produce appreciable PLR income for some years after royalties have dwindled to a trickle.

A large number of other writers can expect PLR to provide a modest addition to their incomes, but far more will find themselves below the cutoff point, where no benefits accrue.

Fears also have been expressed that possible benefits to authors might be eroded, directly or indirectly, by the claims of publishers. The interest of publishers in PLR has already been noted, and the existence of this additional source of income for authors might at some future date influence negotiations on royalty payments, or cause publishers to require a proportion of PLR income in their contracts with authors.

If PLR payments were to become a significant factor in authors' incomes, and were calculated at a flat rate per volume regardless of cost or length, several consequences might result. The more influential authors, sure of their public and able to negotiate with publishers from a position of strength, may prefer to write short books rather than long ones, press for their longer works to be issued in several volumes, and resist the publication of "omnibus" volumes. Authors who consider themselves inadequately recompensed for the use of their books might even wish to withhold them from libraries, as A.P. Herbert once did as part of his campaign for the introduction of PLR.
ARThUR JONES

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Public Lending Right:
The American Author’s Viewpoint

JACK R. HART

American authors are just beginning to hear about public lending right (PLR). But, for the most part, they seem to like what they hear.

Completely confident generalizations about the American writer’s attitude toward PLR are impossible, if only because the attitude is too unformed. At this point, PLR has attracted understanding and support among only a relatively small group of authors active in major East Coast professional organizations.

Nonetheless, interest in PLR is building. Several major writers’ publications have carried at least brief comments on the right within the past year, and the general climate of opinion among authors eventually may stimulate a full-fledged American PLR campaign. But for now, the prevailing opinion is one of first impression, an opinion that the executive secretary of one writers’ organization describes as basically positive (“a little bit of palm-rubbing”) mixed with skepticism (“it’ll never happen in my lifetime”).

Grace Weinstein occupies one of the better vantage points to survey the American writer’s opinion from her position as president of the Council of Writer’s Organizations, an umbrella group embracing a number of leading writers’ associations. She confirms that few authors are conversant with PLR: “I was surprised when I brought it up at one of our meetings that it had to be defined for a lot of people. I’ve been hearing about it for a number of years and I think it would be a wonderful thing.”

Jack R. Hart is Associate Professor, School of Journalism, University of Oregon, Eugene.
Weinstein, who also serves as board president for the American Society of Journalists and Authors (ASJA), finds her own enthusiasm for PLR mirrored in the reactions of fellow writers hearing about the scheme for the first time. The most common preliminary reaction, she says, is "Hey, that's great." Other writers share Weinstein's impression that American authors would eagerly embrace a PLR plan on this side of the Atlantic. Murray Teigh Bloom, an ASJA committee chairman, nonfiction book writer, and author of hundreds of magazine articles, says, "Everyone sees it as all pluses and no minuses." This observation echoes Australian travel writer Colin Simpson's conclusion that among those on the producing side of the Australian book industry, attitudes toward PLR are "utterly predictable." Simpson, who helped lead the successful Australian campaign for PLR, says the obvious conclusion is "that our authors think PLR is of immeasurable benefit, that publishers are all for it, and that literary agents...look to their authors to let them collect authors PLR and charge commission on it." If Simpson's assessment applies equally to American book producers—and the observations of insiders like Weinstein and Bloom suggest that it does—then the spreading word on PLR seems likely to ignite an "utterly predictable" American campaign for PLR along the fiery pattern set by British writers. But the prospects for such unified PLR support among American authors are not nearly that certain. A variety of factors sets U.S. writers apart from their Australian and European counterparts, and suggests that the road to an American PLR scheme will be a rocky one—if it can be traveled at all.

A basic barrier is that American authors are not as organized or professionally minded as many of their cousins elsewhere. Bruce Bliven, Jr., the well-known juvenile and adult nonfiction book writer and New Yorker staff writer, says, "American authors are pretty passive and pretty disorganized." He adds that he hasn't even found the unanimity of support encountered by Weinstein and Bloom, concluding that outside of the tight group of professionally active authors, support for PLR is divided. "I've found about a half-and-half split," he says. "An awful lot of people instantly think it would be a bad idea. It somehow sounds all wrong to them. I think there's an awful long way to go before there's even author support for the idea." Murray Teigh Bloom, despite his warmth for PLR, concedes that even among supporters, the scheme is not a major professional concern: "It's just not a front-burner item. Nobody is beating a loud tom-tom over it." The group most likely to make an issue of PLR is the Authors Guild, Inc., a New York-based writers' organization that has taken the
lead in exploring American PLR possibilities. The Authors League, a related organization, supported the first and only American PLR legislation ever before Congress, a 1973 bill which quietly died in committee. The Authors Guild Bulletin, that circulates among a membership of 5000 professionally-minded writers, has given PLR the most extensive recent coverage of any writers' publication, and is a principal source for what little that American authors know about the scheme. Rob Cather, the Guild's assistant director, has been studying PLR as a preliminary to a possible Guild campaign for American PLR legislation. Cather agrees that consciousness-raising among authors is an essential first step to any further development. He says: "I think most authors are scarcely aware of it. I'd never heard of it myself until...the Guild asked me to do some research into it, and I was astonished. Consulates and cultural offices at embassies had never even heard of it; librarians had no listing of it, even in their catalogs, and it was very hard to find people who even knew what you were talking about."

However, the Guild has seen to it that far more writers, especially those in the New York metropolitan area where its membership is concentrated, at least know what PLR is and how it basically works. In December 1979 Jan Gehlin, a Swedish author and PLR supporter, told Guild Council members about his country's system. Two months later the Guild invited Lord Willis, an activist veteran of the British PLR campaign, to talk about PLR at a well-attended New York meeting; his remarks were printed in the Guild Bulletin. The audience included not only Guild members, but representatives of other writers' organizations (such as Mystery Writers of America), who presumably are spreading the word among their colleagues. Moreover, the Guild Council, which has taken an active interest in PLR, includes such well-known and influential American authors as E.L. Doctorow, John Hersey, Frederic Pohl, Barbara Tuchman, and Isaac Bashevis Singer.

Robert Caro, the Guild president and author of The Power Broker, remains extremely circumspect about the possible direction the Guild will move on PLR: "What we've been doing so far is listening. It's a little early in the day to know exactly what we're going to do." The Guild's direction on PLR depends at least in part on the results of a major survey of authors' incomes that was due to be completed by the Guild Foundation, an organizationally separate group, in fall 1980. Caro says that no current, reliable figures on the subject exist—"I wouldn't base any book I wrote on the kind of information that is now available on the economic condition of writers in America"—and that some hard facts on the finances of writing in this country must precede any major attempt to change the system.
Despite the lack of statistical data, American authors are already remarkably consistent in their opinion that the serious writer's financial outlook is bleak, growing bleaker, and sadly in need of new income sources. That attitude may do more to spur an active campaign for American PLR than any other factor. Bliven states: "Almost all the writers I come into contact with at the New Yorker, and who are putting books together...just take book publishing as a hobby. The number of people who make any money out of writing books is so small that a serious writer hardly thinks there's any serious chance of making any money out of book publishing." Cather of the Authors Guild heartily agrees: "You can get on the best-seller list now and still not have enough to pay the bills. I think there's a great deal of frustration that comes with that." Bliven, Cather and others close to the professional writing world agree that the public perception of book writing as a lucrative profession is seriously distorted. Bliven adds: "The attention is so focused on the big television mini-series rights and the very few extraordinarily successful books. But those are so rare. I've only really met one person who had that kind of lightning hit him, and I've been sitting here in the middle of writers all my life." Cather thinks that overcoming public misconceptions would be one of the first priorities for a PLR public relations campaign. He believes the Guild Foundation study of authors' incomes will be a step in that direction: "I think when the public sees how little the typical author makes, it will have quite an impact." In the meantime, the impression among writers that their financial lot is in need of repair accounts for much of the initial enthusiasm for a PLR scheme. Peter Pautz, executive secretary of Science Fiction Writers of America, quips: "Obviously, I'm in favor of anything that puts money into writers' pockets. Well...almost anything." An added impetus for a PLR drive in this country stems from the widespread belief that the author's lot is growing worse. Active professionals tuned in to changes in the book industry view growing corporate control as a deadly threat to serious book writing. Their chief concern is that corporate ownership will act as a literary Gresham's Law, driving out quality books in favor of mass-appeal paperbacks. Grace Weinstein states: "Publishing has changed a great deal in the past few years, or even in the past two years. The conglomerates are taking over and it's very difficult now to even sell to a publisher the so-called middle-range books, the good useful books that might have gotten a $10-15,000 advance ten or twenty years ago. Today they're just not interested in that. It's the potboiler stuff or the big novel they know they can sell in
quantity.” Richard Lingeman, a book editor, magazine contributor and assistant managing editor of The Nation, says the success of a few best sellers may actually harm the health of the whole industry. “The block-busters siphon money away from the smaller paperback sales,” he explains. He also worries about the vertical integration that has combined paperback and hardcover publishing operations and dried up separate bidding for paperback rights.

Nonetheless, not all American writers would be likely supporters of a PLR campaign. PLR has little appeal to writers who aim at the mass market and who enjoy few library sales. The science fiction writers, riding the crest of a sales wave that rises far above the rest of the fiction market, are one such group. Norman Spinrad, president of Science Fiction Writers of America and a successful science fiction novelist who has published with Doubleday, Avon and others, notes with satisfaction that royalties in his field are way up in the past half-dozen years, and that “something like half” of the fiction now published is science fiction. He also notes that the paperback author has a “built-in inflation edge” because royalties rise as book prices rise. Spinrad’s blunt assessment is that much of the grumbling about writers’ incomes stems from: “all kinds of people writing things that nobody wants to read. These are the people who are starving, the kind of people who are forever living off grants. They are all poverty-stricken.” Spinrad underscores the kinds of differences among writers that might cripple any authors’ campaign for PLR when he wryly adds, “The same people have a snotty attitude toward science fiction.”

One answer to Spinrad is that PLR could free writers from dependence on government grants as a source of alternative financial support. Simpson, the Australian PLR activist, endorses the scheme precisely because of its foundation in the public’s reading tastes, determined by what is checked out of libraries. In his crusty fashion, Simpson uses that rationale to dismiss the argument presented by librarians opposed to the Australian PLR plan, i.e., “that governments should give authors more literary grants; then they wouldn’t need PLR.” He says: “Do I have to spell out...how dim-witted and short-sighted that ‘alternative’ is? Most books don’t and are not intended to qualify as ‘literature.’ Grants are payments that have no long-term effect in making authorship a way of earning a living.”

Several American authors agree that government grants have not been effective in supporting the literary arts and look to PLR as a more effective alternative. Cather says writers have gotten a fair shake from neither government nor the private foundations: “There just isn’t any
money for literature. It’s for the dance, opera, theater, what have you...." Elizabeth Janeway, a prominent feminist, novelist, nonfiction book author, and member of the Authors Guild Council, says literature has been shortchanged in comparison with the other arts because writers, who often are isolated from institutionalized arts organizations, aren’t plugged in to the usual channels of government or foundation support. “Part of the problem,” she says, “is that government doesn’t know how to maintain writers because we’re individuals. It’s easy enough to get a grant for a museum or a symphony, but not for writers. I conceive of PLR as a way the government could make funds available to authors, using the libraries as channels.” Janeway also sees PLR as a way of defusing one of the biggest fears about schemes for government support of writers—that he who pays the fiddler calls the tune. She explains: “If you funnel money to individual writers by way of libraries, you’re putting that institution in between the government and the individual. That way it isn’t up to the government. What would go to writers would be by choice of the public.” She adds that PLR provides a needed protection for government as well, because individual grants to possibly controversial writers make government agencies vulnerable to public criticism: “Somebody can always come after them. Senator Proxmire will give his Golden Fleece Award....”

Writers active in professional organizations don’t see the threat of government control as any real impediment to a successful American PLR plan, often citing positive reports on freedom from government influence among their counterparts in European countries with working PLR programs. They also point to experience with existing U.S. government support channels for literature as a positive sign. Cather says the National Endowment for the Humanities “seems to have done a pretty good job” on that score, and Nora Sayre, a Guild Council member, claims her own NEH grant was “splendidly stringless.”

Nonetheless, the mere linkage of government with writers’ incomes may be an important psychological hurdle that must be cleared before PLR wins widespread American acceptance, even among authors. Bliven says that fear of government involvement is “part of the hot-stove reaction” he sometimes receives when introducing acquaintances to PLR. Caro says his group must be assured that PLR can be administered “with no threat to First Amendment freedoms” before any decision is made to move ahead on a PLR campaign.

One rebuttal to Bliven’s “hot-stove reaction” is the argument that PLR might in fact enhance First Amendment goals by protecting outlets for a diversity of serious literary viewpoints. Janeway, for one,
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says the threat of conglomerate publishing control is so grave that something like a PLR scheme is necessary to preserve the market for serious, thoughtful books that don't necessarily enjoy huge sales. That is a market that libraries traditionally have provided, and that could be buttressed by an appropriate PLR plan. She states: "The number of authors who have to trim their sails by submitting to editorial control is increasing. The number of authors who can make their living by writing as they please, and by being published by a free-thinking publishing house, is now a minority. It would be nice to have some free-lance authors around who are free to express their opinions."24

American authors who see such broad possibilities in PLR naturally reject the argument that the right would represent a radical, and dangerous, departure from traditional property rights. For example, a British librarian's handbook contends that PLR "brings into law a new concept in respect of public ownership, by inferring that the community has a continuing obligation to the originator of the articles it owns."25 Janeway responds tersely that she doesn't "see any point in that. It's all a matter of definition. There are no sacred economic laws." Continuing royalty obligations are already a part of the American economic system. "You get royalties from oil wells," she notes.26 Herbert Mitgang, novelist and nonfiction book author and New York Times writer, who has written on PLR for his newspaper, compares the PLR royalty provisions with the rerun fees paid on television programs.27 Simpson is so irked by the notion that traditional property rights somehow stand in the way of PLR that he responds, with a good deal of hyperbole, that "the author and the publisher are the only producers whose works do not have to be bought, but can be taken home and used for nothing."28

Simpson's rough-and-tumble rhetoric reflects the fire kindled by the PLR campaign both in Australia and Britain, where the main battle line fell between organized authors and various associations of librarians. Simpson still resents what he calls "unscrupulous" tactics by Australian librarians in opposition to PLR;29 and some of the exchanges between British writers and librarians reflected none of that nation's traditional public reserve. The PLR issue has pitted librarians against authors in other countries as well. Swedish authors demonstrated for higher PLR rates by withdrawing every Swedish book from the nation's libraries.

Much of the caution with which Caro and the Authors Guild are approaching PLR stems from the fear that the concept could produce the same kind of writer-librarian animosity it has generated elsewhere,
particularly in Britain. Although Mitgang has written in the *New York Times* that "the proposal is expected to arouse strong opposition from librarians," Caro and others hope to avoid confrontation by developing an American PLR plan with the concerns of librarians in mind. Caro says the Guild's main concern, along with making sure that government funding does not lead to government control, is that "funds for public lending right be obtained without cutting into already inadequate sources of income for the libraries of the United States." 

Several American authors express bewilderment with the writer-librarian conflict PLR has produced elsewhere, and suggest that it stems from an unfounded fear that PLR somehow will cut into library funding. Mitgang says it is precisely this fear that is "the big intellectual stumbling block," and adds, "The idea, of course, is that the money is supposed to be federal aid to writers, not library aid to writers." Bliven, who says he is "terribly puzzled" by the animosity PLR aroused in Britain, says the British experience just doesn't jibe with the warmth he has encountered in dealing with librarians, and the attitude toward libraries he has encountered among American authors: "I can't ever remember any acquaintance of mine speak of the library as anything other than an asset, a sort of court of last resort. He can always think to himself that even if his book hasn't done very well, it at least will be available in the library." Bliven concurs heartily, noting that librarians and authors should be natural allies. "We have many common interests," she says; "We oppose censorship. We stand together on all kinds of things." Still, Janeway echoes a common authors' theme when she says that librarians "aren't realistic" about the financial needs of authors, that they don't adequately realize: "that the books have to come from somewhere. They have to come from people who need to eat." 

The notion that librarians unthinkingly exploit authors could be the core of authors' British-style bitterness toward the library system if a full-scale PLR campaign produced strong library opposition. At present, however, few American authors appear to have given much thought to the library as a source of lost income. Bliven says, "I've never met a writer who had any idea what his own library borrowing amounted to," but he concedes that "if somebody discovered he was the world's most successful author—in library terms—and didn't have any money, he might be pretty sore." 

Even if the typical author doesn't carry lending-rate statistics around in his head, he does have a sense of the library market that—if nourished by widespread pro-PLR propaganda—could be the seed of a sense of exploitation. Peter Pautz, of Science Fiction Writers of America,
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has been following with concern a trend away from library purchase of expensive hardcover editions and toward cheaper paperbacks. And the old author's lament, often illustrated by Jane Austen's observation that "People are more ready to borrow and praise than to buy," is not unknown among American writers. Cather observes that his middle-income neighbors do a great deal of library borrowing: "Those people could afford to buy books, but they don't. And I think they would agree that it isn't quite fair." And Janeway sounds like a latter-day Jane Austen when she refers to the campaign for a new copyright statute and remembers the arguments for library copyright exemptions: "I was told over and over again how useful it was to have my name get known. It's dandy to have my name get known, but I like to be paid for it. People are always willing to promote books, but how about the poor starving author? The librarians seem to think you put books on the shelves and they breed. They don't breed. We write them."

The comments by Cather and Janeway hint at the moral dimension that seems to enter the discussion whenever authors get worked up about PLR. The recurring theme is that authors who back PLR are asking only for their due: if they produce useful products, they deserve to be paid for them. The quest for simple justice sometimes seems to override the hard financial practicalities. Brigid Brophy, the British novelist and biographer and the prime mover in the British PLR campaign, played the theme when she said: "It's more a matter of morale than money. If nothing else, it shows that the government is actually caring slightly for the people who help fill the libraries with their raw material." The moral dimension makes PLR far more appealing than other schemes for supplementing authors' incomes, such as government grants. The fact that PLR payments derive from actual use (by library patrons who have checked out a book because they want to read it) is terribly important to authors. Janeway has said that she considers it crucial to supplement authors' incomes "in some kind of legitimate way." Does she mean money that is earned, rather than some kind of government handout? "My God, yes!" she replies.

That strength of feeling, along with the widespread perception that serious American authors face a glum financial future, suggests that the idea of PLR may have far more appeal here than it has manifested so far. American authors are particularly vulnerable to feelings of isolation and to a psychological lack of worth, because of both their physical isolation in a large country and their lack of financial recognition. American authors may have untapped feelings of moral outrage that could surpass those already articulated by their more organized and
closely knit European cousins. Bliven remembers teaching at an Indiana writers' workshop where "there were a lot of people who seemed to have come out of a sheer sense of loneliness."42

Because PLR is a form of recognition, it can figure in the author's viewpoint as a salve for that kind of loneliness. Subscribers to Coda, a newsletter published by Poets & Writers, Inc., recently heard about European PLR in a cover article entitled, "Poets in Other Countries—Is the Grass Greener?" The article opened with the question, "Are writers more valued, more accepted, seen as necessary to the social fabric in Europe, or South America, or elsewhere in the world?" The answer once again tapped the vein of moral ore so often found superimposed on the PLR discussion. "Many American writers would answer yes, resoundingly. The feelings of isolation, superfluosity, absurdity,...set U.S. writers at bitter odds with our country's pervasive work ethic."43 As British novelist Eva Figues put it, "Due payment for work done and services rendered is not only a practical necessity but a form of psychological feedback which we need to make us feel wanted and necessary to society."44 The great appeal of PLR, adds Grace Weinstein of ASJA, is that "it would bring the public's attention to the fact that this is a product that has an owner, a creator."45

The specific form an American PLR plan might take is, however, still an open question. The idea is too new for a majority of American writers to have formed opinions on most of the hard specifics that must be decided before coming up with a concrete proposal. On the touchy question of just who would be eligible to share in PLR royalties, for example, Janeway frankly admits, "I haven't the slightest idea at this point."46 Bliven has given some preliminary thought to that question and tentatively suggests that publishers should share in PLR royalties, as they do in Australia: "I see public lending right as encouraging good books. So I would want everybody to have a part of it."47 Mitgang thinks that maybe authors would receive the primary royalty, and that a cut for publishers and literary agents would be a matter for contract negotiation.48 Cather notes that Swedish authors are talking about extending the right to photographers, illustrators and the like, and suggests that "logic points in that direction." However, his attitude is still unformed, and he quickly observes that "the world is seldom logical."49

One idea American authors familiar with PLR do seem to accept consistently is that an American plan will include a ceiling on PLR royalties similar to that found in European systems. When the Authors Guild Council voted to undertake a study of PLR, the Guild Bulletin story on the action cited the need for a limitation on payments so that a
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few best-selling authors wouldn’t be the main beneficiaries. Almost every author who gets down to talking about PLR specifics feels obliged to mention something about making sure “the rich don’t get richer.”

American authors are far less certain about whether a PLR plan here would include some central fund for support of writers based on need or merit, rather than just on lending rates or library purchases. No great objection to the idea has surfaced, but several writers see distribution problems in the United States that don’t face authors in the Scandinavian countries, where writers’ welfare funds have been a part of PLR since the beginning. Weinstein comments, “I don’t quite know who would administer such a fund here,” and Spinrad points out that this country lacks any all-embracing writers’ union or central writers’ organization which would simplify distribution of such a fund. He does suggest this need could be recognized in a PLR system that produced more (in percentage terms) for writers who sold less—a “decreasing progressive royalty structure” that returned royalties earned by the most-borrowed authors back into the lower end of the royalty structure.

Knowledgeable authors are more in agreement when they discuss ways in which lending rates should be determined. With a mind to securing the cooperation of librarians, they point to the need for some kind of automated sampling system that would keep the administrative load to a minimum. Bliven recalls a friend’s outrage when he told her about PLR. Her exact words, he said, were: “Don’t you realize the trouble librarians are in already?” Her main concern, other than the possible impact on library budgets, was “the idea that the librarians would have to stop everything and spend their time counting books.” Janeway explains the fear is groundless—“it’s all done by sampling”—and adds: “Certainly the librarian shouldn’t have to carry the load for that.” Cather says, “There seem to be modern electronic gadgets that would make it quite simple,” although he admits that “we haven’t gotten into the nuts and bolts of that part of it yet.”

The solicitude that authors near the center of the recent American interest in PLR show for the interests of librarians suggests that a large part of their efforts will be devoted to winning librarian support before launching a political campaign for the scheme. Mitgang fears that the same kind of rift that developed between authors and librarians in Britain may develop here, unless early efforts to cultivate awareness are directed at librarians as well as authors; “I think the librarians are going to have to be educated as well,” he says. Bliven agrees: “If it’s going to happen in the United States, the librarians will have to understand it first of all. Maybe authors will have to understand it later on.”
Given the limited degree of understanding among American writers at this point, it is at least certain that no sudden, militant author agitation for PLR will break out in the near future. Bliven is not even sure the American writer ever will be willing to commit to a PLR campaign with the fervor of groups like the British Writers Action Workshop: "Writers are egocentric and they're constantly trying to get more time to write. It would be very strange if they suddenly wanted to become political activists."

Even Caro, who heads an organization that encompasses some of the most socially involved American writers, isn't planning for any sudden mobilization. His caution about PLR grows out of a belief that bringing it to life here will involve a far-reaching commitment: "If American writers decide to do it, it will have to be one of the great causes that we take up en masse. We'll all have to be in it. And it still won't be easy to get." Sayre, noting the twenty-eight years the British PLR campaign consumed, says, "It looks as though we're planning for our old age."

PLR unquestionably faces obstacles that may well keep it from American shores for a good long time. A sampling of American authors indicates that they are well aware of those obstacles. But these authors also harbor an attraction to PLR that may blossom into the kind of support the concept has found among writers elsewhere and, for some at least, that gives PLR a ring of historical inevitability. As Robert Caro puts it, "The overwhelming fact about public lending right is that, number one, it is a movement that is covering, slowly but steadily, the entire world." 

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Points of View of Librarians: 
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Introduction

A great deal of the literature on public lending right (PLR) is acrimonious in tone; harsh and intemperate words are used by both supporters and resisters. This is perhaps to be expected; indeed, one might wonder that there were not more in view of the circumstances. Arranged on the one side are a group of writers who, feeling they have been financially victimized time out of mind, have more or less suddenly found in the practices of librarians and libraries both a culprit and a remedy. On the other side are most librarians, dedicated to a universally accepted social institution, and with a long history of service in what they have always considered an honorable profession, suddenly accused of illegal or immoral predations on the community of authors. That the heart of the PLR argument, the automatic conclusion that library lending of books works to the economic detriment of authors, is unproven and even unlikely across the board irritates librarians. That anyone should doubt such an “obvious” fact in turn further inflames authors. The very term public lending right, used as an umbrella term to cover any enactment or administrative arrangement whereby some authors receive financial aid or recompense on the basis of presumed damage done them by library circulation of their works, is a red flag to many librarians. They consider the term inappropriate, misleading and only properly used to denote the right libraries have had for centuries virtually without question; the right to circulate books freely to their constituency.

George Piternick is Professor, School of Librarianship, University of British Columbia, Vancouver.
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This is not to say, however, that all librarians oppose PLR—just as not all authors favor it. Some individual librarians do indeed support it and have served as very zealous advocates. Some regard it, if not with favor, at least with indifference or resignation. It must be remembered that of the ten or so countries with PLR schemes in operation or pending, all but two are countries with small populations and countries which find it difficult to resist what they see as foreign cultural domination. Some of these countries, those in Scandinavia and the Low Countries for instance, have populations so small as to make the success of a vernacular book industry very problematic. The competition of foreign books is severe, whether in translation or even in their original tongues, given the generally high linguistic competence of these peoples. Other countries which have adopted PLR schemes, such as Australia or New Zealand, suffer from the same basic problem, here without linguistic complications. The large-scale importation of texts from the United States and the United Kingdom create severe problems of competition for indigenous authors. It is under conditions such as these that the issue of cultural nationalism may outweigh the author librarian conflict inherent in PLR.

Among library associations the strongest opposition to PLR has been seen in the United Kingdom, where the Library Association has vigorously criticized the whole concept of PLR, from basic assumptions to manner of implementation. To a lesser extent, Canadian librarians have been in opposition, even in the absence of the threat of immediate implementation of some form of PLR. While all countries differ to some extent in their governmental structure, library practices, literary traditions, and economic conditions, the arguments made by librarians in these countries will be most relevant to the United States.

In the words to follow, the author has attempted to bring together points of opposition to PLR which have been raised by librarians, as well as to list some alternatives to PLR proposed by librarians. His bias will be obvious—no attempt has been made to assume a neutral position toward PLR. Instead, the author will attempt to list the chief reasons why librarian opponents of PLR are against it, while still in favor of aid to authors of significant and meritorious works of imagination or scholarship.

The points against PLR made here constitute a sort of inventory, not a balanced or even an argued case. Some points are clearly stronger than others; some may not even be entirely consistent with others, nor even necessarily relevant to a particular type of PLR system in operation. It is hoped that the major points of librarian opposition to PLR
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are included, and that their validity can be at least considered if not finally determined.

Is there a Public Lending Right?

Most authors' arguments for PLR are based on three points, usually issued not as arguable propositions, but as self-evident truths:

1. that the authors' proprietary rights to the texts they have written are fixed and inalienable natural rights,
2. that these rights are unfairly infringed upon by libraries which freely circulate the books embodying these texts, and
3. that the effect of such infringements materially deprives the authors of sums they would otherwise realize through private purchase of these books.

There has been little disposition to examine these contentions very deeply. This is somewhat surprising in view of the fact that the authors, against all evidence, are vehement in their rejection of the idea of PLR payments as being grants from the state to support those engaged in a laudable cultural enterprise with no adequate financial return, but instead insist that the payments are recompense or compensation for financial injury. One would think that an objective demonstration of the injury and of its magnitude would reinforce their case.

Is there a “natural” right, and are libraries infringing?

Authors customarily view PLR as a natural extension of copyright or as a natural analog of public performing rights. Neither analogy is convincing. Both copyright and performing rights differ from PLR in that both are based on the crucial element of reproduction. Briefly and broadly put, the copyright holder owns exclusively, for a stated period, the right to reproduce in any form whatever it is he has created, and nothing more. Beyond this he has no control over the use of his product subsequent to its sale, unless such use has been restricted as a condition of sale. The purchaser of a book has a legal right to do practically anything he wants with it as long as he doesn't reprint it. Performance rights also include the element of reproduction, here manifested in the interpretation of a score or script by performers into a new product, from the sale or presentation of which they, as well as the composer, receive payment. Neither right permits the author to claim anything from those who passively read the text, the play script, or the music score, however they may obtain it. Indeed, copyright laws may even
permit the limited reproduction of works in copyright, if copies so produced are intended for single, noncommercial use. It is clear that the authors' case fails to recognize the essential difference between a text and the book in which it is given physical form, and that PLR is not really related to either of these rights, and is something quite novel, in which the rights of more than the authors must be considered. The Economic Council of Canada, in a report on intellectual property published in 1971, makes the point:

People who firmly believe that they possess not just an interest in some objective, but a basic "natural right" in it, are likely to be more vigorous and indefatigable in the pursuit of that objective. But however passionately may be pressed the claim to a set of rights—whatever language may be used to indicate that the claims in question are believed to be of a superior order—the granting of legal protection to property rights within a democratic society must usually be done by a legislature, the members of which, if they are wise, will be careful to ask what purposes are expected to be served by the extension of legal protection and whether on balance these purposes are likely to be in the best interests of society.

It is often pointed out that in the United States, the rights of authors and inventors are enshrined in the Constitution. That document does indeed deal with such rights, but the context and language of the relevant passage are worth noting. The passage occurs not in the Bill of Rights, but in the enumeration of the powers of the Congress, which are stated to include, among other things, the power "...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writing and Discoveries...." In other words, a limited right is granted in order to promote a stated social end.

PLR cannot, therefore, be considered as a "natural" or "fundamental" right. Any consideration of its establishment must involve its overall social effects, just as the consideration of copyright has done. And it is obvious that the establishment of PLR immediately creates a conflict with the legal rights of libraries, established in countless legal statutes and charters, to circulate books freely. Moreover, if the creator is to retain control over his creation subsequent to its sale, a precedent would be set, which, if logically pursued, could result in a multitude of further problems. Would not the sculptor or painter also be entitled to recompense from those who view his works without having purchased them? Why should there not be a public viewing right? And should not authors be then also entitled to royalties when books they have written are resold in the antiquarian market, or for that matter, even loaned from friend to friend? And what of the publisher and bookseller? If library circulation really reduces the number of books individually
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bought, their gross financial loss is obviously much greater than is that of the author, whose return is only 10-15 percent of the total price. It is worth noting that PLR systems in effect in some countries, e.g., Australia, do provide for payments to publishers. It is clear that problems and consequences such as these, and many others to be mentioned later, have induced governments, when instituting the schemes now in operation for financial aid to authors, to avoid explicit legal establishment of a "public lending right."

Do authors actually suffer financial damage through library circulation?

Many authors have provided individual instances of copies of their books having enjoyed tens and even hundreds of circulations in a public library, and have extrapolated totals of gigantic size from these instances. Librarians, on the other hand, have pointed out that these instances are not typical, applying in the main only to very popular novels, and that books wear out physically long before such figures are reached. Cullis and West, in a study on the economics of PLR, have established an average value of 6.5 readings per library book.2 W.R. Maidment, a British public librarian, says: "It is hard to accept, but the average number of readings of a book purchased by a library is not always vastly different from the normal use in private ownership, especially if allowance is made for successive owners via the secondhand market."3

Contentions such as these, beyond being themselves not well supported by any very objective evidence, are incomplete in establishing the extent or even existence of library damage to authors. Both cases rest upon the assumption that every circulation represents a lost sale; that every library borrower would have bought the book he borrowed had the library copy not been available. But this is clearly simplistic. What must also be considered is the library's place in the entire publishing and reading picture, including the effect of the library market on book publishing and sales, the reading habits of the public, where it gets what it reads, and, not least, what authors themselves gain from library operations.

Studies in all these areas are not abundant, and have not yet produced very definitive results. The evidence that is available points to a very complicated picture in most of these areas, a picture which does not permit easy generalization. But it is clear that certain conventional intimations cannot be supported.

The easy division of the public into two clearly distinguishable groups—those who buy the books they read and those who borrow them from the library—is probably not tenable. Nor, in all likelihood, are
statements such as J.K. Galbraith's that: "the rich can buy books, and
the merely affluent can buy paperbacks. People on a tight budget, or
their children, depend more on the public library," really a true and
complete picture of reality. Other evidences indicate that the readership
of the public library is predominantly middle class, not working class,
and that they not only borrow books from the library, but also buy them.
A survey of adult leisure reading habits in Canada, commissioned by the
Secretary of State of Canada, revealed that the public library ranks well
below bookstores and friends or family members as the usual source of
books read, and lower still as the source of the book most recently read
(lagging in this case below gifts). As the usual source for books, the
public library accounted for only 27 percent of the books read.

Nor is it any secret that booksellers seek to locate close to the public
library whenever possible, and realize the importance of the library to
the book trade. W. J. Duthie, a leading bookseller in Vancouver, says "a
bookseller has a far better chance of success if he establishes himself in a
town with a strong public library, which during its years of existence
has created a suitable 'climate' for the reading of books."

The habit of reading can develop into a big habit, and it can become
difficult to support. There is much reason to conclude that readers
satisfy their needs in a number of ways, including both book purchases
and library use.

The case for PLR depends upon the automatic assumption that
library availability of books inhibits book purchase, an assumption
which must be challenged. There has been little study of this critical
question, perhaps because neither authors in general nor librarians are
usually trained in economic analysis. Two papers, both by professional
economists, conclude that the assumption that authors' incomes would
be increased if public libraries did not exist is highly questionable. R.S.
Thompson points out that the presumed relationship between library
use and book sales is "dubious"; that there is no a priori reason why
"collective consumption arrangements," i.e., library borrowing, should
merit additional payments to the initial producer; and that projections
of lost sales based on free library borrowing are, without an extensive
study of readers' preference patterns, of "no use in determining what
private demand...would be in the absence of libraries." J.G. Cullis,
University of Bath, and P.A. West, University of Sussex, have attempted
a sophisticated economic modeling of authorship, bookselling, and
libraries. They have found that one cannot conclude that authors suffer
income loss through the operation of public libraries, and that "it
cannot be assumed that...higher incomes would accrue anyway in the
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absence of public libraries. The writers of both papers are laudably tentative in their conclusions; it is clear that more study in this area is needed. It is equally clear that the authors' conclusion that library circulation damages them financially cannot be accepted without better evidence.

Both of these studies treat only tangentially the effects of the public library market upon the very publishability of books. The library market is never an insignificant part of the total trade book market in larger countries; it is a highly important component in most of the smaller countries which have instituted PLR systems. That many books now being published would not have been published at all had there not been a library market is a fact of life conceded even by some advocates of PLR. The illogicality of compensating authors for the loss of royalties caused by library use of books which would not have been published in the first place had the libraries not been available to buy them has been pointed out by several librarian opponents of PLR.

What are the effects of PLR on libraries?

Many librarians have resisted the introduction of PLR systems because they see them not only as calling into question the very legitimacy of public library operations, but also as threatening the financial support of libraries, and as involving the libraries in troublesome and expensive recordkeeping to the detriment of their public services.

The centuries-old right of libraries to buy or otherwise obtain books and other library materials, and to circulate them freely to their constituencies, was never seriously questioned until 1951, when John Brophy made his modest proposal. Librarians are jealous of these rights. Faced as they are with the specter of greatly reduced financial support for libraries, they understandably are not hospitable to any charge that their operations are not only expensive and inefficient, as is frequently claimed, but shady as well. Authors frequently disavow any intention of doing anything which might hurt libraries; they emphasize that money to compensate authors would not come from libraries, or library users, but from the "government." Librarians, perhaps more experienced in dealing with government, are less sanguine—and with good reason. Where PLR disbursements are handled by the same agency which provides support to libraries, librarians see direct competition; where the PLR agency is in some other branch of government, they still see competition. Most governments set aside only so much money for support of cultural enterprises, and librarians see PLR as an agent of increased competition between authors and libraries for these funds.
There seems to be ample ground for librarians' fears. In Denmark, where a revised Public Library Act covers both support to libraries and PLR, a drastic shift in allotments for the two purposes has occurred. In the last amendment to the act, in 1975, grants to public libraries were reduced from 30 percent of their budgets to 20 percent, and grants to school libraries were reduced from 30 percent to 15 percent, but the award to authors was increased by 33.3 percent. In the United Kingdom, where PLR will be administered by a separate governmental agency, £2 million has been allocated for its annual operation. This allocation is made at a time when the public library service grant is being cut by 15 percent for the next two years, 1980-81—this on top of a 5.5 percent cut experienced since 1974.

The fear that PLR systems will involve libraries in expensive and time-consuming operations detrimental to their public service aims has generated much librarian opposition. Of the two methods of data gathering, that of counting circulations of certain books has been more vehemently resisted than that of counting holdings of eligible titles. It must be remembered that public libraries once used to be able to tell the patron when the book he wanted would be returned if it were already out to another borrower. The manual systems which allowed records of this type to be maintained have long gone by the board in North America in favor of photo-charging. With photo-charging such information is not available, and photo-charging was adopted only reluctantly for this reason. Its only virtues are speed and relative inexpensiveness. It strikes many librarians as ironic that procedures too expensive to use for the benefit of library borrowers should be instituted to serve another group.

Automated circulation systems are still probably not prevalent enough to help greatly, except insofar as they might be used in gathering circulation statistics by sampling. It is by no means certain that automated circulation machinery would do the job effectively in any case.

PLR disbursements on the basis of library holdings instead of actual circulations have been viewed by librarians as much to be preferred, on the basis of the greater simplicity of the procedure and its reduced impact on library operations. It has been suggested that librarians are over-hospitable to PLR systems based on library holdings in order to escape the dire effects of systems based on library circulation.

Who benefits from PLR?
The contention that payments to authors under PLR schemes should constitute compensation for sales royalties lost through the free
Alternatives to PLR

availability of books in public libraries carries with it the logical implication that those who are most victimized should be those most generously recompensed. It follows further that such recompense should be largely independent of any other consideration which is not directly related to this consideration, and that authors deserve compensation irrespective of their nationality, the type of material they write or otherwise create, the type of library use to which their productions are put, the format in which these works are put forth, and the type of library circulating them.

Schemes functioning and schemes proposed, however, depart widely from this principle. The customary provision that only indigenous authors are to be recompensed for presumed financial damage done to them by libraries creates a moral and possibly a legal problem. In a recent magazine article, the minister responsible for PLR implementation in the United Kingdom was quoted as saying, “I am sympathetic to the view that public lending right should extend only to books of those living and working in this country, but there are difficulties in defining this legally....” Only in West Germany, where PLR is embodied in copyright law, are foreigners given this protection, and there are evidently crippling difficulties in the administration of this provision.

Exclusions on other grounds are abundant. Although some attempts are usually made to relate the amount of presumed damage to recompense, this relationship is severely restricted. Limits are placed on the amount an individual author may receive, and minimum qualifications for recompense are also established. The medium by which the author chooses to communicate also determines his eligibility for relief. The author of pieces published in periodicals is excluded from recompense, as are the compiler of reference materials, the creator of film-scripts, and the writer of textbooks. The author must be careful that his work exceeds some arbitrary measure of length in pages or words. That copy of his book which is circulated by a public library contributes to his income; those circulated by school, university and special libraries generally do not. And so it goes. Whatever “right” is involved grows unrecognizable once all the modifications are made. As the late Eric Clough put it: “A ‘right’ said to be based on usage, and founded on claims for equity, which has to be modified in this way is a very curious right indeed.” It is obvious that all these modifications are based not on presumed damage but on considerations of administrative expediency, and that the authors concur. It is equally obvious that authors as a whole are not to benefit, only some authors. And these authors are, by and large, those who write trade books for general consumption.
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It should be noted also that authors are not the only persons “benefiting” from PLR enactments. The administrative costs themselves of PLR schemes constitute a significant category of expenditure benefiting neither authors nor libraries. Statements of the administrative costs of PLR schemes tend toward the impressionistic, and are expressed usually in rough percentages.

Several projections of administrative costs have been made in the course of planning the implementation of PLR in the United Kingdom in 1982, and changes in the original plan have been made to reduce these costs. According to recent estimates, annual costs (to be subtracted from the £2 million to be made available) will be between £0.3 million and £0.4 million, amounting to 13-16 percent of the total. At least twenty people will be employed, down from the initial estimate of forty or so. It is unlikely that any of these twenty will be paid less than the estimated income for the most popular author, which will be on the order of £1500. It is perhaps worth noting that the recent changes made in the interests of administrative economy call for a reduction in circulation sampling service points from an original figure of seventy-two to forty-five, even though it had been stated earlier that seventy-two was the “minimum consistent with an acceptable degree of accuracy.”

What do Libraries do for Authors?

The charge that authors are financially penalized by library circulation of their works remains unproven. Even if it were demonstrable, however, a reasonable decision to institute some sort of PLR scheme to recompense authors would demand that there be a consideration of countervailing benefits that authors get from libraries. These, librarians feel, are far from negligible. The effect of library purchases in establishing a market for large numbers of books has already been mentioned, as has the importance of this market in assuring the viability of some publishing ventures. But beyond this, libraries also ensure the availability of an author’s published work long after individual titles have gone out of print, and this occurs much more rapidly these days as the costs of maintaining publisher inventories soar. There is reason to believe that the value of having their works available in building a readership is recognized by most authors. An illustrative example: in late 1979, McClelland and Stewart, the largest Canadian general publisher, decided to reduce inventory by dumping, or otherwise dispersing of stocks, of 179 titles which had sold fewer than 1000 copies in the previous year. The Writers Union and the League of Canadian Poets
Alternatives to PLR

objected vigorously, and together bought ten copies of each title and donated them to the library of University College at the University of Toronto. The enterprise was described as "a scheme that will at least guarantee limited public access to the 179 titles involved."19

Beyond preservation, libraries and librarians have a notable record in promoting authors and their works by means of physical display and bibliographical listing. In those countries whose literary output is too small to support commercial bibliographical enterprises, libraries and librarians have provided these services. In Canada, for instance, where no Wilson, Bowker or Whitaker operates, librarians, as A.B. Piternick points out, have been responsible for compiling, or initiating the compilation of, the Canadian Catalogue of Books, Canadian Books in Print, and other bibliographical aids.20

What Alternatives to PLR Would Librarians Suggest?

As mentioned earlier, librarian opposition to PLR schemes, both in principle and in application, in no way questions or denies the fact that most published authors are poorly rewarded for their labors. A few strike it rich; the large majority cannot depend upon their writing for a decent livelihood. This situation is especially severe in smaller countries, where even best-selling authors cannot earn much in absolute terms because of the small size of the potential market. That relief is needed will be conceded by most librarians; some, indeed, are so disturbed by the situation as to become advocates for PLR; others have sought alternative remedies.

It should be realized that the argument for increasing rewards to writers cannot be based on any economic need to support an occupation which might die out if no relief were afforded, but must be made on the basis of our perceptions of social values. It is obvious that the poor returns from most authorship cannot have demonstrably reduced the number of authors writing and the number of manuscripts produced, if the number of items published per year, a figure which continues to rise steadily, is any index.

It seems justifiable to surmise that a major repellent to librarians in PLR schemes may be the fact that there is a basic relationship between popularity and recompense in theory, however much this relationship may be modified in practice, whereas there is no clearly demonstrable correlation between the popularity and the literary value of written works. The result is that those authors whose works enjoy the largest private sale are precisely those who also stand to earn the largest PLR.
benefits, with the literary value of the book a matter of no consequence. The author of the book of high literary or scholarly quality, but with limited popular appeal, is the loser. There are some authors who claim PLR as an absolute right, and who insist on PLR payments in strict relation to the number of library loans; most others have been willing to accept schemes of award which tend to favor authors whose income from sales royalties is small.

A number of suggestions whereby financial aid to authors might be given outside PLR have been put forward by librarians and others at various times. In essence, they recognize the financial plight of most authors but attempt to avoid the dubious assumptions embodied in PLR principles, the gross inequities in PLR practices, and the cumbersome administrative practices of PLR. They fall, by and large, into five general categories: (1) curtailment of library purchases, (2) special pricing of library books, (3) direct tax relief, (4) augmentation of royalty income, and (5) augmented programs of literary awards.

It has been proposed that libraries refrain from purchasing those books whose free circulation is held to damage author interests, at least in the first year or two after publication, the period during which the larger part of their potential sales are realized. Abstention of this type might also serve another purpose—that of establishing the actual effect of library purchases upon authors’ incomes, as pointed out by Piternick and Rothstein.2

A system wherein books sold to libraries would be sold at higher prices to libraries, with the increase going to the authors, is another possibility. To the extent that many libraries now pay more than individual subscribers for periodicals, the idea is not without precedent. The likely effects of differential pricing would be increased care in the selection of books bought by libraries and an intensification of the informational function of libraries over the recreational function.

The exclusion of royalty income, wholly or up to some maximum value, from income taxation would aid authors in providing an automatic augmentation of royalties for their work. There are, no doubt, some few authors who do not earn enough by writing to owe any income tax at all, but it is not clear that PLR benefits to this group would be significant either, given that most PLR schemes require some minimum qualification for reimbursement.

The suggestion has also been made that relief to authors might be achieved by augmentation of normal royalty payments, either as a direct result of bargaining between authors and publishers or by government involvement. It is probably unrealistic to expect any great degree of
success by direct bargaining in what is, and has always been, a strong buyer's market. Maureen Duffy, a leading author advocate of PLR in the United Kingdom, has stated that some publishers are already talking about reducing royalties in lieu of PLR, or seeking agreements to share in the proceeds. But a scheme whereby royalty payments were matched in some way by government grants would certainly be feasible and relatively simple to administer. Governmental guarantee of royalty minimums might be another way of achieving the same end.

Many librarians favor expanded and improved systems of reward for cultural contribution in lieu of PLR, in effect inserting the factor of quality and cultural value. In the simplest terms, they would rather encourage the young Faulkners and Bellows than the young Wallaces and Susanns. Most developed nations already have systems of prizes, awards, fellowships, sabbaticals, writers-in-residence programs, etc., in place; most librarians would like to see them greatly expanded in number and size. That value judgments would be necessary in such a program is obvious, and the difficulties in arriving at such judgments should be not underestimated; but such judgments are already being made. And, to the extent that library holdings might provide data in aid of such judgments, most librarians would be willing to help. The Canadian Library Association has adopted a policy along these lines. At its Annual General Meeting held in Halifax in 1976, it passed a resolution on PLR which, while firmly rejecting any scheme based on the idea of compensating authors for library circulation of their books, did offer to support some system of increased financial rewards to authors based on their cultural contribution. The Book and Periodical Development Council, whose membership includes the Writers Union of Canada and the leading Canadian publishers and booksellers associations, has affirmed the value of library holdings in making assessments of such contributions, because they are: "based on those standards of quality and social and cultural importance, as well as immediate public interest, that are exercised by librarians in selecting the books which they will purchase and keep in their collections. The standards applied are more likely to reflect long-term judgments than are those of the book-buying public at the time of publication."

Increasing financial rewards to authors through methods such as these is bound to be more attractive to librarians in maximizing the likelihood that those authors making the greatest actual or potential contribution to literature and to the national culture will be those rewarded. Also avoided thereby are: (1) the establishment of a right which most librarians regard as not only spurious but detrimental to the
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rights of libraries and their clientele (with the groundless imputation of
damage done to authors by libraries); and (2) the involvement of librar-
iess in expensive clerical operations to the detriment of their services.

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SEVEN EUROPEAN COUNTRIES are operating public lending right (PLR) schemes in 1980. They will be described here in the order in which the schemes entered into force: 1946, Denmark; 1947, Norway; 1954, Sweden; 1963, Finland; 1967, Iceland; 1972, the Netherlands; and 1973, the German Federal Republic.

The situation in the United Kingdom is dealt with elsewhere in this issue. In addition to the countries which have enacted PLR programs, the following have taken various actions toward PLR, but the plans have not been put into effect as of this writing. In Belgium, a 2 percent levy on lending from libraries for a national literature fund was made law in 1947, but practical difficulties prevented its implementation. In Austria, a draft bill on PLR drawn up by the Authors' Association together with the Ministry of Justice was presented to the Ministerrat in 1976, but was abandoned for economic reasons. The draft envisaged an annual government grant of 8 million schillings, one half to be used as an individual loan-based compensation to authors up to a certain maximum, and the other half to be used for social purposes of authors.2

Denmark

In Denmark, an amendment of the Public Libraries Act in 1946 established a “Public Lending Right” providing for compensation to Danish authors for the loan of their books through libraries. An annual

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Ole Koch is Assistant Director, State Inspection of Public Libraries, Copenhagen, Denmark.
government grant corresponding to 5 percent of the state grants to public and school libraries was to be distributed through a special fund to authors or their widows in proportion to the number of volumes by each author in the loan collections of the libraries. The 1946 amendment stated as its object to bring about "an improvement of the financial circumstances of Danish authors" by giving them "a reasonable payment for the use of their works through library lending to the public."³

Later, the scheme was extended to include the use of all books in the libraries, including reference collections, and compensation was also given to authors' widowers and orphans up to the age of twenty-one (but not to other heirs). In 1964, the government grant was increased to 6 percent, and a small share of the grant was reserved for translators. The scheme was administered by the Danish Authors' Fund, an independent body under supervision of the Ministry of Cultural Affairs with a board representing the government, authors and libraries.

The general state grants to public and school libraries were reduced in 1975. In order to indemnify authors, the compensation was converted into a basic fee of 1.60 Dkr per volume (index-regulated).⁴ The 1975 amendment did not alter basic principles, but it led to an administrative reform. Previously, when the government grant was fixed in advance, the census of volumes in the libraries was only a means of calculating each author's share. But now, the record of each volume would release a claim on the treasury. In consequence, the ministry decided that the management of the scheme was really a government responsibility. The fund was abolished, and since 1979 the scheme has been run by the State Inspection of Public Libraries. The statutes of the fund were retained in principle, but rewritten in a Ministerial Order.⁴

A committee of three members representing the government, the library authorities and the authors was appointed to control the administration. Certain cases have to be submitted to the committee, and cases may be brought before the ministry for final decision. The current rules are contained in the 1964 law on public libraries as amended in 1975, and in the Ministerial Order.⁴

**Present Administration**

The material required by the libraries for their annual census of authors' volumes is prepared by the State Inspection of Public Libraries on the basis of applications from the eligible claimants. All libraries

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*A Danish krone exchanged for approximately U.S. $0.16 in March 1981.*
Situation in Continental Europe

comprehended by the law, including public libraries and primary school libraries, render a return of the number of volumes by each author held by the library on January 1. The total number of volumes credited to each author is calculated by a data processing center, and the corresponding payment is forwarded by an automatic procedure in October the same year. Since 1979, the Danish law on public registers has prevented the publication of amounts paid to individuals.

Only original works (of all types) by a single author are eligible for payment. Libraries report on a checklist of the names of eligible authors (about 4500 names in 1980). Doubtful cases must be decided by the State Inspection of Public Libraries, and auxiliary lists are necessary to avoid mistakes. The annual census is a serious burden on the libraries, and the accuracy of the results may sometimes be questioned. Computerized catalogs would solve a number of difficulties, but the existing plans in this direction have made little progress.

In 1980 the government grant was 33.8 million Dkr. The compensation was paid at the rate of 2.37 Dkr per volume for 14.5 million volumes. The administrative costs of the State Inspection of Public Libraries amount to 500,000 Dkr, while the costs of the libraries can be estimated at between 2 and 3 million Dkr.

Plans for the Future

Preparations for a revision of the Danish PLR scheme have been in progress for some years. The Book Committee, appointed by the Ministry for Cultural Affairs to investigate the production, distribution and use of books in Denmark, submitted a report on PLR in 1979, based on a preliminary study by the Working Party reporting in 1977. Neither report was unanimous; authors and publishers insisted on a purely automatic, individual payment, while others felt that the scheme should also be used for the purposes of an active cultural policy.

The Book Committee discussed the merits of a copyright-based scheme but recommended, for the time being, a special law on PLR along the present lines, but with a number of extensions and technical changes. It was recommended that the scheme be reserved for Danish nationals, but that foreigners with a permanent connection with Denmark be admitted. In principle, the scheme should be extended to all categories of originators of library material, such as composers, illustrators and photographers. This would apply to nonbook materials as well, although the committee's terms of reference were restricted to books. Translators, it was agreed, should be considered generously, while the majority rejected a library compensation to publishers. (The
committee is expected to deal with the question of literature support in a broader context.)

Since the Danish public library law includes provisions for libraries in primary schools, the PLR scheme applies to them as well. While these libraries were insignificant in 1946, they have expanded to such an extent that they account for 52 percent of the volumes that released a payment to authors in 1980. This has given the Danish scheme a strong bias in favor of authors of juvenile literature and educational material. The committee agreed to retain school libraries within the scheme for the time being, although this position would seem difficult to maintain. There is no intention of including libraries in other educational institutions in the PLR scheme. Research and special libraries are dominated by foreign literature and will not be included, either. Libraries in Greenland have belonged under the local authorities since the introduction of home rule in 1979.

The committee found no reason to abandon the present stock-based system, and it is interesting to note the reason: a stock-based compensation will give authors a fairly uniform income over a long period of years and allow them to work in peace on time-consuming works, and aged authors can expect a safe income even when their production has slowed. The present exclusion of books with more than one author is motivated by purely technical reasons. It has often been criticized, and the committee agreed that books with two or three authors should be eligible for payment as soon as possible. The same would apply to books created by two or three originators in different categories (authors, illustrators, photographers, etc.). This would require a complete list of all eligible titles, and a manual census in all libraries would be practically impossible, to say nothing of the extra demands on central administration. Failing a computerized solution, the committee suggested a sample in a smaller number of libraries.

The author at the top of the list receives more than one-half million Dkr per annum, while one-half of the authors received less than 1700 Dkr in 1980. The committee felt that an adjustment would be politically wise, and recommended a tapering scale of fees: 4 Dkr for the first 1000 volumes, 3 Dkr for the next 9000 volumes, and 1 Dkr per volume for the rest.

A Danish author said once, "I do not think all books on the shelves of the libraries are worth the same—not even between brothers." A slight majority of the committee proposed a reduction of the fee per volume in order to create a "free fund" to remedy the defects of the automatic payment. The report of the Book Committee is being consid-
Situation in Continental Europe

ered by the Ministry for Cultural Affairs, but a new bill has not yet been drafted.

Norway

In Norway, a collective scheme based on law was introduced in 1947. The annual government grant has no relation to library circulation or stock and there is no individual compensation. The money is paid into a number of funds (i.e., collecting societies) and is used for scholarships, social purposes, etc.

The 1947 law on public and school libraries provided for collective compensation to authors of fiction to be paid into an authors' fund. The government grant was raised by an amendment in 1971, and at the same time, the Ministry of Church and Education was authorized to include other groups of originators in the scheme, composers and visual artists in the first instance.

In 1976, a government report on the conditions of creative art recommended another increase of the library compensation,⁷ and in 1977 the law was amended accordingly. The amended law provides for an annual government grant corresponding to at least 5 percent of the total state and local grants for the purchase of books and other material for loan and use in the libraries comprehended by the law.⁸ At the same time, however, Parliament accepted a general demand from the artists' organizations for negotiations with the government on compensation for public use of their works. Library compensation for the years 1977-79 was negotiated within the framework of this new agreement.⁹ The result is shown in Table 1.

It appears that the 5 percent rule has been reduced to a formality, since the total government grant obtained through negotiation is about three times the legal minimum. In fact, it is agreed that the grant compensates for the use of the works of all groups concerned, not only in the libraries covered by the law, but in all types of libraries that are financed by public authorities.

The money is divided among six funds or collecting societies for the support of various groups of authors and other originators, the three funds for illustrators, photographers and authors of nonfiction having been established in 1979. According to the law, the responsible board of each fund is nominated by the relevant organizations and appointed by the ministry. Each fund administers its share of the government grant according to specific statutes approved by the ministry. The money is used for social purposes such as old age support, travel grants and production aid, support of the organizations, etc.
TABLE 1

NORWEGIAN LIBRARY COMPENSATION, 1977-79

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount (1000 NKr)</th>
<th>Percentage 1979</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1977</td>
<td>1978</td>
</tr>
<tr>
<td>Authors &amp; translators</td>
<td>6,093</td>
<td>7,007</td>
</tr>
<tr>
<td>(fiction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composers</td>
<td>287,000</td>
<td>331,000</td>
</tr>
<tr>
<td>Visual artists</td>
<td>110,000</td>
<td>126,000</td>
</tr>
<tr>
<td>Illustrators of books</td>
<td>292,000</td>
<td>267,000</td>
</tr>
<tr>
<td>Photographers</td>
<td>52,000</td>
<td>60,000</td>
</tr>
<tr>
<td>Authors of nonfiction</td>
<td>394,000</td>
<td>453,000</td>
</tr>
<tr>
<td>Total</td>
<td>7,168</td>
<td>8,214</td>
</tr>
</tbody>
</table>

Adapted from Bok og Bibliotek 16:240, 1979. (A Norwegian krone exchanged for approximately $0.19 in March 1981).

So far, the Norwegian scheme has applied to artistic originators only. In 1979 Parliament approved a motion from the ministry that the relevant organizations should be entitled, as of 1980, to negotiate for library compensation to nonartistic originators as well.10

Sweden

Since 1954, Swedish authors have received compensation from the state for the loan of their books through public and school libraries. Reference works were included in the scheme in 1957, and translations into Swedish in 1961. Since 1978, foreign authors who live permanently in Sweden are treated on a par with Swedish nationals.

In the 1954 motion for the scheme, two major objects were stated: to give authors reasonable compensation for the use of their works through libraries, and to improve the financial conditions of authors. The new appropriation was not intended to replace, but to complete already existing state grants in aid of literature.11

The Swedish scheme is not based on law, as in the other four Scandinavian countries, but on a parliamentary decision. Authors are in a position to influence the construction of the rules in “negotiation-like conversations” with the state.12 The current rules are published in the regulations for the Swedish Authors’ Fund.13

The Government Grant

The state pays to the fund an annual amount depending on the total number of loans and the stock of reference works in the libraries.
The initial payment was 3 öre (0.03 Skr)* per loan, but following several adjustments, the 1979/80 rates of payment are as follows: original works, per loan—29 öre; per reference copy—116 öre; and translations, per loan—14.5 öre; and per reference copy—58 öre. The rates of payment for 1980/81 are 30, 120, 15, and 60 öre, respectively. Annual data on circulation and reference collections are provided by the libraries. Use of foreign original works and books out of copyright does not release compensation, but these categories only account for about 5 percent of the total circulation. The total government grant to the fund for 1979/80 was about 30 million Skr. Part of the money is paid to individual authors in relation to the actual use of their books, while the rest is allotted to a common fund. Originally, 2 öre out of the 3 öre went to individual authors. Today, the common fund clearly has the higher priority.

*The Author’s Coin*

The individual compensation, författarpenning or “author’s coin,” is paid to authors of original works in copyright who are Swedish nationals or permanently resident in Sweden. The amount depends on the number of loans and the number of reference copies of the author’s books in the public and school libraries, as indicated by annual test samples. The author’s coin is also paid to certain other originators (illustrators, painters, photographers, composers) in cases where books consist mainly of drawings, paintings, photos or music, whereas translators as yet receive nothing.

The author’s coin is paid each year at the rate of 17 öre per loan and 68 öre per reference copy (1979/80). Two or three joint authors share the amount equally. No author’s coin is paid for books with more than three authors. If the amount due to a single author is less than 255 Skr, no payment is made. Amounts are reduced upward on a tapering scale: amounts exceeding 17,000 Skr are reduced by 50 percent, amounts exceeding 25,500 Skr by 80 percent, and amounts exceeding 32,300 Skr by 90 percent. The author’s coin for the year 1979/80 was paid with about 7.5 million Skr to 3456 recipients, with Astrid Lindgren at the top of the list (50,900 Skr for 1.5 million loans).

The right to author’s coin is not transferable. After an author’s death, his right will pass to survivors according to the laws on marriage and inheritance.

* A Swedish krona exchanged for approximately U.S. $0.23 in March 1981.
The Solidarity Fund

The part of the fund's resources that is not paid out as author's coin is called the "free" part of the fund. After deduction of administration costs (about 6 percent of the total grant), a sum of about 23 million Skr was available in 1979/80. The free part of the fund's resources can be regarded as a solidarity fund, shared by authors, translators, illustrators (artists and photographers), and their surviving relatives. Within the framework of the fund, a security program has been established in the last few years for authors, etc., providing long-term scholarships, guaranteed author's coin and pensions, together with one-year scholarships, travel grants and other benefits. The long-term scholarships are mainly reserved for young authors, translators and illustrators (artists and photographers), who are given the opportunity of working by means of a fixed, basic income. These scholarships are worth 24,000 Skr a year.

Garanterad författarpenning (guaranteed author's coin) was introduced in 1976, following a test period, and is at present paid to about 160 "established" authors, translators and illustrators who have provided convincing evidence of their work and who do not achieve a minimum of 36,000 Skr through the automatic calculation of author's coin. A guaranteed lifetime income is granted for an unlimited term of years up to pension age, but the recipient is not allowed to accept more than a half-time job.

The main items of expenditure on the budget of the authors' fund for 1979/80 were as follows (in millions Skr):

- author's coin: 7.7
- guaranteed lifetime incomes: 5.1
- long-term scholarships: 4.8
- one-year scholarships and travel grants: 4.3
- pensions: 3.9
- contributions to organizations: 2.9
- other grants: 1.0
- costs of administration: 2.1
- total: 31.8

Random Sampling

The amounts payable in author's coin are calculated on the basis of random samples taken each year of loans and reference copies of works in the public and school libraries. The libraries to be sampled are selected on behalf of the fund by Statistiska Centralbyrån. The three biggest municipalities (Stockholm, Gothenburg and Malmö) participate every year, together with an arbitrary, stratified selection of about 10 percent of the remaining municipalities, which is different each year.
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In each of the participating municipalities, a selection of the loans is registered for a period of four to eight weeks (depending on the loan system), corresponding to a total of about 0.1 percent of all loans. Participation is voluntary, and the fund pays the libraries' costs.

The information which the libraries can give is very summary—normally just the author's surname and the title of the book. The limited size of the sample means that the random variations in an author's loan figures from one year to another can be quite large, especially in the case of authors with small loan figures. However, the fund points out that the total result over a number of years gives a valid picture of an author's loans.14

The results of the random sample are processed by the fund in the year after the loan-year, and the author's coin is paid at the beginning of the following year. For example, loans made in 1979 are processed in 1980, and the author's coin is paid in March 1981.

The board of the fund has recently worked out a system for individual, statistically-calculated compensation even for translators. The introduction of a translator's coin will require an increase of the government grant.

The Authors' Fund

The board of the fund is composed of four government representatives and ten representatives of the originators (eight for authors, one for translators and one for illustrators). The board has the full responsibility for distribution of the solidarity fund. The fund's secretariat employs the equivalent of 6.75 full-time staff.

Finland

Finnish authors and translators receive state bursaries and grants "for the reason that books written or translated by them are available free of charge in public libraries."15 A special law to this effect was passed in 1961 and the scheme has operated since 1964.

The state appropriation is equivalent to 5 percent of the state grants for public libraries in the preceding year and amounted to 1.3 million marks* in 1978. The figures for 1979 and 1980 are expected to be about 2.5 and 4.6 million marks respectively.16 The funds set aside by the state are normally, though not necessarily, divided with 45 percent paid to creative authors (i.e., not to authors of nonfiction), and 10 percent to

* A Finnish mark exchanged for approximately U.S. $0.25 in March 1981.
translators. The remainder is distributed among elderly and/or indigent authors and translators. Applications are handled by the Ministry of Education in cooperation with a board representing the government and the organizations of authors and translators from both language groups (Finnish and Swedish).

Iceland

The Icelandic PLR scheme came into force in 1967 after an amendment of the Public Library Law in 1963. The present rules are contained in the law of 1976 and the regulations of the Icelandic Authors' Fund. The government pays an annual amount of 12 million Icelandic kr (index-regulated) to the Icelandic Authors' Fund for the use of books by Icelandic authors in public libraries. The amount for 1980 was 56 million Ikr. The fund is administered by a committee of three members, two nominated by the writer's union and one by the Ministry of Education.

One-half of the sum available is distributed to owners of copyright (authors or their heirs until fifty years after the author's death) in proportion to the number of their books in public libraries. In practice, the representation of the authors in the stock of Reykjavik City Library is taken as the basis of distribution. (The combined stock of the libraries concerned is only about 150,000 volumes). In 1979, 400 copyright holders received 75 Ikr per volume. The other half is divided into a number of larger grants to individual authors as a recognition of their work. Authors feel that the scheme should be extended to include all types of libraries, and that the government grant would have to be increased in order to give them a reasonable income.

The Netherlands

In Holland, a purchase-based system has operated since 1972. An annual government grant is distributed by the Literature Fund among Dutch authors of belles-lettres in proportion to the annual acquisitions of their books by public libraries. The scheme is not based on law, and the annual grant is fixed by the minister of Culture, Recreation and

*An Icelandic krona exchanged for approximately U.S. $0.0035 in October 1980.
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Welfare. The initial grant of 200,000 guilders* has gradually been raised to 480,000 guilders for 1980. The scheme is managed by the Literature Fund (Fonds voor de Letteren) according to rules laid down by the board of the fund.2

Compensation is paid to authors of Dutch nationality writing in the Dutch or the Friesian language who are alive in the year of acquisition. Individual compensation is based on the number of volumes supplied to public libraries by the Nederlandse Bibliotheek Dienst (NBD), and since 1973, also by the Centrale Bibliotheekdienst voor Friesland, serving the Friesian public libraries. Since these central agencies cooperate with nearly all publishers and almost all public libraries, it is possible to estimate each single author's relative share of the total annual acquisitions with a high degree of probability. The compensation, however, is only paid to creative authors, i.e., authors of "bellettrie" and juvenile literature, not to authors of nonfiction. Eligibility depends on whether the work belongs to these categories, regardless of quality. In fact, the selection of titles for compensation is based on the bibliographic data appearing on the catalog cards produced by the Dutch Centre for Public Libraries (NBLC).

The sum available is distributed among the authors of the selected works in proportion to their shares of the total acquisitions. Since the sales figures of the NBD are kept confidential, except to the fund, authors are not informed about the actual compensation per volume. Although the annual grants have been raised, the number of titles and volumes has increased as well, and the compensation per volume is probably lower today than the initial figure of 1.05 guilders. The compensation for 1978 was distributed among 718 authors in amounts ranging from 10 guilders to 10,081 guilders. Translators of belles-lettres and juvenile literature are comprehended by the scheme, although they do not receive an automatic individual compensation; rather, 18 percent of the annual grant is reserved for special bursaries to translators.

The Dutch scheme is rather simple and causes no extra work in the libraries, but its shortcomings are obvious: there is no legal basis; the annual grant depends ultimately on political benevolence; and the system ignores a considerable number of the authors who are represented in public libraries. The Dutch Authors' Association has been advocating a legal compensation to be paid by the state to authors and their heirs for the loan of all types of books in public libraries.22 H.

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*A Netherlands guilder or florin exchanged for approximately U.S. $0.44 in March 1981.
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Cohen Jehoram has pleaded for a clear-cut system based on copyright law, while J.H. Spoor has suggested a surcharge system based on the publication of double editions, one for general use and one for library use to be bought at a higher price. Margreet Wijnstroom has indicated a solution through library legislation.

However, the Public Libraries Law of 1975 did not change the situation, and, so far, the government has not been in favor of a copyright-based solution. Since 1979, a working party with representatives of the ministry and the Authors' Association has been discussing government policy with respect to literature, including the question of PLR.

**West Germany**

*Büchereitantieme* or PLR was introduced in the Federal Republic of Germany in 1972 by an amendment of the copyright law.

Section 27(1) of the law reads:

For the hiring and lending of copies of a work in respect of which further distribution is permitted under Sec. 17(2), an equitable remuneration shall be paid to the author if the hiring or lending is executed for the financial gain of the hirer or lender, or if the copies are hired or lent through an institution accessible to the public (library, record library or collection of other copies). The claim for remuneration may only be asserted through a collecting society.

The amendment went into effect on January 1, 1973, and applies to all libraries in the Federal Republic and West Berlin that are open to the public.

The claim for compensation includes all kinds of copyrighted library material (copies of books, periodicals, records, sound and video cassettes, slides, etc.). In German law, the protection period is seventy years after the originator's death. Only 10 percent (in public libraries, 5 percent) of the books held or circulated by libraries are estimated to be out of copyright.

It is a debatable question whether the use of books in reference collections implies "lending" (as asserted by Nordemann and Kreile-Melichar) or not (as claimed by Dörrfeldt). The aim of the law, however, was to give originators additional remuneration for the repeated use of one copy of a work by a number of consumers, and to create a pension fund for authors. In fact, the real political incentive was the desire to establish social security for authors. Copyright law was used as a tool of social policy.
The Parliament pronounced as its expectation that the federal government and the states would meet the claim for compensation with a lump sum without reduction of book budgets and without any extra payment by library users. But for a long time, it seemed impossible to implement the law. Was it a "failure from the outset?"

The General Contract

After two years' "struggle of all against everyone," the question of payment was solved in a general contract (Gesamtvertrag) between the federal government and the eleven federated states (Länder) on the one hand, and four collecting societies on the other. The contract provides that authors cannot apply for PLR as individuals, but only through a collecting society to whom they assign their PLR rights. The German literary collecting society VG Wort (Verwertungsgesellschaft Wort) which together with the Authors' Association had led the political struggle was joined by three competing societies: VG Wissenschaft, representing the scientific publishers and authors; GEMA, the composers' collecting society; and VG Bild/Kunst, representing illustrators and photographers.

The payment was fixed as an annual lump sum of 9 million DM as from January 1, 1973, 10 percent of it borne by the federation and 90 percent by the states, which undertook the liability resting on public libraries. The contract runs to 1985, but the size of the lump sum can be renegotiated every second year. An obligation of libraries to provide information on their circulation on a sample basis was stipulated in an additional agreement which is part of the general contract. No extra costs would fall on the libraries.

The general contract of 1975 only covered libraries financed by public authorities. A continuation contract (Anschlussvertrag) between the same parties took effect in 1980. The lump sum was increased by 10 percent to cover the claims of the collecting societies on the remaining sector of public libraries, namely church libraries and staff libraries of firms. Since the lump sum had been renegotiated in the meantime to 11.8 million DM, the total sum to be paid by the federation and the states was increased by the continuation contract to 13 million DM in 1980.

The Collecting Societies

The conflicting interests of the collecting societies were settled in their agreement of November 1975 on the distribution of the lump sum:

*The German Mark exchanged for approximately U.S. $0.49 in March 1981.
The two principal societies agreed to define their spheres of action: VG Wort is concerned with public libraries, and VG Wissenschaft with research libraries. This means, for example, that VG Wort takes care of the interests of scientific authors and publishers who are represented in the public libraries.

The two collecting societies of authors distribute their shares of the lump sum quite differently. After deduction of taxes, administrative costs and 10 percent for a social welfare fund for authors in need, VG Wort divides the remainder into two equal parts. One-half is transferred to the Authors' Old Age Security Corporation (Autorenversorgungswerk) in accordance with the general aim of the law. The corporation pays a quasi-employer's contribution to the old-age security of free-lance writers, putting them on approximately the same footing as the average employee. The other one-half (about 38 percent of the VG Wort share) is paid individually to authors (70 percent) and their publishers (30 percent).

For the purposes of the share-out, authors are divided into nine groups according to the loan figures reported by a rotating sample of eighteen public library systems, chosen within six categories of size and type. In these libraries, all loans are recorded twice a year over a fortnightly period, as provided in the "additional agreement." The first individual payment was made by VG Wort in 1976 (for the year 1973). Ninety-six percent of the authors received less than DM 100, the average payment per loan being about 1 Pfennig. The maximum payment was fixed at DM 3150.

In principle, foreign authors are entitled to the same individual payment as German nationals. VG Wort is aiming at a system of mutual agreements with foreign collecting societies. In addition, direct membership in the VG Wort is open to citizens of all EEC countries, and to Swiss and Austrian authors.

The VG Wissenschaft has chosen other principles of distribution. Most scientific authors have other professions and are not dependent on a pension scheme. Moreover, the annual circulation per volume in research libraries is so low (0.6 to 0.8) that a sampling of loans would be deceptive.

After a deduction for administration and other purposes, the remaining 65 percent is divided equally between publishers and authors. The publishers' share is not distributed individually, but is used for, e.g., printing cost subsidies and support of research. The
authors' share is distributed as a nonrecurring payment in proportion to the number of the author's new publications, new editions and reprints which have appeared within the year in question. In fact, this is a very simplified purchase-based system.

**European Issues**

At present, there are PLR systems in the five Scandinavian countries and in three other European countries (including a system under development in the United Kingdom). Four of these countries are members of the European Economic Community. Denmark is the only Scandinavian country to have joined the EEC.

Although the Scandinavian countries have been cooperating closely in many ways, their PLR systems are totally different in content, scope and legal basis, and each scheme is reserved for the country's own citizens. Attempts within the framework of the Nordic Council to establish a joint system, or at least bilateral agreements on a reciprocal basis, have not been successful. On the other hand, Denmark, the Netherlands, the German Federal Republic, and the United Kingdom are facing the problem of maintaining different systems within the EEC. Apart from Germany, the countries of Europe have chosen to authorize their PLR systems outside the copyright laws, presumably in order to keep them as national systems for the benefit of each country's own citizens.

It has been asserted that any PLR scheme is per se part of the copyright system; consequently, the principle of national treatment as expressed in article 5 of the Berne Convention of Copyright would apply to PLR. In that case, authors from other copyright union countries should have the same rights as national authors regarding PLR. This point of view has been expressed by Wilhelm Nordermann. In his opinion, the Scandinavian and British solutions represent "a flagrant violation of the international copyright treaties." Eugen Ulmer, on the other hand, assumes that the Scandinavian systems cannot be considered as an outcome of copyright, since they do not imply direct claims from authors on libraries. A similar opinion has been stated by Svante Bergström and by the Danish Copyright Committee.

Within the EEC, any discrimination on grounds of nationality is prohibited according to Article 7 of the Treaty of Rome. It seems to be an open question whether cultural aid granted by a member state, e.g., to its own authors, is compatible with the Common Market. Adolf Dietz has discussed the relations between the rules of the EEC and various
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*Special nonautomatic grant for translators.
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PLR systems. He assumes that Article 7 of the Treaty of Rome prohibits discrimination, whether the rules of PLR are based in copyright law or not. However, he cannot totally disregard the case of small countries like Denmark and Holland for a national scheme. National treatment of foreign authors in such countries would draw the greater part of the library compensation abroad, frustrating the social objective associated with the compensation. A standardized regulation within the Common Market, ensuring strict reciprocity, would, in his opinion, offer at least a partial solution.

Although it has been proposed to standardize the PLR systems within the EEC, the introduction of parallel copyright-based systems in all member states is presumably still a long way off. Owing to the joint-Scandinavian character of the copyright legislation, none of the Scandinavian countries is likely to change over to a copyright-based PLR system except in the event of a wide Scandinavian unanimity.

Conclusions

It is a general feature of all the PLR schemes described that they are based on a combination of partially conflicting principles. We can isolate three different arguments for a library compensation scheme: (1) the originators are entitled to remuneration, (2) most authors are poorly situated financially, and (3) the state should support the cultural life of the community. In other words, we have three principles: a principle of copyright, a principle of social policy, and a principle of cultural policy.

The copyright principle has been formally implemented in West Germany, but the political incentive behind the German scheme has really been a wish for social security for a specific group of authors. The Danish scheme is, perhaps, the scheme which, within its limitations, most closely approaches the copyright principle, although it is at the same time found politically untenable for individual authors to earn large sums of money.

It is the social-political principle that wins through; why should successful authors get the lion's share, while poets go hungry? An attempt to solve this problem is made by a graduated scale of payments to individual authors and others, and by reserving part of the funds for collective purposes, as is the case, for instance, in Sweden and Germany. Dietz recognizes the conflict between the copyright principle and the social-political principle, and formulates a theory on collective copyright. Kreile expresses the relationship in a paradox: “Die Bibliotheks-
tantieme wurde von Staaten entweder als Urhebergesetz in der Form eines Sozialgesetzes—so vornehmlich in Skandinavien—oder als Sozialgesetz im Gewande und in der Form eines Urhebergesetzes eingeführt” ("The public lending right was introduced by the states either as copyright law in the form of a social law—as principally in Scandinavia—or as social law in the guise and form of a copyright law"). It cannot be said, either, that the cultural principle has been clearly implemented anywhere—and if one did wish to implement it, it would be meaningless to link it with costly censuses of library loans.

Considering each scheme apart, as we have done, it is difficult to say whether they serve their purposes. The only fact that remains is a political decision to let the state grant a payment to certain groups of originators who are represented in certain types of libraries. But then, the schemes should not be considered in isolation. It will only be possible to put them in the proper perspective if they are viewed in the context of the various countries’ other social and cultural legislation. If that is true, attempts to harmonize the various schemes must appear utopian.

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17. According to the law as amended by Law No. 216 of May 12, 1967.


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20. Bibliotheek en Samenleving vol. 4, no. 11, Dec. 1976 is a special issue on PLR with many references.


OLE KOCH

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Additional References

The Situation in the United Kingdom

RAYMOND ASTBURY

The Case For and Against Public Lending Right

FROM THE AUTHORS' VIEWPOINT, public lending right (PLR) has nothing to do with patronage or charity whereby subsidies are given to meritorious but unpopular authors, or to young writers of promise, or to indigent authors; it is a matter of natural justice, a right based ultimately on copyright to fair payment for use due to authors for the multiple exploitation of their books through libraries.¹

Almost from the outset of the PLR campaign, the focus of attention has been upon the public library because, it has been claimed, unlike educational libraries where books are used in the main for study or reference purposes on the premises, the public library acts as a book distributor or free bookseller, with the result that there has been a decline in the sales of hardback books to private buyers and the incomes of authors and publishers are no longer even remotely related to the size of the readership of their joint products.² Authors have been characterized as slave laborers in the service of what is in effect a "huge nationalized industry for the lending of books which has undermined and almost wiped out the private enterprise of selling books to individual owners."³ Without the introduction of PLR, it is asserted, the native British professional writer will soon be extinct. Libraries will be reduced to offering a service based on lending books by British writers of the past, academics whose writing is a spin-off from and subsidized by their secure employment, and North American writers. Ultimately,

¹ Raymond Astbury is Principal Lecturer, School of Librarianship and Information Studies, Liverpool Polytechnic, England.
written English (as distinguished from written North American) would be lost as a language.⁴

Over the nearly thirty years of the PLR campaign, authors have frequently presented the case for PLR in relation to the ratio of borrowing and buying in highly dramatic terms, which has undoubtedly influenced public and parliamentary opinion. In 1960 Sir Alan Herbert estimated that over twenty years he earned £75 a year from royalties on the sale to libraries of copies of his two most popular books, which were issued 90,000 times a year from public libraries.⁵

Research has indicated that a public library book is borrowed an average of seven times a year during an average shelf life of 5.6 years, giving 39.2 borrowings.⁶ Although authors are skeptical about these figures, it has been pointed out that this would mean that on a sale of 2500 copies (a fairly typical edition size today for a novel which is not in the best seller class), almost all of them to libraries, there would be an average of 98,000 borrowings.⁷

It has been estimated that in Britain in 1920 one book was borrowed for every ten bought, but this borrowing-to-buying ratio had almost reversed by 1965, when nine and one-half books were borrowed for every one bought. However, this estimate was based upon the known number of public library issues with the addition of a notional number of loans from nonpublic libraries for which there are no authoritative statistics. If this ratio were calculated solely on the basis of public library loans, then it can be shown that a ratio of three books borrowed for every one bought in the 1920s has barely changed in the 1970s. In 1924, 86 million volumes were issued from public libraries, and about 30 million copies were sold; in the 1970s, public libraries issued 600-plus million volumes annually, and about 200 million volumes were sold each year.⁸

Nevertheless, the disparity between the number of copies of a book purchased by a public library and the number of times it is borrowed is used to give added force to the authors' case for PLR, but it is not seen to be the vital element in justifying the principle of PLR: the principle of fair payment for use is based ultimately on copyright.⁹ The increasing momentum of the PLR campaign in Britain must be viewed against the international background of developments which influence the condition of authorship, and we are now witnessing "a complete reappraisal of the very basis of copyright, or author's right, in the changing social context of today."¹⁰ Technological developments are bringing about a communications revolution in which it is becoming increasingly difficult to protect copyright owners against infringements of their intellectual property rights.¹¹ Similarly, it is argued that changed conditions in
the marketing of books brought about by the scale of free borrowing through public libraries has eroded the value of the authors' and publishers' rights in copies. The unrecompensed multiple use of an author's text through a public library, it is argued, is undermining his copyright as surely as when a librarian or a reader physically reproduces all or part of the author's work using a photocopier without making payments to him.  

Authors have therefore demanded that "there should be founded a new conception." A public lending right should be established by analogy with public performing right (PPR), which is based on copyright. Just as a composer or a recording artist is rewarded every time his work is performed in public, so, too, an author should be rewarded every time one of his books is borrowed from a public library. Horizontal equity requires that authors should have the same rights as composers, playwrights and recording artists. This conception has been challenged on the ground that PLR is not strictly analogous to PPR; the distinction is between the private enjoyment by individuals reading, for example, a book or play or music score, and the exploitation of these works in public by intermediaries. Authors have, however, continued to claim that there is an identity in principle between PLR and PPR: the crucial distinction, it is contended, is between public and private lending.

The number of titles published in the United Kingdom each year has risen almost without exception over the last three decades. In 1937, 17,137 titles were published. For the first time, over 20,000 titles were published in 1957 (20,719); over 30,000 in 1968 (31,420); over 40,000 in 1979 (41,940); and 48,158 titles were published in 1980. (This continuing upward trend is now being caused, in part at least, by the effects of a hard pound in relation to a soft dollar, which means that British publishers are handling more American-originated titles.) The current indications are that, because of the continuing economic recession in the United Kingdom, four or five thousand fewer titles will be published in 1981 than in 1980.

This increasing annual output of titles has been accompanied by a decline in the volume of sales per title: in the 1960s some 300 million volumes were printed annually, but in the 1970s this figure fell to about 200 million. Though there has been a nearly sixfold increase in the value of book sales over the past fifteen years, when the figures are adjusted for inflation it is evident that there has been a lack of stability or real growth in this period. The rate of inflation has been rising rapidly in Britain in the past five years in particular, and, especially over the past two years, book prices have risen more than most other goods.
Improvement in sales turnover is therefore being achieved by raising prices, not by increasing sales.¹⁶ The authors' economic welfare is inevitably conditioned by the vicious circle of ever-increasing manufacturing costs firmly linked to higher prices and reduced sales. From the early 1970s library book funds have been reduced in real terms, and the trend is continuing.¹⁷ In these circumstances authors are more anxious than ever to ensure that they are rewarded for the use of their books by library borrowers, as well as for the sale of their books to libraries.

Surveys of authorship have shown that writers' incomes have declined as book trade turnover has increased.¹⁸ The most recent survey of authors' incomes was carried out in 1972 and covered more than one-half of the 3,250 members of the Society of Authors. At that time when the national average wage was £1,500 a year, more than half the respondents earned less than one-third of that sum from their writing.¹⁹ Librarians have challenged the validity of these surveys on the ground that they are based on too small a sample of authors. They have stressed the point that many authors do not write primarily for money. Librarians have sometimes suspected that the PLR lobby is centered on a hard core of professional novelists and writers of general hardback nonfiction whose sales have declined and who have mistakenly identified free borrowing from public libraries as the sole cause of their difficulties.²⁰

By the early 1970s, across the whole spectrum of British publishing, the average sales per title were no more than 7,000 copies, and many books were published in editions of no more than 3,000 copies.²¹ Moreover, the great increase in the number of titles being published each year has taken place mainly in the field of utilitarian books (especially technical) and educational books, and opportunities for part-time writers to appear in print have increased. By contrast, fiction currently represents a much smaller proportion (12 percent) of the total output of books than it did in 1937 (22 percent), though fiction now accounts for 72 percent of public library issues.²² Authors have sometimes asserted that the relative decline in the number of fiction titles published each year is a direct consequence of the expansion of the public library: "The free market has been tampered with by the free library."²³

Concurrent with the relative fall in the number of novels published each year has been a decline in the volume of sales of individual titles. During World War II, a novelist with a prewar sale of two thousand copies could expect to sell ten thousand.²⁴ By the mid-1960s authors whose books had sold in editions of six or seven thousand copies in the mid-1950s were selling only about four or five thousand copies, and the
Situation in the United Kingdom

gap between the totally unprofitable and the very profitable novel continued to widen.\textsuperscript{25} It is against this background that the novelists in particular have resolutely insisted that PLR should be implemented as a loans-based scheme.

The Library Association (representing the profession of librarianship) and the local authority associations (representing the authorities which are responsible for providing public library services) have consistently opposed the principle of PLR, its implementation as a loans-based scheme, and its application exclusively to public libraries. The years of the PLR campaign have been punctuated by memoranda from the Library Association, notably in 1960, 1968 and 1972, with a definitive statement appearing in 1974.\textsuperscript{26}

Basically, librarians reject the concept that when an article is sold outright to a purchaser at a price fixed by the producer there should be further payments made in relation to the number of people who use it. Such a principle, it is argued, could well be applied to, for example, the hiring of cars and washing machines, or indeed to any cooperative scheme whereby people hire or buy goods which they intend to use only on a temporary basis. However, it has been pointed out that libraries do not, in fact, hire books to readers. There is no contract.\textsuperscript{27} Moreover, the authors have averred that if local authorities bought motor cars and permitted all citizens to borrow them free of charge, then the motor manufacturers would soon seek to impose special conditions on the sale of their vehicles to the lending agencies.\textsuperscript{28}

Librarians claim that libraries promote the reading habit and act as a nationwide shop window for books. From the librarian’s viewpoint, writing, publishing, bookselling, and institutionalized book buying are interdependent activities, and PLR is inequitable because library book buying makes possible the publication of many books which would otherwise be unviable, yet the implementation of PLR would require further payments to be made in respect to their use. Research has shown that there is a positive relationship between book borrowing on the one hand and book buying and book ownership on the other.\textsuperscript{29} It cannot be shown that the collective consumption of books through public libraries is adversely affecting the profitability of book production and hence the supply of new titles. On the contrary, it has been shown that the publishing industry is in a relatively healthy economic condition. Moreover, the contention that there is a clear relationship between the number of times a book is borrowed from a library at a zero cost to the readers and the number of lost sales of that book at a given price to private purchasers presupposes a degree of elasticity in the demand for
books for which there is no supporting empirical evidence. Other factors which inhibit book buying, such as storage and transport costs and, especially, the informational problems which have to be solved by would-be purchasers in making a choice from the bewildering variety of titles in existence, are incentives to the collective consumption of books.  

Conversely, it has been argued that if society believes it to be right on the grounds of equity that authors should receive rewards in proportion to the number of readers for whom they provide a service, rather than according to the number of their books which are sold, then by analogy with PPR, fees for service as of right "is the only basis on which PLR can be demanded."  

Even so, there is no justification on economic grounds for assuming that any increase in authors' incomes accruing from PLR would have been produced in a pure market economy from which public libraries were absent.

If PLR does not embrace libraries other than public libraries, and nonbook media as well as books, librarians assert that the principle on which it is said to be based is substantially modified. Moreover, if funds are allocated to authors in relation to the loans or purchases of their books from public libraries alone, such a biased sample of public lending would mean that both the loans and the purchases of some categories of material would be underrepresented.

It is difficult to defend PLR on the grounds of distributional justice in that it will raise the incomes of low-paid writers to levels which are comparable to those in other professions, or to justify it on the grounds that it will both facilitate the production of minority-appeal books and reduce the amount of hack writing currently being produced. If PLR is based on the principle of fair payment for use, then the pattern of distribution of funds arising from it is irrelevant. Nevertheless, it is true that either a loans-based or a purchase-based scheme related to public libraries alone will benefit most substantially those writers who are already well established and popular. State subsidies and tax concessions would be a cheaper and more effective way of giving aid to younger professionals or to the authors and publishers of significant scholarly and other minority-appeal works. The Library Association has consistently advocated that the government should enhance its financial support of the Arts Council to enable it to fulfill these functions.

Some librarians fear that the implementation of PLR will introduce new pressures on book selectors and stock editors. The selection of new books and the replacement or withdrawal of books from stock will
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be carried out in the future by professional librarians who will be aware that their decisions will affect the rate at which authors continue to receive income from library books.34

The Origin and Evolution of the PLR Campaign

Ironically, the first formal proposal that a fee for each lending of a book from a library should be paid to the author was made in February 1951 by Eric Leyland, a former chief librarian of Walthamstow Public Library who had become a full-time children’s author, writing in W.H. Smith’s and Son’s Trade Circular. Leyland suggested that a borrower should pay a halfpenny each time he took out a book from a commercial lending library, and he justified this proposal by analogy with the performing right fees paid to composers. The same month, novelist John Brophy joined the debate which was stimulated by Leyland’s suggestion. Brophy advocated that both commercial and public library borrowers should pay a penny each time they borrowed a book, outlining a scheme which came to be known as the “Brophy penny,” and subsequently elaborating it in the summer 1951 issue of Author.35 As he had anticipated, Brophy’s idea was unequivocally rejected by the great majority of librarians on three main grounds: the free library system was sacrosanct; the plan was administratively impractical; and authors had no right to ask for borrowing fees, because they already received a royalty on each copy of a book sold to a library.36

Some authors stoutly defended the principle of the “free” public library and they objected to the Brophy penny in particular because it would have favored the more popular authors. Authors proposed a wide range of modifications and alternatives to Brophy’s scheme. Some thought readers should pay twopence or threepence a loan; others, that the penny per loan should apply only to fiction; that the National Book League should take on the task of disbursing to authors a fixed percentage of the fines received by libraries on overdue books; or that public libraries should charge readers a subscription of sixpence a year and that this money should be paid into a central fund for authors and their dependents. Some authors believed libraries should pay a percentage of their annual book fund into a central fund for authors; or that commercial and public lending libraries should pay 100 percent surcharge on all books bought for the purpose of home lending and this money should be paid by the publishers to individual authors without deducting anything for their administrative costs. Commercial libraries, others recommended, should forgo the 33.8 percent and public libraries the 10
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percent discount they enjoyed on the published price of new books, and this money should be paid into a central fund for authors. Some thought libraries should keep records of issues and authors should receive royalties in proportion to the number of times their books were borrowed the previous year, and the payments should be funded by increasing the local rates; or that a scheme should be established on the model of the Danish system, whereby a sum equal to 5 percent (at that time) of the state grant to public libraries be distributed among authors according to the number of their books stocked by libraries. Thus, very early in the history of the PLR campaign the main options for its implementation were promoted, and these alternatives have been given a fluctuating emphasis over the years. Should the second royalty be paid to authors collectively or individually? Should it be paid by the borrowers, by the libraries (that is, by the ratepayers), or by the central government? Should the payment be in the form of a surcharge on the individual volumes purchased by libraries, or in the form of a lump sum percentage of the libraries' annual expenditure for books?

The Committee of Management of the Society of Authors found that there was some justification for the librarians' objection to Brophy's scheme on the ground of its impracticality. Moreover, Sir John Maud at the Ministry of Education advised the authors to promote the application of the Danish scheme in Britain. At his suggestion the society commissioned a survey of the economic condition of authorship in an attempt to influence the thinking of politicians and civil servants, and "Critical Times for Authors," a pamphlet written by Walter Allen, duly appeared in 1953. In this tract the Brophy penny is jettisoned in favor of a state grant to authors which would be a percentage of an annual government subsidy to public libraries.

The growing interest in the Scandinavian schemes for authors was further stimulated by a fourth leader in The Times (June 6, 1957), which reported that the Swedish authors' organization had received £500,000 from the state in recompense for the lending of books by public libraries in 1956. Brophy vigorously rejected the idea of government patronage as the beginning of the state monopoly of literature. He insisted that the borrowers should pay, but he put forward a new proposal that readers should pay an annual subscription of five shillings for up to sixty loans, with an additional shilling being paid for each subsequent sixty loans.

On July 11, 1957, the PLR issue was raised for the first time in Parliament when Francis Hastings, Earl of Huntingdon, advocated the introduction of a scheme modeled on the Danish system. But for the next few years there was a lull in the PLR campaign. The Society of
Authors was preoccupied with the fight to reform the law of obscene libel and was awaiting the publication of a government report on the public library system. The "Roberts Report" was published in February 1959, but it did not refer to PLR. It did, however, provide the authors with valuable statistics about public library borrowers, bookstocks, issues, and expenditures. Sir Alan Herbert, author, journalist, lawyer, able polemicist, and former member of Parliament, who had played a significant role in the reform of the law of obscene libel, was persuaded by the Society of Authors to take charge of the PLR campaign in September 1959.

With the assistance of a barrister, Stephen Tumim, and his publisher, J. Alan White (chairman of Methuen and Company), Sir Alan Herbert drafted a Memorandum in which the case for public lending right (a phrase coined at that time by J. Alan White) was outlined and the tactics for achieving it discussed. At the same time, the Authors and Publishers Lending Right Association (APLA) was formed, with Sir Alan as chairman and J. Alan White as vice-chairman. The Memorandum was published on March 11, 1960, and received wide press notice. In it, the publisher was identified as being of equal importance with the author in the production of a book, and should therefore be entitled to a share from PLR income. It advocated that PLR should be established by law in parallel with PPR by amending the Copyright Act of 1956. Though the "free" public library system was stated to be anachronistic, it recommended that the government rather than the borrowers pay for PLR. Various bases for raising a levy of about £1 million were suggested: a royalty per volume issued or per volume stocked; a royalty on the first forty issues of a book; a royalty per registered reader or per head of population served; or a royalty expressed as a percentage either of a library’s total expenditure or of its book fund.

The PLR campaign then entered a new political phase. The first PLR bill was presented in the House of Commons July 21, 1960, and it extended copyright to create a public lending right analogous to public performing right. It required library authorities and the proprietors of commercial lending libraries to make payments on books borrowed of, respectively, one penny per issue, and one penny per issue in excess of 2000 issues.

The day after the bill was presented, Conservative Minister of Education Sir David Eccles (later Lord Eccles) informed an authors’ delegation that he had no sympathy for PLR. The only positive suggestion he made was that public libraries might be willing to forgo the 10 percent discount they enjoyed from booksellers and this money might
be used to set up a fund for authors and publishers. On August 5, Board of Trade officials gave advice to the PLR campaigners which caused them to abandon the first bill: authors might sue librarians for infringements of copyright when they loaned books unless there was a compulsory assignment of PLR to APLA, and many authors would oppose this; foreign authors would be able to claim fees when their books were borrowed from British libraries, but British authors would not benefit reciprocally; and since the Copyright Act had been revised in 1956, the government did not support yet another revision after such a short interval.46

The APLA committee, therefore, promoted a second bill which sought to amend the Public Libraries Act of 1892 in order to give library authorities the option to charge the borrowers. It was presented in the Commons on November 22, 1960. Before the bill came up for a second reading on December 9, members of Parliament were in possession of a Library Association leaflet opposing it, and the bill was “talked out” on that day and on March 10, 1961.47 On March 21, representatives of APLA met members of the major local government associations, and for the first time local authorities were offered a share in the income from PLR. It was proposed by APLA that a charge not exceeding twopence per book issued would be levied on library authorities to produce £3 million on 400 million issues a year, and half of this would be plowed back into libraries. The APLA bait was not taken.48

Stung by the failure of the two PLR bills to obtain support in the Commons, the APLA members worked to make contacts privately with members of Parliament in order to build support for PLR on an all-party basis. The success of these endeavors was demonstrated in December 1961 when David James, a member of Parliament and publisher-member of APLA, tabled an “early day motion” to the effect that the government should give sympathetic attention to the economic condition of authors and publishers as affected by the fact that eleven books were borrowed for every one purchased. This motion was signed by 140 members of Parliament of all parties.49

Representatives of the Library Association met with APLA for the first time on January 11, 1962, but there was no common ground between the two groups on PLR. A period of continued lobbying of politicians culminated in the October 1962 publication of Libraries: Free for All?, written by Ralph Harris and Sir Alan Herbert. The free public library system was represented as an outmoded institution which had become primarily a recreational agency. Moreover, it was starved of money for development. It was suggested that local authorities should
therefore be given the option to charge readers seven shillings and sixpence per annum for borrowing an unlimited number of books. No charge would be made for the use of reference and other books on the premises. PLR was claimed as a matter of natural justice.\textsuperscript{50}

During the progress of the Public Libraries and Museums Bill through the Commons in 1964, the supporters of PLR made a determined but unsuccessful attempt to have it amended to permit local authorities to charge book-borrowers as a means of financing PLR. The defense of the free public library system by Sir Edward Boyle (later Lord Boyle of Handsworth), Lord Eccles' successor as Minister of Education, epitomized the views of those who opposed charging book-borrowers. Even a small charge, he asserted, would have a considerable deterrent effect on use. Above all, he thought that it was essential for everyone in a local community to feel that the public library belonged to him: it should be seen as a social service, not as a commercial enterprise.\textsuperscript{51}

In autumn 1964 the Labour Party won the general election and Parliament member Jennie Lee (later Baroness Lee of Asheridge), Minister for the Arts in the new government, stated that she was sympathetic to PLR, provided that it was financed by some method other than charging the borrower. The Arts Council produced a PLR scheme (largely the work of J. Alan White) which was based on both the Danish and Swedish systems. It was recommended that the government finance a scheme based on the in-copyright stocks held in a sample of public libraries, with the figures being grossed up to represent national holdings. Thus, for example, if the stocks of the sample libraries totaled 5 million volumes and the total stock of all libraries was 80 million volumes, then the multiplier would be 16; and an author and publisher of a book of which the sample libraries held 50 copies would be credited at the rate of $50 \times 16$, or 800. The authors would receive 75 percent of the income and the publishers 25 percent.\textsuperscript{52}

The government did not respond to these proposals, which were published in January 1968, until the author Michael Holroyd wrote an excoriating attack on the government, and on Lee in particular, which was published in \textit{The Times Saturday Review} February 15, 1969, under the title “Oh Lord, Miss Lee, How Long?”\textsuperscript{53} For the first time, \textit{all} the interested parties—librarians, authors, local authorities—met July 1, 1969, at a conference convened by the Department of Education and Science under the chairmanship of Lee. Again there was no common ground. The department did, however, indicate it would be willing to discuss a scheme linked to the purchase of books by libraries, provided that it was based on a one-time, lump-sum payment from the Treasury.
A Working Party was set up. In the meantime, the Arts Council had tested its stock-sampling scheme in three public libraries and it was discovered to be impracticable until libraries had installed computerized systems for recording both stocks and loans. In August the Department of Education and Science circulated its proposal for a purchase-based scheme, as opposed to one based on stocks or loans, with payments being made to authors only. But once again, the librarians and the local authorities declined to cooperate.54

An Arts Council Working Party therefore devised a scheme which did not require the participation of librarians. The major library booksellers were to provide details of their sales to libraries, and the scheme proposed a royalty of 15 percent—75 percent paid to authors and 25 percent to publishers. Only new books would be covered by the scheme—those published after Parliament had sanctioned the proposals—and in-copyright books already held by public libraries would be excluded. The government was called upon to provide a grant of £2 million to finance the scheme. An outline of the scheme appeared in an appendix to a symposium on PLR published in February 1971. The work contained an introduction by Lord Goodman, Chairman of the Arts Council, and essays by ten authors, librarians and others connected with the book trade, and gained wide notice.55

A Conservative government came to power in July 1970. By the time the PLR symposium was published in 1971, Lord Eccles, who as Paymaster General had responsibility for the Arts, had rejected the latest proposals. He did, however, set up in March 1971 a Working Party with very narrow terms of reference, not to discuss the principle of PLR, but merely to examine how copyright law might be amended and to consider the various methods of implementing it. On this basis, representatives of the Library Association and of the local authority associations were able to participate in the discussions.56

The Working Party published a unanimous report in May 1972, but it was issued by the Paymaster General without any commitment on the government's part. The report recommended that the necessary amendment to copyright law could be achieved by adding "lending to the public" to the acts restricted by copyright, but that "lending" should also embrace the reference use of books. The Working Party saw no reason why PLR should be restricted to public libraries and to printed materials. However, it was thought to be impracticable to organize PLR payments to authors in Britain by either a loans-sampling scheme (as in Sweden) or library stock statistics (as in Denmark). Two methods of implementing PLR were considered suitable to British conditions: the
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surcharge system, which requires libraries to pay a higher price than the published price for their books; and the blanket licensing system, whereby the author assigns his PLR to a collecting society which issues an annual license to each lending agency and distributes to each author, on a basis related to the value of his library sales and to the libraries' expenditure on books, a share of the revenue received from licensing fees. The blanket licensing system is less precise, but administratively easier and less costly to operate, than the surcharge system. Nothing was done to implement the recommendations in the Working Party report. The legal problems which would have ensued from amending copyright law in 1972 were the same as in 1960, when authors had been forced to drop the idea.57

In summer 1972 the Society of Authors and the Publishers Association issued a joint statement in which they urged the government to introduce PLR by amending the law of copyright and to implement a blanket licensing system. The government was asked to provide £4 million to be distributed, after the deduction of administrative costs of about £500,000, to authors (75 percent) and publishers (25 percent) as a percentage of the published price of each work sold to libraries.58

That same summer, five members of the Society of Authors—Lettice Cooper, Francis King, Michael Levey, Maureen Duffy, and Brigid Brophy (John Brophy's daughter)—formed the Writer's Action Group (WAG) to campaign for a loans-based scheme. A purchase-based blanket licensing scheme, WAG complained, violated the principle of a lending right by compounding all use, however frequent, into a single outright payment at the time of purchase on each book. The group said that older authors would not benefit, and that the author of a 2000-word introduction to a coffee-table book of illustrations selling for £5 would receive five times more than an author of an 80,000-word novel selling for £1. Furthermore, WAG objected to the publishers having an automatic right to a share of the income from PLR.59

In response to this protest, the Society of Authors recommended a modified scheme to the minister. It was suggested that PLR be introduced by means of a blanket-licensing scheme, but that this should be replaced by a loans-based scheme as soon as a sufficient number of libraries had installed computerized systems.60 WAG refused to compromise on the requirement that PLR be implemented from the outset as a loans-based scheme, arguing that already enough British libraries were computerized to provide a larger sample than that used in the Swedish scheme.61
In October 1972 the Library Association published its "Observations on the Report of the Working Party on Public Lending Right," in which the profession's opposition to PLR was reiterated. The Standing Conference of National and University Libraries (SCONUL) also rejected the principle of PLR, and warned that if academic libraries had to pay license fees, they would buy fewer books. That same month, two articles critical of PLR, one by a public librarian and the other by a university librarian, were published in *Journal of Librarianship*.

At the beginning of the 1973-74 session of Parliament, a private members' PLR bill (the third since 1960) was introduced in the Commons, but it had to be abandoned when Parliament was dissolved on February 7, 1974. By that time 269 members of Parliament had declared their support for PLR, though 13 of these insisted that it must be introduced without imposing charges on the reader. By that time also, the various authors' groups were united in favor of a loans-based scheme. The Conservative, Minister for the Arts, Norman St. John-Stevas (Lord Eccles's successor), and Hugh Jenkins, Minister for the Arts in the Labour administration which took office in March 1974, were both committed to the introduction of PLR legislation. The fourth private members' PLR bill was introduced in the Commons on April 3, but it failed to obtain a second reading because its terms were unacceptable both to authors and librarians: it proposed the establishment of a government-financed agency which would have the power to decide which of three options was most appropriate for implementing PLR in respect to any given class of books—loans-based, stock-sampling or purchase-based.

The Labour government set up a Technical Investigation Group (TIG), and Logica Limited, a computer consultant firm, was commissioned to undertake a feasibility study. Logica's findings became progressively available from October 1974, and they were incorporated in the first TIG report, which was published in March 1975. A second TIG report was published in October 1975. The main conclusion of this research was that loans-sampling and purchase-based schemes are feasible and, subject to a number of variables, comparable in cost. It would be prohibitively expensive—£5 million a year at 1975 values—to record the loans in all public library service points. The TIG investigated a system based on a sample of seventy-two service points. This base has a built-in margin of error: nineteen of twenty authors whose correct payment was £800 for every £1 million distributed could expect over a ten-year period, if the sample were rotated every five years, to receive a payment in the range of £700 to £900 a year. For authors whose...
correct payment was £100, the range would be £78 to £122. It was thought that seventy-two service points would be the largest sample which could be afforded without spending all or most of the money the government was willing to allocate for PLR solely on administrative costs.68

At the end of 1974 the Library Association published its most comprehensive critique of PLR. On the question of payments to authors, it was pointed out that a government grant of £1 million would yield a mere 0.74p per loan. A yield of 1p per loan would require a fund of £6 million. A much larger sum would be needed if PLR were extended to embrace lending from nonpublic libraries.69

The TIG did not undertake a comprehensive survey of the amounts likely to be received by individual authors, but they concluded that the probable pattern of payments was that a small proportion of authors would receive relatively large payments, collectively constituting a relatively large share of the fixed pool; a large proportion would receive a moderate payments; and another large proportion would receive small or zero payments. The payments which authors in certain categories might expect to receive were estimated to be £1261 for every £1 million available for distribution for a current popular writer of adult fiction, £11 for the author of a single work of adult nonfiction, and £35 for an established writer of adult fiction with no recent publications.70

At one time Hugh Jenkins favored weighting the scheme so that authors of long books would receive more than authors of short ones. Brigid Brophy and Maureen Duffy pointed out that this would produce a greater reward for Gone with the Wind than for T.S. Eliot's Four Quartets.71 The minister did not press his case. He did, however, subsequently announce his intention of setting a maximum level of entitlement, so that the most popular authors could not scoop the pool.72 His successor as Minister for the Arts, Lord Donaldson of Kingsbridge, also supported this policy.73 The authors' organizations favored a flat rate per loan system, but they have reluctantly agreed to the imposition of an upper limit on authors' incomes from PLR.74

On June 9, 1975, Lord Willis introduced a loans-based PLR bill into the House of Lords, but after a debate over three hours on July 4 he withdrew it, after receiving firm assurance that the government would bring in its own measure.75 Later that month, twenty-eight leading public figures and authors pressed home the case for PLR in The Times.76 The entire December 1975 issue of New Review, sponsored by the Arts Council, was devoted to the question of PLR, with letters from some one hundred authors, publishers, politicians, and several librarians indicating their support for it.77
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In March 1976 the government introduced into the Lords its first PLR bill. Lord Willis succeeded in amending it in two respects, against the government's wishes: the word works was substituted for books, so that PLR would apply to nonbook materials; and only British writers, or those foreign writers whose countries operated reciprocal schemes, could benefit. In the Commons, the bill finally had to be abandoned November 17 due to the filibustering of a small group of Parliament members.\textsuperscript{78}

On January 25, 1977, Lord Willis introduced yet another private members' PLR bill (the seventh since 1960) which was basically the same as the government's bill without his previous amendments.\textsuperscript{79} The Commons did not proceed with this bill. In the Commons, Norman St. John-Stevas introduced a private members' bill December 7, 1977, but its progress was blocked by the same group who had defeated the government's bill.\textsuperscript{80}

The authors subsequently suggested the establishment of a non-statutory PLR scheme. In August 1977, Lord Donaldson outlined this scheme in letters to the Library Association and the local authority associations. Basically, the scheme followed the provisions of the government's 1976 PLR bill and the recommendations in the TIG reports of 1974-75. The PLR funds were to be channeled through the Arts Council into a new body, the Public Lending Right Council. The local authorities were unwilling to participate in a non-statutory scheme, and it was subsequently discovered that the Arts Council's constitution would not allow it to play the part it had been allotted. Nevertheless, the Department of Education and Science continued to promote the idea of a non-statutory scheme into summer 1978. The local authorities have proposed an alternative statutory scheme based on the sales of books to all kinds of libraries through the major library book-sellers. This scheme is virtually identical to that proposed by the Arts Council in 1970.\textsuperscript{81} It is, however, unacceptable to authors.

**Public Lending Right Today and Tomorrow**

The Labour government introduced its second PLR bill (the ninth PLR bill since 1960) into the Commons on November 3, 1978. The critical debate occurred January 24, 1979, when a group of Conservative backbenchers (who were the main filibusters, though not the only opponents of the bill) attempted to talk the bill out, but the government moved the closure of the debate, and it was carried by 214 votes to 19. The report stage and the third reading of the bill were completed on the
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night of January 30-31. The bill was read for a third time in the Lords on March 6 and received the royal assent on March 22, just before a general election was called. The most serious threat to the enactment of the bill was the possibility that a general election might have been called at any time during its progress.82

The Public Lending Right Act is mainly an enabling measure which requires the Secretary of State to appoint a registrar to administer the PLR scheme, which has to be approved by Parliament. The registrar must establish a register of eligible books and authors, who must apply for inclusion in person. The act established an authors’ PLR independent of copyright, so that authors and not the copyright owners (frequently the publishers) receive payments from a fixed sum in a central fund based on the number of times books are borrowed from a sample of public libraries. The central fund must cover the costs both of running the scheme and of payments to authors, and must not exceed £2 million in any one year (twice the limit in the 1976 bill), but the secretary, with the consent of the Treasury, may increase this amount by statutory instrument subject to a resolution of the House of Commons. The act empowers the secretary to decide which classes and categories of books are eligible for registration. PLR in a book takes effect from the date of publication, and subsists to the end of the fiftieth year after the author’s death. It is transmissible by assignment or by testamentary disposition.83

Norman St. John-Stevas, chancellor of the duchy of Lancaster in the Conservative administration which took office in May 1979, is responsible for devising and implementing the PLR scheme. In December 1979, the Office of Arts and Libraries published a Consultative Document on the proposed scheme and requested the views of all the interested parties.84

Books distributed without charge, those in Crown copyright, and those housed in reference libraries are to be excluded from the scheme. To reduce the administrative costs, it is proposed that the scheme be restricted to books with no more than three principal coauthors. Secondary contributors, including authors and translators, would be excluded from benefits.85

To ensure that a popular author not receive too large a proportion of the total fund, it is proposed that no author should receive more than £1000 of each £1 million available for distribution, less administrative costs. Credits above this amount would be redistributed among the rest of the eligible authors. Alternatively, a tapering scale of payment might be introduced, so that for each £1 million available an individual would
not receive more than £1000, and would need twice as many loans to qualify for a second £1000, three times as many for a third £1000, and so on.  

The Consultative Document envisages that the registrar would calculate the sums due to registered authors using data collected by a stratified sample of approximately seventy public library service points, which would be rotated every five years. Local authorities will be reimbursed from the central fund for any expenditure incurred in making returns of loans information. The registrar is empowered under the act to obtain information from public libraries. Indeed, if a library staff member provides inaccurate information, he, and possibly his chief librarian and the local authority, is liable on summary conviction to a fine of £1000. The Library Association considers it particularly ironic that this penal sanction should be contained in the act when it has been unable to persuade the Department of Education and Science of the need for statutory penalties to support the enforcement of standards of library provision under the Public Libraries and Museums Act of 1964.  

It has been estimated that by 1982, when the scheme is expected to come into operation, 75 of the 165 local authorities in the United Kingdom will have installed computerized equipment for recording loans at about 630 of their busiest service points. The data on book loans will be transcribed by the library authorities onto magnetic tape cassettes and forwarded at regular intervals to the registrar, who will run a computer tape showing the estimates of total loans of individual books and their ISBNs against the register, in order to calculate the sums payable to each author in relation to the total sum available for distribution.  

Over sixty organizations and individuals, mostly authors, have commented on the Consultative Document. One of the more controversial aspects of the proposed scheme is its cost. On the basis of estimates made by the TIG in 1975, the cost at 1979 prices is £600,000 per annum when the scheme is in full operation. In addition, during the two- to three-year planning period, expenditure was expected to be incurred at the rate of £100,000 in the first twelve months and £400,000 in the last twelve months using a sample of seventy-two service points. The TIG also estimated that the registrar would need a staff of thirty-five to forty, and that some 110,000 authors would be eligible to register, of whom probably one-half would do so.  

Supported by the authors' groups, the Authors' Lending and Copyright Society Ltd. (ALCS) has recommended to the minister that it should administer the scheme. The ALCS has commissioned research
which indicates that only some 10,000 authors would register initially, with a further 7000 registering annually thereafter. Moreover, ALCS claims it could launch the PLR scheme at a cost of about £150,000. The civil servants consider this estimate to be wildly optimistic. Even so, after the Consultative Document had been published, the government announced it had reduced the cost of running the PLR scheme by one-half. This was to have been achieved mainly by cutting the proposed size of the registrar's staff to twenty, by buying some services, and by reducing the size of the sample of service points from seventy-two to forty-five. It is now planned to reduce the sample to sixteen service points. The criticism that the administrative costs are too high a percentage of the PLR fund is really a complaint about the size of the fund. If the fund is increased in real terms, then the relative cost of running the scheme drops.

Librarians were skeptical about the adequacy of a scheme based on a sample of 72 service points, and are even more critical of one based on a sample of 16 service points, because there are over 6000 full-time and part-time branch and mobile libraries, and the number of service points rises to over 12,000 if all hospitals, voluntary centers, clubs, schools, and factories are included. The Association of Municipal Authorities (AMA) and the Association of County Councils (ACC) continue to urge the government to jettison the loans-based scheme and to institute instead a sales-based scheme using the records of the major library booksellers, who collectively account for over 80 percent of library purchases, in contrast to the loans-based scheme, which covers less than 1 percent of library loans.

The local authorities argue that the devisers of the loans-based scheme have not fully appreciated the administrative difficulties, the amount of additional expenditure, and the administrative confusion involved in implementing the scheme. They are also apprehensive that the PLR fund will not be financed from additional central government money but rather that the Treasury will find the cash by virement from the existing funds available for local government purposes. Moreover, they fear that as authors press for the PLR fund to be increased over the years, the government will shift the responsibility of paying for it to the local authorities, who will in turn meet the cost by charging the book-borrowers.

At present, the writers' groups and a majority of members of Parliament across the political parties are opposed to the imposition of borrowing fees. It is not, however, inconceivable that at some time in the future an ultraconservative government might wish to give local...
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authorities the option of levying fees on borrowers. The Daily Telegraph (a right-wing newspaper which has consistently lobbied for PLR) responded to the Consultative Document by urging that borrowing fees be introduced at a level which would provide authors with an adequate rate of recompense and cover the costs of running a PLR scheme.95

The authors’ groups do not at present recommend the adoption of the government’s PLR scheme for a variety of reasons: the registration procedure is too complicated; identification by author’s name rather than by ISBN may be cheaper and more accurate; the sample of service points should initially be restricted, to thirty-six, rising to fifty when the fund reaches £4 million, and to seventy-two when it reaches £6 million; translators should be allowed to register; pamphlets should not qualify for payments; coauthors should be treated as one authorial entity, with payments being made to one of them or to a nominee such as a literary agent; and the scheme should be restricted at least initially, to authors residing in the United Kingdom and to foreign authors from countries which have reciprocal PLR schemes.96 On this last point, the government’s law officers are now considering whether the wording of the PLR act allows for foreign authors to be excluded. It would seem that Britain’s obligations under the Treaty of Rome would preclude the exclusion of writers from other EEC countries.97

Many respondents to the Consultative Document criticized the decision to exclude reference books. Regional bodies representing authors are anxious to ensure that the stratified sample will provide for books with a mainly regional readership and books in minority languages. The Publishers Association opposes the proposal to set an upper limit on payments to authors, because this would be contrary to the basic principle of PLR as a right, not a charity, which must therefore be realized in payment for use. The publishers assert that it is inequitable to exclude illustrators and translators from PLR or to restrict payments for multiauthored works, and they claim that they are the most appropriate people to assess the significance of the contribution to a given work of the various coauthors or of the illustrator. They also assert that they should be able to register authors’ works. (The act specifies registration by the authors in person.) Since the act empowers authors to assign their public lending right, the publishers suggest that they may also wish to license their publishers to handle the right on their behalf, to share the proceeds from PLR with their licensees, and to offset anticipated PLR payments against advances on royalties. Currently, authors, composers, illustrators, and publishers are setting up a licens-
Situation in the United Kingdom

ing and collecting agency to monitor and receive payments for the reprographic reproduction of in-copyright material by local authorities, and the publishers recommend that this organization should administer PLR, thereby saving some of the money needed to set up a special organization to administer the scheme.98

The civil servants who are drafting the detailed PLR scheme are currently evaluating the census of library service points, including information about loans, stocks, issue methods, opening hours, and locations, which has been carried out by the Office of Arts and Libraries in order to facilitate the choice of a stratified sample. If a start is to be made on recording loans in 1982-83 so that authors will begin to receive payments at the end of that period, then the draft scheme will have to have been presented to Parliament by the end of 1980, where it must remain for forty sittings and be debated in both houses before it can be implemented.99

What of the future of PLR from the authors' point of view? Maureen Duffy, novelist and founder-member of WAG, anticipates that the authors' groups will promote the following developments: the inclusion of reference books, nonbook materials and nonpublic libraries within the scope of the PLR scheme; the creation of an international network of reciprocal PLR arrangements; the allocation of a sum of money to PLR which represents a reasonable proportion of the total expenditure on the library system; and the replacement of the fixed-pool method of financing PLR by a flat rate of a penny per loan.100

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Public Lending Right:
Situation in New Zealand and Australia

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New Zealand and Australia are the only countries in the South Pacific region to have introduced public lending right (PLR) in 1973 and 1974, respectively. Other countries in the region, including the ASEAN nations (Malaysia, Singapore, Indonesia, Thailand, and the Philippines), have no plans to implement PLR for a variety of reasons: the very small number of authors, lack of pressure from organized writers' associations, and the existence of other forms of supporting literature, e.g., grants and tax exemptions on royalties.¹

New Zealand and Australia are geographically relatively close, and PLR was introduced about the same time in the two countries, but in fact there was no cooperation between interested parties. The Australian Society of Authors (ASA) archive contains correspondence between the United Kingdom Society of Authors and ASA but not between the New Zealand Centre of PEN and ASA, even though ASA has a number of New Zealand writers as members. Both countries introduced PLR independently of each other and, as the two systems are dissimilar, the countries will be treated separately.

New Zealand

The 3.1 million inhabitants of New Zealand (which saw the first group of immigrants under a definite scheme of colonialization only in 1840), live on two main islands approximately the size of the United

Henning Rasmussen is System Coordinator, Caulfield Institute of Technology Library, Victoria, Australia.
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Kingdom and 1600 kilometers east of Australia. The largest section of the population (2.7 million) are of European origin; 330,000 are either Maoris or Pacific Island Polynesians; and only 33,000 of Asian or Indian origin. About 2.6 million live in urban areas, thus giving a high population density in these areas—a figure accentuated by a noticeable rural-urban drift.2 The latest figures available in the Official Yearbook 1979 show that New Zealand (in 1974) had 191 public library systems covering 268 libraries, with a bookstock of 4.6 million, and 21.8 million circulations to 1.03 million borrowers.3

PLR

The first New Zealander to mention the principle of PLR appears to be John Alexander Lee, who in 1938 wrote: "The books [i.e., in the libraries] are cheap or free at the writer's expense, not at the community's."4 With direct reference to New Zealand he said: "One of these days private and municipal libraries will be compelled to credit the scribbler with a few modest pence every time his book circulates.... The pimp is compelled to yield a proportion even to the prostitute."5

Between 1938 and 1966, as far as is ascertainable, the literature does not reveal any agitation for the introduction of PLR in New Zealand. In 1966, the author John Pascoe described the PLR system in Denmark and urged that a petition should be presented asking for the adoption in New Zealand of a similar system.6 The news about the PLR discussions in the United Kingdom were the basis for a paper by the city librarian of Wellington, Stuart Perry, who in 1968 described PLR in detail, thus being the first New Zealand librarian to deal seriously with the issue. He stated: "Whatever is done ought to be the subject of discussions among the New Zealand Library Association, the PEN (New Zealand Centre), and representatives of book trade interests."7

At the New Zealand Library Association (NZLA) conference in 1968, Perry gave the librarian's view on PLR, and John Pascoe put forward the writer's point of view. Perry moved that the NZLA council discuss PLR and other matters of mutual concern with writers', booksellers' and publishers' organizations. The motion was carried only after an amendment to the effect that the NZLA council might participate in such discussions under certain conditions.8 A discussion was held in 1970 between NZLA and PEN during which NZLA was asked to conduct a survey in order to establish holdings of New Zealand authors. NZLA declined but supplied PEN with names of representative libraries "without prejudice to its position on this matter."9

PEN commissioned the McNair Survey Pty. Ltd. in 1971 to carry out a survey of established New Zealand authors' earnings. It showed
that the average gross earnings from royalties for a medium group of authors was NZ$1.92* per week.10 A policy statement from the NZLA council agreed that authors were poorly paid but asserted that support for New Zealand writers "from public funds should be determined by value to the community, not by popularity, and that it can only be met by the central government, not by local authorities."11 The Association, supported by PEN, objected to attempts to let public libraries collect the relevant fees or to let library authorities pay any fees.

A feasibility study carried out by PEN in cooperation with NZLA sought to ascertain whether it would be possible (using established survey methods) to make a reliable calculation of authors' stocks in metropolitan, leading provincial, country, school, and university libraries. Ian Cross, chairman of PEN's PLR Committee, stated in a submission of March 23, 1972, to the minister of Internal Affairs that "the exercise indicated clearly that an annual sample of authors' library stocks could be calculated with surprising ease, and that the findings of the sample would be reliable."12 NZLA and PEN jointly asked for a committee to inquire into improving the financial position of New Zealand authors, and an interdepartmental committee was set up to report to the government on the desirability and practicality of introducing a PLR system.13 The participating authorities were the departments of Internal Affairs, Education (including a representative of the National Library), Treasury, and Justice.14 The minister of Internal Affairs, D.A. Highet, opposed any involvement of government funds, whereas the leader of the opposition, Norman Kirk, in April 1972 pledged Labour Party support for a government-funded PLR.15 The election in November 1972 resulted in a change of government and a subsequent change in the mandate of the interdepartmental PLR Committee, which now was to "consider practicable ways of implementing the government's announced intention of giving assistance to authors."16 Though sympathetic to the PLR idea, the government nevertheless did not want to introduce a scheme as a right. The New Zealand scheme, therefore, "is not a 'right' in the full sense but is a fund for N.Z. writers, the payments from which are calculated on the basis of such a right, i.e., compensation for loss or royalties from books held in libraries."17 There are no links with library or copyright legislation, and the fund provides only for authors who are citizens or residents of New Zealand.

The first census of library stocks was carried out in a sample consisting of the seven university libraries, all public libraries with

*The New Zealand dollar exchanged for approximately US$0.94 in March 1981.
more than 100,000 books, the Country Library Service and the School Library Service, two training college libraries, four of the twenty-three public libraries with between 20,000 and 100,000 books, and four of the twenty-seven with between 10,000 and 20,000 books.  The Department of Internal Affairs has administered the scheme since its inception in 1973. It is kept under constant review by an advisory committee which also acts as an appeal tribunal in case of disputes. The committee has an independent chairman, two nominees of PEN, a nominee each from the Literary Fund Advisory Committee and NZLA, a representative of the Department of Internal Affairs and another from the National Library.

The rules relating to qualified authors and qualified works are few, and apart from minor changes are still the same as in 1973. The New Zealand Authors' Fund calls for applications for payment each year, and those applying for the PLR payment for the first time pay an initial fee of NZ$5. Authors must reapply every year. In order to qualify for PLR payment, an author has to be either: (1) a New Zealand citizen residing in New Zealand at the date of application or, if not resident, having lived outside New Zealand for not more than three years immediately before that date; or (2) a noncitizen residing in New Zealand continuously for at least two years before the date of application. No payment is made where more than two authors are responsible for the intellectual and/or artistic content of a work.

The major conditions for qualified works are that they must: (1) be at least forty-eight pages of prose, ninety-six pages of photographs and/or art reproductions, or twenty-four pages of verse or drama; (2) have been listed in the New Zealand National Bibliography; and (3) be a work of which at least fifty copies are held in the scheduled libraries according to calculations based on sampling procedures. Children's storybooks containing a combination of text and illustrations and with at least twenty-four pages may be eligible for a percentage payment at the discretion of the Advisory Committee (usually 15 percent for author and 15 percent for illustrator). This last regulation was introduced in 1975. Translators qualify for payment if their translations are made with the consent of the owners of the copyright in the works or their authorized agents. The major exemptions are textbooks used in, or designed for, use in primary and secondary schools, anthologies, serials, collections of maps, etc., and works with Crown copyright. Unlike the Australian scheme, the New Zealand scheme does not include any payments to publishers.

The first payment in 1973 was NZ$1.30 per copy from the total PLR allocation of NZ$140,000. In 1979 the amount paid per copy had fallen...
to NZ$1.13 despite an increase in the allocation to NZ$200,000, the reason being that the number of authors receiving PLR payment had risen from 354 in 1973\textsuperscript{21} to 699 in 1979.\textsuperscript{22}

A test check was carried out in 1975 to determine the accuracy of the 1973 survey and of the random sampling procedures being used. Both showed a high degree of reliability and in 1979 a new holdings survey was planned for August/September 1980.\textsuperscript{23}

The calculations of payments to authors is very simple: the costs of the census and the expenses of the committee are deducted from the annual grants and the remainder is divided by the number of qualifying copies. The result is a flat rate of payment per copy.

An important aspect of the introduction of PLR in New Zealand was the close cooperation of PEN and NZLA, in contrast to the situations in the United Kingdom and in Australia. The past president of NZLA was able to report that: "The discussions which led to the establishment of the Authors' Fund were conducted in an unusual spirit of amity and fairmindedness....Librarians were anxious to avoid the stance of non co-operation which had been evident in Australia and Great Britain. The biggest contribution came from authors, Ian Cross in particular."\textsuperscript{24} Cross, president of PEN, in his turn is reported to have said to the PEN annual general meeting on June 15, 1973, that: "A significant difference here in New Zealand which has given us what we wanted has been the attitude of the Library Association. It has been enlightened, helpful and unselfish. Where librarians differed with us, they did so directly. But points of disagreement were always explored with the object of finding common ground."\textsuperscript{25}

Very little has been written about the possible effects of PLR in New Zealand. Aileen Claridge of the National Library of New Zealand has stated in a letter to the author that "the PLR scheme is having no discernible effect on New Zealand libraries."\textsuperscript{26}

### Australia

Australia has an area of 7.7 million square kilometers and a population of 14.1 million, including 160,000 Aboriginals (1977 estimate); 70 percent live in towns with more than 100,000 inhabitants.\textsuperscript{27} Of these, 80 percent are Australian born, 10 percent were born in other English-speaking countries and 10 percent in non-English speaking countries.\textsuperscript{28}

There is no federal funding of public libraries in Australia, apart from the Canberra Public Library system, and no federal legislation; the different states have different ways of funding their library services, and
the published statistics differ in scope from state to state. Figures gathered during the inquiry into Public Libraries show that, in 1975, 2.9 million registered borrowers borrowed 60.3 million volumes from a total bookstock of 13.88 million volumes in 771 library systems maintained by local government authorities.29

PLR

The first record of an interest in PLR in Australia is 1957, when the chairman of the Commonwealth Literary Fund, A. Grenfell Price, recommended the introduction of the Swedish PLR scheme to the prime minister. His proposal was rejected, and the idea appears to have lapsed for a number of years.30 It was revived in 1966, when the author John Kiddell suggested an amendment to the Copyright Act to permit the payment of lending royalties to authors, publishers and libraries.31 The proposed payment was to come from fees paid by the users. Kiddell's suggestion was rejected by the Management Committee of ASA.

The travel writer Colin Simpson in 1967 became the ASA spokesman on PLR and he became the driving force behind the ASA's efforts to introduce PLR into Australia. In November 1967, ASA sought the opinion of H.H. Glass of the Queen's Council on the possible incorporation of PLR into the Copyright Act, and asked for a suggested amendment to the act should this be possible.32 The opinion given by Glass on November 30, 1967, was positive33 and ASA, together with the Australian Book Publishers' Association (ABPA), which met half the legal costs involved, drew up a submission for PLR. The main points in this first submission were: (1) that in recognizing the public importance and value of libraries, ASA would not ask for any scheme of compensation that would hinder libraries' operations; (2) that the PLR should be acknowledged as an author's right; (3) that there was a very considerable, though hardly measurable, loss of sales through library lending; (4) that publishers too should have compensation; (5) that the system of free libraries existed at the expense of authors and publishers; and (6) that PLR should be legally recognized in copyright legislation.34

To forestall the resistance from libraries and library organizations which had been encountered in England, Colin Simpson wrote a lengthy article in the Australian Library Journal setting out the points mentioned in the submission to the attorney general and stressing the ASA's opinion that borrowers should not pay anything. Simpson concluded by stating:

We do not want to subtract one cent for ourselves from the moneys governments are prepared to grant for library-establishment subsidy
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and book purchase. It will be in our interest as well as yours that libraries get more funds, much more—once we are recompensed. Then, if governments and local authorities have to be hammered and shamed into granting you what should be granted, we shall do our part in hammering and shaming them.35

A meeting was held between the attorney general and ASA and its legal advisers on March 15, 1968. The attorney general suggested that a small committee of inquiry be set up. In a subsequent letter to him dated March 18, 1968, ASA made a proposal as to whom the members should be.

The attorney general apparently then changed his mind and formulated a scheme which was sent to the federal cabinet, but rejected. ASA could not obtain any information about the content of the scheme, and the rejection seemed to be a disappointment to the attorney general.36 In another letter to ASA the attorney general refused to offer an opinion on the possible inclusion of PLR in the copyright legislation. He expressed concern about possible implications if PLR was included and suggested that ASA put forward the scheme in another form.37

In order to appraise the financial situation of authors, in 1969 ASA asked the McNair Company to conduct a survey of the earnings of writers and authors in Australia. The survey concluded that the average remuneration from writing for a full-time author was about one dollar per hour.38 After the federal election in 1969, ASA approached the new attorney general, T.E.F. Hughes, in November and appealed to him to establish PLR within the Copyright Act of 1968, or, if this proved impracticable, to advise the ASA on what the government would be prepared to do. In this new approach ASA recommended the Danish scheme, based on bookstocks. ASA received some unexpected support in a letter from the Fisher Library Officers' Association (University of Sydney), which approved of PLR as it operated in the Scandinavian countries and called upon the Library Association of Australia (LAA) to make a statement in support of the authors.39

In January 1970, Colin Simpson, on behalf of the Management Committee of ASA, wrote to the prime minister, J.G. Gorton, asking for a committee to "examine the economically-underprivileged position of Australian authors, and to consider whether, and at what cost to Commonwealth Funds, this situation can be remedied."40 Simpson's letter also contained the ASA proposal, which was later discussed by the Committee and Advisory Board of the Commonwealth Literary Fund.41 The Advisory Board asked for a new submission on "which to base a recommendation to the Prime Minister for the implementation of Public Lending Right."42 ASA's submission stated that recompense for loss
of sales and for community use of authors' creative works should be paid to Australian publishers and authors based on stock counts in selected public lending libraries, and that the amount be not less than twenty-five cents per copy. ASA suggested the establishment of a committee to recommend fees, the division of the fees between authors and publishers, and the method of fund distribution; the committee was supposed to have representatives from the federal government, Commonwealth Literary Fund, ASA, ABPA and LAA.  

It appears that a report by the Commonwealth Literary Fund finished in August 1970 was given to a parliamentary committee consisting of Snedden, Whitlam and Lucock, and later to an interdepartmental committee which was to make a recommendation to the government. In October 1970, the Management Committee of ASA discussed how public attention could be drawn to the PLR case, and at a general meeting on October 26, 1970, ASA passed the following resolution: "That we write to the ABPA asking it to consider, in conjunction with its authors, withholding such books as authors asked to be withheld from sale to libraries until such time as PLR is granted." In accordance with this resolution, Angus & Robertson, in a letter of April 30, 1971, to all booksellers and library organizations, stated that they, in cooperation with Colin Simpson, would withhold his new book *The New Australia* from the library suppliers.

It was suggested to the Management Committee that authors and their families, as library members, should borrow their books from public lending libraries and retain and renew them for as long as possible. An advertisement was made ready for insertion in the *Australian* (and a draft indicates that the costs would be met by Angus & Robertson). The advertisement had to await an answer from Prime Minister McMahon to a letter dated June 21, 1971, from ASA. Very forcefully, Colin Simpson again set out the case for PLR, clearly showing his frustration and asking for an answer by July 15 to the plea that authors should have economic justice. The withdrawing of books was averted when a letter of July 13, 1971, from McMahon suggested a further meeting with the attorney general, to which ASA agreed.

When Whitlam received a copy of an ASA letter of November 3, 1970, to the prime minister concerning the delays in establishing PLR, he placed the following question on the notice paper for the attorney general when Parliament resumed on February 16, 1971: "Has he given consideration to appointing a committee to advise on legislation with respect to public lending rights as a former attorney-general did with respect to copyrights?" No answer was received, and when a new
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attorney general was appointed, the question was answered thus: "Because of the more limited nature of the subject I do not propose to appoint a committee as in the case of the copyright law. The matter is being given attention by my Department and other interested Departments."50

A new submission by ASA and ABPA in August 1971 was entitled "The Case for the PLR with Proposals as to its Implementation." The principles in this submission were "that authors and publishers have a right to be recompensed when their books are publicly used by being lent from libraries" and that "a situation of injustice exists and should be corrected."51 The submission defined "Australian authors" and "Australian publishers," compared PLR with "performing right," and described the Danish and Swedish systems and the suggested British system of 1968. ASA and ABPA still considered incorporation of PLR in the copyright legislation as "the most desirable form of recognition of this right."52

ASA asked in the submission for a system based on the Danish scheme, with certain changes. Translators should qualify, though only for one-half of the normal entitlement, and public libraries were taken to include libraries in colleges and universities. The society again stressed that libraries should not "bear the cost, directly or indirectly through any scheme that charges the cost of authors' and publishers' PLR recompense on library purchases."53

PLR is, of course, of interest to librarians and their associations, and in 1971 LAA started participating in the discussions. The role of LAA is difficult to ascertain from primary material. The PLR file in the LAA office in April 1978 contained only the Australia Council's 1977 pamphlet on PLR. It was not possible to retrieve any of the correspondence, the existence of which is revealed through notes and articles in the Australian Library Journal and through an interview with Colin Simpson.54

An LAA committee on PLR reported to the General Council on August 22, 1971, its findings and recommendations based on Colin Simpson's articles on PLR in Australian Library Journal and Australian Author. The majority agreed in principle with "the right of Australian authors to be compensated for the use of their books in libraries through financial encouragement from the Government but doubts that a 'PLR' would achieve the objectives propounded by the ASA and would prefer a thorough investigation of the roles of the Commonwealth Literary Fund and the Arts Council of Australia in this field."55 The subcommittee recommended:
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1) that the Sub-Committee be authorized to have discussions with the ASA to clarify their claims, it being clearly understood that the LAA has no opinion on the matter at this stage, and 2) that the Sub-Committee be authorized to seek interviews with the Attorney-General and the Minister for Environment, Aborigines and the Arts to determine present Government policies on this matter and to outline some of the complicating factors in the claims expressed by the ASA.  

As far as can be determined from the printed sources and the files in ASA, the meeting authorized in the first recommendation took place only on April 21, 1972. In the period between July 22 and August 22, 1971 (the date of the General Council meeting in Sydney), LAA, however, reached an opinion on PLR, as published in the October 1971 Australian Library Journal, where the president of LAA, R.C. Sharman, in a presidential address, quoted a resolution which had been carried at the General Council of the LAA concerning the relation between the authors' claim for PLR and the role of the Commonwealth Literary Fund: "This Association strongly urges that the Commonwealth Government should increase substantially the funds available to the Commonwealth Literary Fund as the best means of assisting authors to write books needed by the readers of Australia." 

It should be noted that the presidential address does not mention the most important resolution concerning PLR carried on the same day. Resolution no. 84/71 stated in section 1 "that the LAA rejects the claim that a right, either moral or legal, exists whereby an author should be paid in respect of the loan of one of his books by a person or body which has purchased it." This resolution was published in the same issue of Australian Library Journal. 

ASA and ABPA had a meeting with the attorney general, Ivor Greenwood, who expressed a willingness to put a PLR scheme before the cabinet, provided a reasonable method could be devised. In order to estimate the costs, ABPA asked its members to supply lists of books which, by the publishers' judgment, would qualify (i.e., fifty copies held in lending libraries). A list comprising about 3000 titles was sent to the attorney general's department in April 1972. The department had arranged for the Commonwealth Bureau of Census and Statistics to conduct a library sampling using the ABPA list. This sampling, however, was never finished owing to the change of government. 

The first responsible commitment to introducing PLR was made by the then leader of the Opposition, Gough Whitlam, at a function for the Australian Writers' Guild on June 14, 1972. Whitlam stated that the Australian Labor Party committed itself as a matter of policy to introduce PLR. If Labor was elected, Whitlam would set up a committee to

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make recommendations within six months on how to implement a federally funded PLR scheme. After Labor's assumption of office in 1972, ASA submitted a brief recapitulation of the society's earlier proposals covering: recognition of the PLR, compensation to Australian authors and publishers, application of the Danish scheme, annual payment from government funds, and establishment of an "Australian Authors' and Publishers' Recompense Fund." The submission again stressed that: "This Society has the highest regard for library services, fully recognizes their value to the community, and is concerned that these be not diminished in any way. We hope the LAA will show itself as co-operative as its New Zealand counterpart promises to be."

The prime minister, Gough Whitlam, directed the Australian Council for the Arts to report on means of implementing a scheme for PLR, and at its meeting on March 1-2, 1973, the literature board appointed a committee of inquiry to report on the matter. The first members were all members of the literature board. The next meeting of the literature board resolved that the PLR committee include representatives of LAA, ABPA and ASA. The attorney general's department and the Bureau of Census and Statistics were asked to send observers to the meetings of the committee, now named the Public Lending Right Committee.

However, before the first meeting of the full PLR Committee on May 1, 1973, LAA sent a letter to all municipalities with public libraries. The letter was signed by the general secretary of LAA, Allan Horton, and not, as perhaps might have been expected, by the president. The basic statement in the letter was that "there appears to me to be a danger that libraries will be faced with a large increase in book prices to finance payments to authors." The letter was accompanied by an LAA document of December 15, 1972, also signed by Horton, setting out the views of the LAA. The letter and the enclosed document were obviously designed to create an anti-PLR movement, and the general secretary asked to be sent copies of any letters that anti-PLR lobbyists might send to their members of Parliament. It is difficult to understand why LAA took this step, since it was evident that libraries would not have to pay for PLR, either directly or indirectly. The warning that local authorities might face increased book prices was based on facts valid only for Britain, where such a scheme had been proposed. The letter seems to be from Horton—"there appears to me" (my italics)—rather than from LAA; this assumption is perhaps supported by the fact that LAA does not have a copy of the letter or the document in their files. The circulation of the LAA letter had no
influence on the introduction of PLR, and the minutes of the PLR Committee reveal no discussion of the LAA initiative. A number of issues were debated during the PLR Committee meetings, such as definitions of Australian publishers and authors, time span for PLR payments, selection of libraries and samples, and number of pages necessary in a volume in order to qualify for PLR payment.65

A librarian was employed to identify public lending libraries which would constitute a reasonable sample from which extrapolation could be made in order to establish the number of eligible books held in public lending libraries. On April 18, 1974, the PLR Committee reported to the literature board, and presented a draft of their final report on PLR. An extraordinary addition was made by the board, which recommended that poetry be paid at A$1* per volume, i.e., double the amount recommended for the scheme. The literature board approved the report, which was sent to the Australian Council for the Arts with the recommendation that a payment of fifty cents per volume be made to authors and twelve and one-half cents per volume to publishers.66 The ASA was concerned about the decision of the literature board to compensate poets at a different rate, and wrote to the chairman, Geoffrey Blainey, asking him to preserve the principle of PLR as a straight commercial compensation for the presence of books on library shelves.67

The prime minister, Gough Whitlam, announced the introduction of PLR on May 13, 1974. The PLR scheme would not need legislation and would apply retroactively to April 1, 1974, with writers paid fifty cents and publishers twelve and one-half cents for each copy of their books in Australian lending libraries.68 Since a new federal election was scheduled for May 18, 1974, ASA sought and obtained assurance from the Opposition spokesman for the arts, Condor Laucke, that “our coalition government will continue the public lending right payments and continue the present literary fellowship scheme.”69 At a meeting on the same day, the literature board advocated that poetry be paid a higher rate than other books.70 Discussions with the executive officer of the Public Library Division, Library Council of Victoria, Barrett Reid, revealed that this suggestion was not carried through,71 and no official decision can be found in the sources available to me.

The PLR fund was to be administered by the Australian Authors' Fund Committee, whose members, appointed by the prime minister, were to be responsible to the prime minister’s department. The chairman was independent, and the other members were: a nominee of the

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literature board, a representative of the interests of authors, a representative of the interest of publishers, a representative of the interests of libraries, an officer of the department of the attorney general, and an officer of the Treasury.

This committee was established after the federal election when Whitlham again was prime minister and, in order to keep the promise that payments were to be retroactive to April 1, 1974, the Australian Authors' Fund Committee decided to use the lists compiled by the ABPA and the writers' organizations. Since these lists were samples only, some omissions, anomalies and errors were found, but the organizations involved accepted these as a reasonable compromise in order to get the scheme into operation. By November 1974, about 2000 authors had received PLR payments amounting to A$390,000 and about 75 publishers received payments amounting to A$97,000. For the fiscal year 1975/76, payments were to be made on the basis of applications from all claimants. The sample of libraries were widened on the advice of the Bureau of Statistics and the National Library, which was now represented on the Australian Authors' Fund Committee. It must be noted that libraries were fully paid for all the costs involved and that library cooperation was entirely voluntary. In order to maintain maximum cooperation from public libraries, and in order to keep the administrative costs of the scheme as low as possible, it was decided that a full range of titles would be counted in 1975 only, with surveys in the following years being restricted to one-third of the main file alone plus new titles for which claims were lodged for the first time. Titles first published in the preceding year would be counted for two consecutive years and would then be transferred to the triennial cycle. In September 1975, Whitlam promised to introduce a bill for a PLR act into Parliament in order to secure the future of the scheme. Officers of the attorney general's department had advised that "there could be difficulties for the administering authority in the absence of legislation and that, even if the scheme was not covered by legislation initially, it would be desirable to introduce legislation at an early date."72 The bill was drafted and tabled for November 11, 1975; but on that day Whitlam was dismissed by the governor general. The new coalition government set up an Administrative Review Committee which was to deal with different aspects of the Australia Council. This committee accepted a recommendation from its chairman, Sir Henry Bland, that PLR become a responsibility of the Australia Council. ASA was gravely concerned about the government's attitude and tried to keep the Australian Authors' Fund Committee as it was, but on December 10, 1976, the Australia Council resolved to
appoint a committee under section 17A of the Australia Council Act 1975 as amended by Act. no. 113 of 1976. The PLR Committee, as it was named, was chaired by an officer of the Australia Council staff, the other members being the members of the defunct Australian Authors’ Fund Committee. The PLR Committee had the responsibility of advising the Australia Council on the administration of the PLR scheme generally and to prepare a gazette notice outlining the principles on which PLR would be organized. This notice was almost identical with the Charter, Definitions and Procedures of the Australian Authors’ Fund Committee as published in the January 1975 Australian Author. Discussions and decisions in the PLR Committee had influenced the gazette notice, which was forwarded to the Australia Council for approval on September 27, 1978. It is expected that the minister of state for home affairs, R.J. Ellicott, will gazette the notice in the near future, thus establishing PLR on a legal basis.

**PLR Machinery in Australia**

The machinery by which PLR operates in Australia is set out in the PLR Charter and Definitions, which are designed to establish how eligibility for PLR is converted into monetary entitlement. A number of definitions are given for books, authors, editors, illustrators, translators, and publishers, and for claimants for deceased authors’ PLR. A number of cases are mentioned which do not yield PLR, such as books with more than three creators (authors, coauthors, illustrators, editors, and translators), or where the authorship is by an association, an institution or another corporate body; publications where copyright is vested in the Crown; encyclopedias and dictionaries with a number of authors; and magazines and serials. Eligible books are created by eligible authors; each book must contain at least forty-eight printed pages, except children’s books and works of poetry or drama, where only twenty-four printed pages are required. Books published in more than one volume yield PLR for each volume.

The Australian scheme provides PLR for Australian citizens and for non-Australians as long as they are residing in Australia. PLR payments are made until the death of the author or until a period of fifty years after the first publication has expired, whichever date is the later. Editors are eligible to share in PLR if they are named on the title page of the book or in the Australian National Bibliography and if they have chosen the text from one or more authors’ writings.

Normally up to three creators can share PLR funds equally. Illustrators can obtain funds only where they have been party to contracts
and have not received an outright payment for the illustrations provided for the book. When an author dies, the following categories of persons will be eligible for PLR: surviving spouse, all first-generation children, and (eventually) a companion. Spouse is defined as: "widow or widower, or any person who lived with the deceased author as husband or wife on a permanent basis although not legally married to the author and who was so living immediately before that author's death." If a spouse has applied and been ruled eligible for PLR funds, the children cannot be eligible.

Publishers are eligible with regard to books by Australian authors if, in the opinion of the PLR Committee, they regularly carry on publishing in Australia. In order to make this decision, the PLR Committee will examine a number of functions such as the place "1) Where the contracts for books have been made, 2) Where the editing of the books has taken place, 3) Where books were designed, 4) Where production and printing were supervised, 5) Where marketing of the book and general publishing administration took place." 78

For each title, claims for PLR money must be lodged by creators, publishers, and claimants for deceased authors. The claims are checked against the Australian MARC records, and if the title is eligible, it is given a control number which, together with the name and address of the claimant, is fed into the master computer claimant file. Each eligible book is allocated a control number—where possible, the ISBN—and this number is added to the master computer book file. The two master files contain cross references between books and claims. A checklist of eligible books is produced with authors' surnames and titles of edited works in alphabetical order. The following information is given for each title: author, title, subtitle, coauthor(s), editor(s), illustrator(s), translator, publisher, place and year of publication, and control number. The checklist is sent to the libraries which participate in the stock-taking for the year.

The Australian method of stock-taking employs a refined statistical sampling of public libraries, with certain exemptions. The collections in Western Australia, South Australia, Australian Capital Territory, and Tasmania are all recorded in central shelflists and, together with the Australian collection in Mosman, New South Wales, and the collections in a small number of other libraries, are counted every year. For Victoria, Queensland and New South Wales, a number of libraries are selected at random from twenty-two different strata, such as metropolitan libraries with bookstocks in the ranges of 0-100,000 and 100,000+; and extra metropolitan libraries with bookstocks in the ranges of 0-
The frequency with which the libraries occur in the annual sampling varies with some libraries being asked to participate every year, and others only four times in thirty-five years. However, since it is a random sampling, a library in the latter group could, in theory, be asked to participate in four consecutive years. The probability of being asked to participate in two consecutive years is remote, though.

When the libraries have recorded the number of copies held, the lists are returned, the number of copies are keypunched into the master computer book file, and an estimate of the total number of copies of each title held in all Australian libraries is extrapolated. The accuracy of the completed estimates varies but is usually better than ±9.5 percent. Thus, an author paid for 3000 volumes might well have between 2715 and 3285 volumes.

If the number for a title is fifty or more, a claimant advice is produced stating the number of copies, percentage of entitlement (two coauthors will receive 50 percent each), value of each title, and total amount payable. If a title is not eligible for payment (i.e., fewer than fifty copies held), it is nevertheless kept on the file, and will be considered for PLR entitlement until three years after the year of publication. If a claimant wants to reclaim after this period, he can do so for a fee of five dollars per title. The PLR payment has not been changed since the introduction of the scheme in 1974. The author receives fifty cents per copy and the publisher twelve and one-half cents. All payments are taxable, and as stated in an editorial: "The tremendous gain in achieving PLR...is slowly being whittled away by inflation: PLR payments remain stuck in their 1974 groove."80

Colin Simpson tried to raise the rate for 1977, but the Treasury blocked the move.81 A new attempt in February 1978 was made in vain, though Minister for Home Affairs R. J. Ellicot promised to discuss with the prime minister and the minister for finance "an increase in rates for the 78-79 financial year."82 A “Draft Report on the Publishing Industry” published in November 1978 by the Industries Assistance Commission included a recommendation directly related to PLR: that PLR payments to publishers should be abolished.83

ASA urged that this finding be reversed: "The Commissioners should accept that the development and expansion of public borrowing libraries by successive State and Federal governments is a continuing response to community needs and that the same governments see PLR for publishers as a simple compensation for the perceived reduction in their market for books."84 In February 1980, ASA again appealed for an
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increase in respect of payments of 50 percent based on an increase in the Consumer Price Index of almost 100 percent\(^5\) since 1974, and stated that “authors, whether in Australia, New Zealand or any other country, need to establish their right to periodic renegotiations whenever payments are based on fixed amounts.”\(^6\)

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3. Ibid., pp. 218-21.


5. Ibid., p. 270.


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70. Australian Council for the Arts. Literature Board. "Minutes of Meeting No. 26, 16 May 1974."
72. Attorney General's Department to Department of the Prime Minister and Cabinet, May 9, 1974.
74. Minister assisting Prime Minister in the Arts A.A. Staley to Australian Society of Authors, Jan. 4, 1977.
75. "The Australian Authors' Fund Committee," Australian Author 7:10-14, Summer 1975.
77. "The Australian Authors' Fund Committee," op. cit.
82. Ibid., p. 13.
86. Ibid.
DISCUSSION OF PUBLIC LENDING RIGHT (PLR) is much further advanced in Canada than in the United States.* Authors' and librarians' groups have issued resolutions and manifestoes on the subject, formal debates have been held, and the Canada Council is developing a "model" for compensating authors based on holdings of their works by libraries.

The Canada Council, a governmental corporation which administers grant programs for artists and authors, is not to be confused with other councils which have studied PLR and rendered reports relative to its implementation in Canada: the Canadian Book and Periodical Development Council, composed of representatives from the Canadian Library Association (CLA) and various Canadian writers, publishers and booksellers, is one such group. Another council is that of the CLA, whose statement on compensation for authors was subsequently modified and adopted by the annual conference of the CLA in Halifax in 1976.

Other groups actively studying PLR and its possible implementation in Canada include (or have included) the Canadian Copyright Institute, the Ontario Library Association, the Canadian Political Science Association, and—certainly not the least militant—the Writer's

*To meet the problem produced by the untimely death of Rudolph C. Ellsworth, who was to have contributed the article on PLR in the Americas, the issue editor has assembled the following review of the literature on this subject.

Perry D. Morrison is Professor of Librarianship and Coordinator of Library Research, University of Oregon, Eugene.
PERRY D. MORRISON

Union of Canada. Much of the information in the library press about PLR in Canada has come from the pen of Rudolph Charles Ellsworth, former head of the Bibliographic Research Service, Douglas Library, Queen's University at Kingston, Ontario, and later, at the time of his death, librarian of the Metropolitan Sanitary District of Greater Chicago. As a counterbalance to Ellsworth's accounts, which opponents of PLR regard as slanted in favor of it, one should consult the writings of George and Anne Piternick and of Samuel Rothstein, all of the University of British Columbia School of Librarianship. Ellsworth's most useful summaries are those appearing in the Ontario Library Review in 1976 and in Libri in 1977, based on a talk given at the Royal School of Librarianship, Copenhagen. The bibliography appended to the latter article is particularly useful. The opposition view by Piternick and Rothstein was initially published in Felicier, and later in somewhat modified form in the U.S. publication, The U*N*A*B*A*S*H*E*D Librarian. A letter by Anne Piternick, CLA president, 1976-77, to Feliciter was written to set the record straight as to the official position of the CLA on PLR. It quotes in full the 1976 resolution of the association, which states that the "CLA strongly urges the federal government...to develop and fund a system of increased financial rewards to authors." The resolution further states that CLA is ready: "to support the use of library holdings data in the consideration and development of an appropriate system....CLA makes these recommendations in recognition of the cultural contribution of Canadian writers and not in recognition of any legal entitlement, i.e., a public lending 'right.' "

To librarians, at least, the most readily accessible source of statements in support of, opposition to, and equivocal on, PLR for Canada is the report of the Copyright Workshop sponsored by the Canadian Association of College and University Libraries and held June 14, 1975, during the annual conference of the Canadian Library Association. Françoise Hébert of the National Library of Canada moderated the proceedings. Marian Engel, a writer and member of the Writer's Union, presented the pro-PLR position. Roy C. Sharp, a lawyer, argued the case for PLR as an extension of copyright and discussed the position of the publisher as well as that of the author. A.A. Keyes, then consultant with the Canadian Department of Consumer and Corporate Affairs, furnished a brief and frankly "ambivalent" piece from the point of view of the consumer—the only attempt to view the question from this angle anywhere in the PLR literature. As one would expect, Ellsworth produced a report on the history and current status of PLR schemes in various countries in the world. Finally, George Piternick filed the
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opposition brief, and advocated in lieu of PLR, a program of financial relief for authors without reference to use of their works in libraries by, for example, tax exclusions "for the first $x dollars of royalty of sale income" received from writing.6

Additional pro-PLR statements from the author's and publisher's point of view in Canada are available in nonlibrary sources held only in the larger U.S. libraries. These articles have appeared in Quill and Quire, a writers' professional journal, and in such more general periodicals as Saturday Night and Maclean's, as well as in daily newspapers in Canada. A selection of these sources are cited in Ellsworth's Libri bibliography. However, Ellsworth attributes considerable influence in furthering debate on PLR in Canada to a report sponsored by librarians, namely, the Ontario Canadian Public Lending Rights Action Group. This 16-page report, entitled "Public Lending Right: A Survey of Practices, Options and Opinions," is the basis for the passage of a pro-PLR motion at the 1974 annual meeting of the Ontario Library Association in Ottawa. According to Ellsworth, "this report raises and answers many questions." However, he is quick to add, with little fear of contradiction, that "upon closer scrutiny most of the issues concerned with authors' lending rights become more rather than less complex."7

The Canada Council is conducting a questionnaire survey of Canadian authors in order to form a representative list of their publications to check against the holdings of a sample of Canadian libraries. This data will form the basis for a model for a PLR program which could be put into immediate effect whenever funds are provided. The plan will be based on library holdings (rather than circulation from libraries) of books by Canadian authors. It would thus be a scheme for remunerating Canadian authors other than by extension of copyright to library lending. To reward all authors, Canadian and foreign, who copyright books in Canada would be impossibly costly. In fact, the Canada Council will not claim it openly as a right.8 The council prefers to refer to the subject as CLU (compensation for library use) rather than PLR. The plan will also provide for a decreasing scale of payments related to any particular book or author, so that a few authors of best sellers will not profit unduly, and so that the new author or author of books for specialized audiences will also benefit significantly from PLR payments.9

The Committee of the Canada Council on Compensation for Library Use has studied alternatives put forth by opponents of PLR and put them aside as "inadequate for the purposes PLR is to achieve." On the other hand, the committee has "been careful to keep the librarians' concerns in mind" in drawing up "a system acceptable to one and all."10—a large order!
According to A.A. Keyes, the Canada Council "could announce that their reservoir of funds will be used to provide a purely administrative mechanism, a system similar to that in Australia." To the contrary, a spokesperson for the Canada Council indicates that any scheme put forth by the council would require special funding by Parliament. The Canada Council anticipates no problems with federal versus provincial responsibility for any PLR scheme it may put forward. Indeed, provinces may wish to augment the payments from the federal scheme in coordinated PLR plans for their own authors.

The question of extending the principle of PLR to other arts and to publishers will certainly be addressed both by the Council in constructing the model and by Parliament in discussion of funding. Be that as it may, we can only end this discussion of the situation in Canada, as Ellsworth usually did his, with a quotation from the Calgary writer, James H. Gray: with the PLR issue, "the love-hate relationship between authors and libraries goes quickly back to square one."

In the United States the issue is not so tightly drawn, at least not yet. Nor will it be in the near future, given the present political climate in this country. The most significant event in the history of PLR in the United States was the introduction, at the request of the Authors League of America, of a bill by then Congressman Ogden R. Reid (D., N.Y.) to the House of Representatives to "Establish a Commission to Study and Make Recommendations on Methods for Compensating Authors for the Use of Their Books by Libraries in 1973" (93d Cong., 1st Sess., H.R. 4850). The commission, the bill stated, would be associated with the Library of Congress. Any funds for lending royalties would be provided by the federal government and would not affect the Copyright Act. The bill was referred to the Committee on House Administration, where it apparently died.

Mr. Reid is no longer in congress, but the Authors Guild has far from given up the cause. PLR was the principal topic of discussion at the annual meeting of the guild, February 28, 1980, in New York, which featured an address by the British champion of PLR, Lord John Ted Willis. The guild has also been running a series of articles on PLR in various countries in its Bulletin. The guild's council also invited Jan Gehlin, a Swedish author and leader in the PLR movement there, to address the council on December 3, 1980. According to Guild president Robert A. Caro, in studying the question of whether the organization should launch a campaign for PLR, the guild must consider the following questions: "Can PLR be funded in such a way as not to cut into already inadequate funds for public libraries, and to insure absolutely
that there is not governmental intrusion into the field of freedom of expression? Can PLR be handled in such a way that the author of bestsellers does not benefit disproportionately?"16 He indicated that, while these questions appear to have been answered in a satisfactory manner in other countries, the situation in the United States may be different. In approaching the problem, Caro thinks that a first priority would be the creation of a "climate of opinion" among American authors.

Another project which should be of interest in assessing, if not creating, the climate of opinion among authors is a study recently commissioned by the Authors Guild Foundation. This study will assess the economic condition of U.S. authors by questionnaires and personal interviews conducted by the Center for Social Sciences of Columbia University. The purposes of this study are broader than the question of support of authorship through-PLR, but the results will be relevant to this issue.17

Although over the last decade several exploratory articles have appeared in the library press of the United States regarding PLR18 the issue has generated little actual debate among American librarians. Undoubtedly, most American librarians are only dimly aware of PLR at all, if indeed they have ever heard of it. If militancy among professional authors in favor of PLR continues to grow—as there are many indications that it will—then we can expect American libraries to draw up sides on this issue, as they have on so many others during the last two turbulent decades. The present turn of political sentiment away from government expenditure may well at least delay the necessity for becoming involved in the PLR issue. However, librarians and others should become aware of an issue that is very likely to become hotter as such powerful writers as Barbara W. Tuchman and other members of the Authors Guild really put their influence to work on the matter.

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1. Anne B. Piternick writes in a note to the author: "This statement is true as it stands, but gives a misleading emphasis to CLA's involvement. It would be more accurate to say that the CBPC is a council composed of Canadian publishing, bookselling and writing associates with representation also from CLA. CLA has had problems in the past with CBPC proclaiming its positions on topics which were sharply opposed to CLA's. More recently CLA has won the concession that such announcements mention CLA's opposition."


6. Ibid., p. 96.


Public Lending Right: The South African Scene

P.E. WESTRA

In South Africa authors are, apart from the income which they receive when copies of their publications are sold, not remunerated for the use which libraries make of their books. In comparison with most Western countries, very little is being done by the state to support writers financially and to stimulate local book production and literature. Relatively few publications on public lending right (PLR) have appeared in South Africa, and the authors’ campaign for the introduction of a PLR system has so far not really gained momentum.

To assist the reader in understanding present trends of thought on PLR in South Africa, it is necessary to survey the most important South African publications on PLR and memorandums which interested parties have recently submitted to the South African government, in which the introduction of a PLR scheme in South Africa is either advocated or opposed. It is also necessary to study some results of my own investigations into the opinions of South African writers and librarians on PLR, into the role of the public library system in the South African book market, and into the income which South African writers receive from their books.

De Vleeschauwer was the first South African to publish a fairly comprehensive study of PLR.¹ He described the background against which the authors’ claims for PLR originated and described the PLR systems in use in foreign countries. He recommended at the end of his dissertation that authors should not receive financial support based on the use which libraries make of their books, but directly from an

¹ P.E. Westra is Assistant Director, The State Library—Die Staatsbibliotek, Pretoria, South Africa.
authors' fund which the government should establish. This publication by de Vleeschauwer can be regarded as one of the most outstanding and comprehensive of the contributions to appear on the subject.

In a paper presented during the annual conference of the South African Library Association in 1969, Anna Smith, then City Librarian of Johannesburg, described the history of PLR in Nordic countries and Great Britain, and summarized the pros and cons of PLR. She concluded that, as a librarian, she was not in favor of PLR.

In the February 1975 Cape Librarian, various South African authors presented their opinions on PLR. Renault regarded PLR as a means of enabling authors to write full-time. Rousseau stressed that the writing of books in South Africa is a difficult and financially unrewarding activity. In his opinion, none could afford to be a librarian if library work were as poorly paid as the writing of books. He advocated that authors should be remunerated on the basis of the number of times their books are issued by libraries. I published papers in 1978 concerning the most important aspects of PLR, and completed a master's thesis in 1980 entitled "Public Lending Right in Theory and Practice with Special Reference to South Africa."

During 1975 the Afrikaanse Skrywerskring, one of the two existing Afrikaans authors' societies, submitted a memorandum to the minister of national education recommending the government subsidize books bought by libraries, to the benefit of South African authors. No details were provided on methods to make the scheme work in practice. As a motivation for introducing such a scheme, the society stated that a copy of a book may be circulated hundreds of times by a library, while the authors receive no compensation whatsoever. The society further indicated that it is opposed to a system of compensation based on circulations of books through libraries, as these systems have proven to be too cumbersome and expensive.

In 1976 the South African government appointed an ad hoc committee, on which various interested organizations were represented, to study various problems regarding the application of the Copyright Act of 1965. This committee was also asked to consider the question of PLR and to decide whether any proposals in this regard should be made to the government. In the same year, during a combined meeting of this committee and the National Library Advisory Council (NLAC), the NLAC was asked to study PLR and to advise which steps should be taken in this connection.

The South African Publishers Association, having taken note of this development, consulted with the various South African authors'
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societies and then compiled a memorandum for the ad hoc committee advocating the introduction of PLR in South Africa: "it is the opinion of the Association that, as has been proved to be the case overseas, librarians are hardly likely to be sympathetic to the idea." The recommendations in this memorandum were based mainly on the report of the British Working Party on PLR of 1972, and may be summarized as follows: (1) libraries must pay an annual license fee which will give them the right to issue books to the public; and (2) a central body should be established, on which authors and publishers should be represented, to collect these license fees from libraries and to distribute this income among authors and publishers on the basis of the number of copies which libraries buy of their books.

In 1978 the NLAC submitted a memorandum on PLR to the minister of national education asserting that the state already subsidized South African authors on a considerable scale through the purchase of their books by libraries. The introduction of a system of financial support for authors based on the availability of books in libraries was not supported by the NLAC for the reason that such schemes had many serious shortcomings. The council therefore recommended that the possibility and desirability of introducing a state-financed scheme, through which the production of good literature by all South African authors could be supported, should be investigated. During 1979 the South African Library Association recommended to the minister of national education that a system of PLR should not be introduced in South Africa, but rather that a central fund be established through which the production of good literature would be stimulated.

It can be concluded that relatively little has been written in South Africa on PLR; and it is further clear that South African authors in general are in favor of introducing a system of PLR, while librarians are opposed to it. The latter conclusion is confirmed by a survey which the author undertook during 1979 to establish the opinions of South African authors and librarians regarding PLR.

Of 124 authors who took part in this survey, 65 percent stated that they had a right to be compensated for the use libraries made of their books; 13 percent expressed no opinion; 10 percent were uncertain; and 12 percent indicated they were against the introduction of such a system in South Africa. Those authors in favor of the introduction of a PLR system in South Africa justify their standpoint as follows:

1. The public library has a detrimental influence on the total sale of publications. Especially in the current economic climate, the public will borrow more and more from libraries and buy fewer books;
2. The free loan of books by libraries goes against the principles of fair use, as laid down by copyright legislation; and
3. A system of lending right, for the benefit of authors, will serve to promote South African books.

Authors who felt uncertain about PLR, or expressed themselves against it, were of the opinion that PLR systems as introduced overseas were impractical, mainly benefited authors of popular fiction, and would do little to stimulate "good" literature.

Of the seventy librarians asked to comment on the statements authors made on PLR, fifty-three responded. As can be expected, the majority expressed doubts about the authors' supposition that the library has a detrimental influence on the total sale of books. Many of the respondents felt that the public library stimulates the readers' interest in books, and often is the direct reason readers buy certain books for themselves. The public library forms an important market, especially for first novels of authors, literary works and good nonfiction, which are not purchased in great quantities by the general public. Most librarians are of the opinion that the free lending of books does not run counter to the spirit of copyright. A minority, however, believe there might be a conflict between the aims of the public library and the rights of authors. The majority of the respondents advocated that an author of merit should be placed in a financial position to utilize his potential to the optimum; but they consider that financial support should not be based on the use which libraries make of publications.

The opinions of authors and librarians as expressed in this survey reflect all the "classic" arguments for and against PLR, which are repeatedly expressed in the literature on this subject. Assertions made by both groups are, however, generally purely hypothetical, based on probabilities and assumptions, and not substantiated by statistical or other proofs.

As South African libraries have stressed over and over their importance as buyers of local publications, a survey was also conducted to establish how much these libraries annually spend on the acquisition of books; which part of the total edition of various genres of South African publications are bought by these libraries; and how important these purchases are in financial terms, for the South African authors and publishers. The general conclusion was that the role of South African public libraries as buyers of books is much smaller than generally realized by librarians. These libraries in general buy only a small portion of the total editions of South African publications. Only a few
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Afrikaans novels which were published in small editions constituted an exception to this rule.

Public libraries in general make available those publications their users want to read, which means that many fewer copies are bought of novels of a high literary value than of popular novels. During the book year 1978/79, South African public libraries collectively bought South African publications valued at approximately R3 million.* Of this amount, about R360,000 was paid to the authors of these publications in the form of authors' fees. In the same period, about 1.5 million books valued at approximately R3 million were sold to members of Afrikaans book clubs. The public library in South Africa plays an important role as distributor of books. This is shown by the fact that they annually loan about 50 million books, about half of which are of South African origin. The conclusion which can be drawn from these statistics is that, although South African book clubs play a relatively much smaller role as distributors of books, they are, in terms of income, as important to the book industry as all South African public libraries together.

During a book's first year in the public library, the author receives an average 1.4 cents each time his book is circulated by a public library (total authors' fees divided by total number of loans per year), but nothing for the following years. With these facts in mind, it is understandable why many authors believe that the income which they receive from the sale of their books to libraries is not proportionate to the service given by means of their books. This belief forms one of the strongest arguments for the payment of PLR to South African writers. From a study of the literature on the subject, it was further concluded that most users of South African libraries buy fewer books than they would if they could not obtain their books from a library. Although this conclusion does not prove that the library has a detrimental influence on the total sale of books, it is likely that the great numbers of books which the public library circulates has a negative rather than positive influence on the total sale of these publications. This applies especially to popular novels and children's books, copies of which are issued an average of twenty-four and seventeen times per year, respectively, during the first two or three years after publication.

From the survey of authors' opinions regarding PLR, it became clear that most South African writers are dissatisfied with the income they derive from the writing of books. In order to establish whether the writing of books is in fact a badly paid occupation in South Africa, an

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*The South African rand exchanged for approximately U.S. $1.00 in October 1980.

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investigation was made to determine the financial position of South African authors, and to establish how many of them write full-time and the professions of part-time authors. An "author" was defined as a person who has published one or more books in South Africa normally found in a South African public library. A questionnaire was sent to a sample of 250 authors; 134 were completed and returned. From the results of this survey, it can be concluded that about 10 percent of those authors had no income from their books, a further 54 percent earned less than R1000, 18 percent earned between R1000 and R3000, and the remainder earned R3000 or more per annum. Only about 2 percent of the respondents indicated that they were full-time writers; 39 percent were either housewives or pensioners, and 23 percent were teachers or lecturers. As a group, the respondents were very productive writers: during a period of twenty-seven months, they published an average of 2.5 books each.

The general conclusion which can be drawn from this investigation is that the writing of books normally purchased by public libraries, as is the case in other countries, is in general not a profitable activity in South Africa. Very few authors can make a living exclusively from their writing.

The surveys described above indicate that all of the factors which gave rise to the introduction of PLR schemes abroad are also present in South Africa. Most South African authors feel that they have a right to be remunerated for the use libraries make of their books; public libraries form, as is the case in countries which pay public lending right, a very important distribution channel for South African publications, but contribute little to the generally low income of South African authors.

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