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SCOPING STUDY ON PUBLIC LENDING RIGHT

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1 EXECUTIVE SUMMARY

This scoping study provides a comparative analysis of PLR systems across different countries, with the aim to uncover similarities, differences, and best practices within these global systems. The study demonstrates the adaptability of Public Lending Right (in the following: PLR) systems to diverse national cultural goals and economic contexts, as evidenced by the 35 systems currently in operation (“active systems”) and a number of systems in development worldwide. Most of these systems, reflecting a spectrum of policy objectives and national circumstances, exemplify the alignment of PLR with local needs. The establishment of a robust PLR system requires the close cooperation and collaborative efforts among government, library, and rightholder representatives to achieve meaningful compensation without straining library budgets.

Regulations contained in **International Legal Framework**, namely the Berne Convention, the WIPO Copyright Treaty and the TRIPs Agreement do not mention lending as an exclusive right or public lending as a right requiring remuneration, leaving the legal construction to national legal regimes. While the international treaties set certain standards and principles, the specifics of exhaustion regimes, including whether lending is considered a right that is exhausted, remain subject to national legislation. Countries may choose to include or exclude specific elements based on their policy objectives and legal traditions.

Three legal forms of PLR regulation in the 35 active PLR systems can be distinguished, sometimes in a combination of these forms. Copyright Law Systems prevail (28 countries), mostly under the regime of the European Rental and Lending Directive. PLR specific regulation is in place in 9 countries. 7 systems work under a broader Arts and Culture Policy.

Libraries covered by PLR: All of the systems cover public libraries, the meaning of this term not being consistently defined, 19 cover scientific and research libraries, 16 cover school libraries. Libraries for beneficiary persons under the Marrakesh Treaty (2013) are subject to other regulations in most countries.

Material covered by PLR systems is in many countries defined by whether a work carries an ISBN, therefore, primarily referring to printed books.

All active PLR systems cover printed literary books, 35 systems cover non-fiction works and children’s books. Schoolbooks and scientific works are included in 20 systems if they are on loan in public libraries. 19 systems include also sheet music. Printed periodicals are covered in principle by 12 systems, but payment often depends on whether the copies are actually on loan, meaning out of library use in contrast to use as a reference material.

Audiobooks on physical carriers are covered by 24 systems, music on CDs by 19 systems; films on DVDs by 17 systems. Computer games on physical carriers are included in 8 systems, however, in practice rarely available for loan. Software is covered by the law of 4 systems (Germany having an industry agreement in place not to make use of the lending right for some genres) and board games are covered by 3 systems. The latter categories often lack rightholder representation by Collecting Management Organizations (CMOs).

E-books (literary works, non-fiction works, comics/graphic novels and children’s books) are currently subject to PLR under 7 systems, schoolbooks and scientific works only covered in Australia (ELR), Finland and Norway. Currently, only Denmark covers E-Periodicals.

Audiobooks in digital format, temporarily made available to users via streaming or downloading technology, are covered by 10 systems. 6 systems cover music and 6 film streaming/downloading. No systems actively cover streaming or downloading of educational courses and seminars unless they are distributed with a physical book (included in a CD or DVD).

Eligible recipients of PLR: text authors of books are included in all active systems; translators in 35 systems, original authors of translated works receive PLR under 25 systems, 13 systems distribute to editors for their copyright protected works; 10 systems distribute also to journalists. Visual artists, at least in their role as co-authors (e.g. in case of children's picture books) are included in 32 systems. Other visual artists (e.g. film artists) receive PLR under 16 systems. Composers, music text authors and musicians receive PLR under 12 systems; actors and narrators of audiobooks under 12 systems. Producers of audiobooks receive PLR under 10 systems; film and music producers under 9 systems. Book publishers receive PLR under 13 systems. Italy distributes only to rightholder organizations, not to individuals.

Eligibility restrictions apply in some countries, only nationals receive PLR under 6 systems, residents under 8 systems; 9 systems are restricted to writers in a specific language.

Funding for PLR systems is paid by the respective state government in 32 systems; special arrangements apply in Spain (municipalities); the Netherlands, Luxembourg and Belgium (individual libraries). 9 countries pay a flat fee (among these in 4 cases the flat fee being influenced by empirically assessed loan figures; otherwise subject to negotiation or government decision); in 13 cases, the funding depends directly on the number of library loans; in 3 cases on the number of library card holders; in 2 cases on the value of acquisitions and in 10 cases on stock count, while combinations are possible. Only Denmark relies on a page count method. Payment exemptions apply in 8 systems.

Sums paid in 2021 per capita (per inhabitant) ranged up to 4,48 USD in the case of Denmark but were an average of 0,52 USD and a median value of 0,124 USD.

Governance: PLR systems are governed by CMOs in 19 countries; by government bodies in 12 countries and by NGOs, such as authors' representative organizations in 2 countries.

Distribution criteria range from the number of published works in a library ("stock count") as basis to 10 systems, the number of loans as a basis to 23 systems to a flat fee per creator as basis under 2 systems. Some systems do not distribute to individual creators, but subsidize grants, scholarships (Norway) or cultural events (Italy). A wide variety of combinations and specific distribution systems is applied. In some systems, corrective factors apply in order to avoid what they consider as over-compensation of very successful creators and to specifically promote certain groups of creators, such as distributing a part of PLR funding as a flat fee or thresholds or caps/ceilings. Some systems restrict eligibility also to living creators and closely related heirs.

Key insights from the analysis of PLR systems globally include:

- State Funding Mechanism

Recognizing the cultural, educational, and social significance of libraries, successful PLR systems are typically funded by state budgets or regulated by market mechanisms, ensuring financial support without compromising library budgets. National law may offer the opportunity to utilize tax income from other sectors (e.g., Poland, France).

- Objective Assessment Criteria

The amount of PLR funds is best determined using objective criteria, this may be loan data, library purchases, stock counts, or other measures closely tied to relevant library usage. The funds must, at least under European Law, not be purely symbolic and must in some way reflect the size of the library sector and the level of usage by the public (2011 CJEU judgement VEWA).

- Periodic Payment Adjustments

Periodic adjustments of payments should be based on objective criteria, considering economic and cultural developments among recipients. While fixed calculations are not primarily recommended, the process should involve automated assessments procedures and discussions led by committees which include rightholder, library and government representatives.

- Public Library Coverage

PLR systems should encompass all publicly accessible libraries without excluding criteria such as size or place of a library. Considerations for special arrangements about the coverage of libraries with distinct use profiles (e.g., reference libraries, libraries for beneficiary persons under the Marrakesh Treaty (2013), or art libraries) should be made. Specialized educational libraries may be covered by separate schemes and arrangements. Other publicly funded libraries, but not considered to be public libraries, such as school libraries and other libraries in educational institutions, universities or specialist libraries, depending on the access rules can be included with the objective to also promote authors and publishers of non-fictional and academic works.

- The range of materials covered by PLR systems should follow the range of works on loan:

- Books of all genres, identifiable by ISBN or other identifiers form the backbone of library catalogues and also of PLR systems.
- Audiobooks have great importance for public library users in most countries and should be considered, but also other physical non-books, i.e., music and films on carriers.
- Periodicals such as magazines or journals might also be covered by PLR systems, if they are covered by the law and on loan.
- E-Lending of books and other protected works is included in an increasing number of countries' PLR system without a uniform legal solution as to the problem of digital exhaustion. PLR systems may take these works into consideration even if these works are subject to licensing and are not subject to fair use or to a copyright exception.

- Eligible recipients in PLR systems vary in how they cover creators and other rightholders who contribute to the relevant protected works on loan. This may include:

- Text authors and translators.
- Visual artists (whether illustrators, photographers or fine artists) in their role of co-authors. Consideration may be given to a quota-based participation of illustrators of cover designs and creators of other visual material in publications.
- Original authors of translated works as well as other foreign authors need special attention when making decisions about distributing PLR. In case of limited funds and a high ratio of translated works in contrast to national creators, a limitation of the system to authors and translators in the national language or resident and/or

national authors can be considered. This may involve exploring the possibility of reciprocal agreements with CMOs in related countries beforehand.

- Publishers.
- Composers and musicians as well as narrators of audiobooks.
- Producers of audiobooks, music and films.

- Sustainable Distribution Systems

Sustainable PLR distribution systems balance actual work usage and national conditions, considering financial and technological resources, as well as cultural objectives. Administrative costs and data quality limitations may prompt alternative compensation models, such as per capita fees or social and cultural funding.

Methodological and Navigational Notes

The study draws insights from national legal acts, online information from PLR administering organizations, and interviews with knowledgeable representatives, offering valuable considerations for countries contemplating or refining their PLR systems.

The complexities and variations inherent in legal frameworks, cultural contexts, and administrative structures mean that some aspects of PLR systems must be simplified or generalized for the purposes of the study. As such, the information presented should be interpreted as a summary rather than an exhaustive representation of individual regulations.

The tables included in this study are designed to provide information about key factors for the purpose of comparison. In the interest of making various PLR systems comparable, certain estimations and ratings have been employed. Where country information was not available at the time of research, this is indicated in the tables. It is important to note that these tables aim to present an overview and may not capture the nuanced details of specific regulations in each jurisdiction.

The country reports provide a basis for further exploration of primary sources for comprehensive insights into each PLR system. Readers are encouraged to refer to specific national laws in the Annex, official documents, or authoritative sources for precise details on PLR regulations in each jurisdiction.

Indented bullet points are used to highlight specific examples from countries. These examples are intended to serve as noteworthy illustrations rather than exhaustive representations.

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3 INTRODUCTION

Public lending right (PLR) is the right that allows authors and other rightholders to receive payment from the government to compensate for the free loan of their books by public and other libraries.¹ This scoping study, proposed by the Republics of Sierra Leone, Panama, and Malawi will provide a comparative analysis of PLR systems across different countries over active PLR systems worldwide. The examination aims to uncover similarities, differences, and best practices within these global systems.

In 2023, in over 2.8 million libraries (317 national, academic, 410,123 public, community, 2.2 million school and 42,187 other libraries) a total number of 1,119.7 million users were registered worldwide. Physical loans in public libraries alone amounted to 6,339.8 million loans and 1,025,9 million electronic loans.²

From the perspective of many stakeholders, authors need to be compensated for these uses as they provide the material that libraries need in order to fulfil their mission for the knowledge and cultural societies.³ They consider their work a key contribution to the social pact between creators and libraries that benefits society. The European Writers' Council (EWC) argues,⁴ based on the principle that every use of a copyrighted work should be subject to exclusive rights or at least a remuneration⁵, that

- in many countries lending figures are just as large as sales and therefore affect the primary markets of authors and publishers.
- PLR payments can help to ensure a thriving literary sector, as compensation for loans also generates an increase in income, which is positively reflected in tax payments, as well as in the pension and social security contributions of authors who are often employed as freelancers (writers, translators, illustrators, for example).
- by investing in authors through PLR, the state not only supports the well-being of creators during their working lives but also alleviates future burdens on state budgets. PLR may serve as a safeguard against old-age poverty experienced by freelancers in cultural sectors and offers substantial benefits to state budgets, especially in areas like pensions and unemployment benefits.

However, it is essential to acknowledge considerations raised by entities such as the International Federation of Library Associations and Institutions (IFLA) to ensure a comprehensive evaluation of the implications of PLR systems. IFLA argues⁶ that

- PLR should always be funded directly from state budget without diminishing library budgets.
- access to public libraries, whether to use the works they contain for reference purposes or in order to borrow them, must remain free at the point of use.
- while the cultural and social support for authors that most existing PLR systems provide is indeed laudable, [...] that the use of copyright works through public libraries detracts from primary sales – is unproven. In fact, lending by publicly accessible libraries often

¹ As described for the UK under <https://www.bl.uk/plr> payment from the government to remunerate rightholders.

² IFLA WorldMap of Libraries 2023, <https://librarymap.ifla.org/map/Metric/Number-of-libraries/LibraryType/Public-Libraries/Weight/Totals-by-Country>.

³ "It is self-evident that books borrowed from a library will diminish the sale of an author's book so paying the author for the expertise and time in writing that book is both morally and economically essential." Salama, Ambassador and Permanent Representative of Malawi to The United Nations in Geneva, May 1, 2017, WIPO Event, <https://www.internationalauthors.org/celebrating-malawis-creative-sector-at-wipo/>.

⁴ Information by Nicole Pfister-Fetz and Nina George (EWC) on February 8, 2024.

⁵ Reflecting the principle of Art. 23(3) Universal Declaration of Human Rights, that all use of human work should be subject to remuneration.

⁶ With further statements under <https://www.ifla.org/de/publications/the-ifla-position-on-public-lending-right-2016/>.

assists in the marketing of copyright works, the promotion of new authors' works, and encourages sales.

- the decision to introduce PLR should be based on domestic consideration of whether or not it has a net benefit for cultural support and the equitable dissemination of information and creative expression.
- in countries where PLR systems are introduced, librarians could, in the right circumstances, accept PLR as a means of cultural recognition and economic and social security support for authors provided that the financial and administrative support for PLR does not come from library budgets, but from the State as a cultural support.

These interests and considerations have to be carefully balanced in creating and changing PLR systems.

The lending of books and other creative works by libraries is currently subject to PLR payments in 35 countries of the world. About 25 further countries provide for a legal basis, but currently do not have a PLR system in operation. The countries of Zanzibar and Malawi are in the process of implementing a respective PLR system. Burkina Faso, Ethiopia and Mozambique and other countries include a right to authorize lending in their copyright acts.

The comparison shall explore the diverse legal frameworks and structures of active PLR systems underpinning the compensation of authors in its different forms and the varieties of legal schemes. Some provisions make a legal connection between the libraries' cultural duties and the protection of intellectual property as well as the compensation of creators, other systems concentrate on the funding of the cultural sector independent of copyright rules.

Apart from the legal landscape, differences of systems are also visible in varying implementations. Key objectives include identifying eligibility criteria, examining types of covered works and scrutinizing administrative structures responsible for PLR implementation. Relevant limitations on eligibility, such as exclusion of certain genres, formats, or self-published works shall be made visible. Other criteria, such as restrictions on citizenship and language requirements constitute essential components of the analysis.

The study also investigates administrative structures within the responsible government agencies and collective management organizations (CMOs), exploring registration, payment distribution and dispute resolution mechanisms.

Relevant financial aspects on the income side cover funding mechanisms, including government budgets, library budgets, and other sources, shedding light on criteria used for assessing PLR funds. Calculation methods for distributing payments to authors, publishers, and other rights holders on the receiving side consider factors such as the number of loans, book categories, and other parameters within PLR systems.

A vital aspect of this study involves insights from key stakeholders, including representatives from authors' and publishers' associations as well as library and government representatives. Their contributions provide up-to-date knowledge of national PLR systems, enhancing the depth and accuracy of the analysis.

Based on the findings, the study aspires to offer recommendations useful for implementation of new PLR systems and for further development of existing ones. Stakeholders are encouraged to consider potential adjustments to eligibility criteria, payment mechanisms, and administrative processes to foster the effectiveness and fairness of PLR systems.

The contemporary digital revolution in library practices presents an unparalleled challenge – e-lending. Despite the rise in the practice of e-lending in most countries, only seven systems

currently address payments under PLR for digital lending, primarily due to the fact that PLR legal structures are restricted to compensating for the lending of physical copies only. In regard to e-lending, individual licensing arrangements between publishers and libraries currently prevail. As physical loans decrease in a digitized library landscape, the study addresses the evolution of solutions to align current PLR systems with changing needs of creators and other rightholders with the needs of libraries in the coming years.

4 DEVELOPMENT OF PLR SYSTEMS

The first system of a library lending compensation for authors was discussed within the Authors' community in the United Kingdom early but was first established in Denmark in 1946. Soon it was followed by systems in other Scandinavian countries, Norway in 1947, Sweden in 1954, Finland in 1963, Faroe Islands in 1966 and Iceland in 1968, the Netherlands in 1971 and (West-)Germany in 1972. New Zealand introduced PLR in 1973, Australia in 1974. Austria followed in 1977. The United Kingdom introduced PLR in 1979, Israel and Canada in 1986, Greenland in 1993, Liechtenstein in 1999. In some countries, PLR systems existed even before a legal foundation was established (**Austria, Australia, Netherlands and Norway**).

Even in the early years, the variety of PLR was already wide, including detailed loan and work-based payments based on data from sample libraries and more general book and writer support in the form of grants and awards. Most systems only paid to writers, a few also supported publishers with a (smaller) share in PLR, **Germany and Australia** serve as examples.

28 of the 35 countries with active PLR systems at the moment are countries within the framework of EU and EEA, as PLR has been recognized in European law in 1992 and copyright law provides for a lending right since 1993. Belgium and Spain introduced PLR in 1994, Slovenia in 1995, Estonia in 2000, Luxembourg in 2001, Lithuania in 2002, France and Croatia in 2003, Italy, Latvia and the Czech Republic in 2006, Ireland in 2007, Hungary in 2008, Poland, Malta and the Slovak Republic in 2015, Cyprus in 2016.

But also in Europe, new systems are still in development.

- As a most recent example, **Greece** will most likely be distributing a PLR in 2024 for the first time.⁷
- In **Romania**, the PLR system is still in development, **Portugal** also does not have an active PLR system.

Outside Europe, other countries are developing systems as well.

- In **Burkina Faso, Ethiopia and Mozambique**, copyright acts recognize the lending right. **Malawi** and **Zanzibar** have already introduced PLR legislation.⁸
- **Hongkong** has also agreed in principle to introduce PLR.⁹
- **Turkey** has drafted legal instruments for PLR that have not been passed by the parliament yet.¹⁰

⁷ Papadopoulou; The public lending right in Greece: Sleeping Beauty and Snow White September 25, 2023, <https://copyrightblog.kluweriplaw.com/2023/09/25/the-public-lending-right-in-greece-sleeping-beauty-and-snow-white/>.

⁸ Malawi Government Notice 16 of 2021, <https://malawilii.org/akn/mw/act/gn/2021/16/eng@2021-03-05>

⁹ <https://plrinternational.com/indevelopment>.

¹⁰ <https://plrinternational.com/indevelopment>.

The historic development supports the assumption that smaller countries with less widespread languages followed the objective to remunerate writers for the lending of their works earlier and in faster progress. In larger, English-speaking countries the process of discussion and adoption of PLR systems took considerably longer.

5 LEGAL ASPECTS OF THE PUBLIC LENDING RIGHT

6 INTERNATIONAL LEGAL FRAMEWORK

7 WIPO TREATIES AND NATIONAL TREATMENT

The WIPO Treaties forming the framework for copyright, namely the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), do not mention a lending right or the PLR explicitly.

The international legal framework may remain silent on lending as the not-for-profit use, but does provide guidance on renting, the commercial, profitable use. As the TRIPs Agreement introduces further protection and goes beyond the scope of the Berne Convention,¹¹ it also deals with rental rights in respect of copyrighted works in Article 11 while lending rights are not mentioned.

Under the Berne Convention, the rights granted for the public lending of books by non-profit-making libraries to the public are not included in the set of exclusive rights. In 1996, there were discussions about a proposal to a possible Protocol to the Berne Convention by the International Secretariat of WIPO to the Third Session of the Committee of Experts. Document, supra note 23, No. 88 - 98, states that

*"it should be accepted that, since the adoption of the latest text of the Berne Convention, a de facto agreement of the member countries of the Berne Union has emerged about a fifth exception to the obligation to grant national treatment (concerning public lending rights for lending books by non-profit-making libraries to the public),"*¹²

but such an agreement was never codified.

The assessment whether the principle of national treatment (Art. 5(1) of the Berne Convention) - according to which works originating in one of the member States must be protected in each of the member States in the same way that such States protect the works of their own nationals - applies to public lending rights has been contentious. The difficulty of this question reflected in a statement by the Director General of WIPO:

*"that everything depended on how that right was formulated: if it was formulated by circumventing the copyright law, by declaring that it was covered by another law, then, of course, it was difficult to argue that it was covered by the obligation to grant national treatment."*¹³

¹¹ So-called "Berne-Plus" approach, as mentioned by Reinbothe, GRUR Int. 1992, p. 707, 709.

¹² Statement in the Report from the Committee of Experts on a possible protocol to the Berne Convention 3rd Session, Document BCP/CE/III/3 No. 97.

¹³ Statement in the Report from the Committee of Experts on a possible protocol to the Berne Convention 3rd Session, Document BCP/CE/III/3, No. 113.

The features of PLR were described as “non-typical in copyright”, as it is a pure royalty without exclusive nature and therefore does not fit into the minimum rights of the Berne Convention.¹⁴ Also, under most systems, not all holders of copyrighted works are eligible for PLR, and some systems do not tie the right to receive PLR to the copyright protection term, but pay PLR only until the end of the life of an author.¹⁵ A right in the sense of Art. 5(1) of the Berne Convention would also mean that there would be a legal claim to the payment in the form of a remuneration which is not true for some of the PLR systems under a broader arts and culture policy.¹⁶

Arguments of those not in favor of subjecting Public Lending Right to national treatment stressed that the “absence of public lending right did not seriously endanger authors’ interests, and, at the same time, the recognition of such a right could pose unjustified financial burdens on developing countries, especially on their library systems.”¹⁷ Even by those against including the lending right as an exercise of the distribution right in the Protocol to the Berne Convention¹⁸ it seems to be an accepted and logical consequence of introducing a right to equitable compensation (PLR), their arguments covered the aspect implicitly. National treatment would force countries with library stock mostly containing translated works from other countries to a duty to distribute most of their PLR remuneration to original authors outside. This might lead to regulations outside of copyright law. Systems under a broader arts and culture policy would be preferred automatically in countries with less widespread languages.¹⁹

As European Nordic countries have introduced PLR systems under copyright regime and with a focus on a broader arts and culture policy and this has not been formally challenged by the European Commission in front of court, the lack of mention of lending right and PLR in the international legal framework still remains relevant in the sense that there is freedom for countries to implement systems with a stronger focus on national objectives.

In this context, it must be pointed out that opinions differ, whether the term “remuneration” or the term “compensation” should be used for PLR. In Art. 7(3), the WIPO Copyright Treaty (WCT) mentions the term “remuneration” in the context of “a system of equitable remuneration of authors for the rental of copies of their works”, however, this does not apply to acts of lending. There is no general legal definition of a “remuneration right” in international copyright law, typically, a “right of remuneration” usually means an entitlement to payment made by those who perform an act in respect of a work or an object of related rights.²⁰

Reinbothe expressly argues in favor of using the term “remuneration” to PLR, pointing out that PLR is no „compensation“, but a self-standing right of equitable remuneration, as it provides the author with a royalty for the use of the work - and this irrespective of any damage, such as a

¹⁴ von Lewinski, National Treatment, Reciprocity and Retorsion – The Case of Public Lending Right, in: Beier/Schricker (eds.), IIC Studie Vol. 11, p. 53 – 62, 55, 58.

¹⁵ von Lewinski, National Treatment, Reciprocity and Retorsion – The Case of Public Lending Right, in: Beier/Schricker (eds.), IIC Studie Vol. 11, p. 53 – 62, 58.

¹⁶ von Lewinski, National Treatment, Reciprocity and Retorsion – The Case of Public Lending Right, in: Beier/Schricker (eds.), IIC Studie Vol. 11, p. 53 – 62, 57.

¹⁷ Delegation of India, Statement in the Report from the Committee of Experts on a possible protocol to the Berne Convention, 4th Session Geneva, December 5 to 9, 1994, No. 20.

¹⁸ Statement in the Report from the Committee of Experts on a possible protocol to the Berne Convention, 4th Session Geneva, December 5 to 9, 1994, No. 20.

¹⁹ von Lewinski, National Treatment, Reciprocity and Retorsion – The Case of Public Lending Right, in: Beier/Schricker (eds.), IIC Studie Vol. 11, p. 53 – 62, 62.

²⁰ WIPO Guide to the Copyright and Related Rights Treaties Administered published by the WIPO and Glossary of Copyright and Related Rights Terms (2004), p. 308: “The “right to remuneration” as such may exist on two differing legal bases: “Either an exclusive right of authorization is limited in certain specific cases to a mere right to equitable remuneration (such as, for example, in certain specific cases of reprographic reproduction); or the right is provided for in the international copyright and related rights norms, and in national copyright laws, as a right to such remuneration (such as the resale right).”

potential loss of sales.²¹ IFLA²² and others²³ operating under systems out of copyright regimes rather use the term “compensation” suggesting a payment for a harm suffered. The use of “(equitable) compensation” rather than “remuneration” may, however, be also used as a compromise, also in the context of exceptions and limitations practice, as happened even under European copyright terminology, when continental member States, the United Kingdom and Ireland had to find common a terminology.²⁴ In this Study, the less European copyright related term “(equitable) compensation” is used where reference is made also to non-European (non-copyright based) systems, it’s use should be understood in the sense of the mentioned compromise.

8 DISTRIBUTION RIGHT AND EXHAUSTION

Another question is, how far WIPO Treaties limit the freedom of national legislators to include and establish new exhaustion regimes for PLR.

Copyright exhaustion²⁵ is a legal principle that limits the scope of a copyright holder's distribution rights. It asserts that after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author,²⁶ the exclusive rights to control the distribution of that specific copy does not exist any longer. The principle of exhaustion ensures a balance between the protection of intellectual property and the promotion of public access to creative works.

The Berne Convention does not mention exhaustion in the wording, although the inclusion of a general right of distribution was discussed in the past with much support also for the inclusion of a provision stating that the right of distribution was exhausted upon first sale or other transfer of ownership.²⁷ In the discussion about a definition of the distribution right, a majority were of the opinion that the right of distribution should be restricted to cover distribution of physical, tangible copies only.²⁸ The territorial scope of such exhaustion (national, regional or global (“international”)) was disputed, as by establishing a principle of national exhaustion of the distribution right, parallel imports could be prohibited.

As the dispute remained undecided, this provides for a certain degree of freedom for national legislators to establish new exhaustion regimes.

The TRIPs Agreement, in Article 6, explicitly allows member states to determine the conditions under which exhaustion of distribution rights applies after the first sale or other transfer of ownership. This grants flexibility to countries to define their own rules regarding exhaustion, taking into consideration their specific cultural, economic, and legal contexts.

Similarly, the WIPO Copyright Treaty (WCT) of 1996 mentions the exhaustion of the right of distribution in Article 6(2) in a clarification concerning the digital uses and underlines the freedom of member states to define the conditions under which the exhaustion of the making available right applies after the first sale or other transfer of ownership of the original or a copy

²¹ Reinbothe, as a peer reviewer to this Study.

²² The IFLA Position on Public Lending Right 2016, <https://www.ifla.org/de/publications/the-ifla-position-on-public-lending-right-2016/>

²³ <https://canadacouncil.ca/funding/public-lending-right>

²⁴ von Lewinski/Walter, European Copyright Law. A commentary, 2010, p.1028.

²⁵ Under US Law referred to as the “first-sale doctrine”.

²⁶ Article 6(2) of the WIPO Copyright Treaty.

²⁷ Report from the Committee of Experts on a possible protocol to the Berne Convention, 4th Session Geneva, December 5 to 9, 1994, No. 60.

²⁸ Report from the Committee of Experts on a possible protocol to the Berne Convention, 4th Session Geneva, December 5 to 9, 1994, No. 50.

of the work with the authorization of the author. Within the Agreed Statements concerning Articles 6 and 7, it is made clear that the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible object.²⁹ Lending is not mentioned in this context.

The WIPO Performances and Phonograms Treaty (WPPT), also of 1996, includes parallel provisions about the exhaustion of performers’ and phonogram producers’ rights of distribution in Articles 8(2) and 12(2). Art. 9(1) concerning the Rental Right refers to “original and copies” and has to be interpreted as meaning physical copies only.³⁰ Again, these provisions and the Agreed Statements referring to them do not mention lending.

Both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) provide member states with the freedom to define the conditions under which the exhaustion of the right of distribution applies. The treaties do not prescribe a uniform approach and allow for variations in national legislation.

This is shown by the European legal situation: The CJEU distinguishes lending from other forms of exploitation of a protected work. They are seen as different in nature from a sale or any other lawful form of distribution, since “the lending right remains one of the prerogatives of the author notwithstanding the sale of the physical medium containing the work. Consequently, the lending right is not exhausted by the sale or any other act of distribution, whereas the distribution right may be exhausted, but only and specifically upon the first sale in the European Union by the rightholder or with his consent.”³¹

An example on a different national approach may be the situation in **Germany**. Germany has made use of the option under Art. 6 of the Rental and Lending Directive not to include lending, in contrast to rental, under the exclusive rights of the author. This was intended to emphasize the cultural, educational, and educational policy tasks of libraries and ensure access to all published works. The lending right of physical work copies would be exhausted with the first distribution of the work under such systems. However, the rule installs the right to an equitable remuneration (PLR) as an economically balancing reflex in connection with the lending of physical work copies.³²

It can be said, while the international treaties establish certain standards and principles, the specifics of exhaustion regimes, including whether lending is subject to exhaustion, remain subject to national legislation. Countries may choose to include or exclude specific elements based on their policy objectives and legal traditions.

9 DIGITAL WORK COPIES

Assessing the applicability of exhaustion regimes becomes complex when addressing the “lending” of digital products (“e-lending”) that also depends on the interpretation of the scope of “distribution.”

²⁹ As the protocols show, this was inserted on the background of an “overwhelming majority” and “clear opinion” of the Delegates in the discussion, Report from the Committee of Experts on a possible protocol to the Berne Convention, 4th Session Geneva, December 5 to 9, 1994, No. 50.

³⁰ von Lewinski, *The WIPO Performances and Phonograms Treaty*, Art. 9 in: Reinbothe/v. Lewinski, *The WIPO Treaties on Copyright*, 2nd edition 2014, 8.9.23.

³¹ CJEU Judgment of 6 July 2006, *Commission v Portugal*, C-53/05 para. 34; CJEU Judgment of 10 November 2016, *VOB/Stichting Leenrecht*, C 174/15.

³² Sec. 27(2) German Copyright Act (<https://www.wipo.int/wipolex/en/legislation/details/21825>)

Art. 6 of the WIPO Copyright Treaty refers to originals and copies and is to be understood as covering physical objects only, to which the distribution rights apply. Digital uses may qualify as acts of making available under Art. 8 WIPO Copyright Treaty.³³ Any national regulation of a making available right under the WIPO Copyright Treaty would therefore have to cover the relevant use by an exclusive right.³⁴

However, the desire for harmonization of digital copyright law encounters challenges in diverse national markets.

For the European Law countries, digital "lending" by public libraries is consequently regarded as a form of making available or communication to the public for a limited duration, coupled with the right of reproduction, rather than traditional distribution, through the Internet or libraries' networks, by downloading, streaming, or similar modes of transmission.³⁵ This perspective is in line with Article 4(c) of the European Directive on the legal protection of computer programs which foresees an exclusive right over "any form of distribution to the public of the original or copies of a computer program". on computer programs, which exclusively covers the "distribution to the public of the original or copies of a computer program," limited to physical copies. Furthermore, Art. 9 (2) of the Renting and Lending Directive (2006) at least implicitly addresses the topic by choosing the word "objects" that restricts "distribution" to physical copies of a work.

The Rental and Lending Directive (2006) defines lending in Art. 2(1)(b) as making a work available for use without direct or indirect economic or commercial advantage for a limited time, it also mentions in Art. 1(1), that Member States have the right to authorize or prohibit the rental and lending of copyright works. The InfoSoc Directive (2001)³⁶ mentions in Art. 3 that the author has the exclusive right to authorize or prohibit all types of making available to the public, which includes public libraries.

The CJEU ruled under this framework on whether Dutch libraries can "lend" (make available) E-books temporarily through downloads, approving the "one-copy-one-user" model.³⁷ This model is described by the CJEU as follows: "lending of a digital copy of a book, where that lending is carried out by placing that copy on the server of a public library and allowing a user to reproduce that copy by downloading it onto his own computer, bearing in mind that only one copy may be downloaded during the lending period and that, after that period has expired, the downloaded copy can no longer be used by that user."³⁸

The decision contains the finding that this specific form of "digital lending" has the same effect as the lending defined under Article 2(1)(b) of the Rental and Lending Directive (2006), and Member States can allow exceptions to exclusive lending rights if E-books are legally circulated in the EU, a finding that was surprising to many,³⁹ even if it was only referring to the very specific instance of the "one-copy-one-user" model.⁴⁰ The CJEU analyzed Art. 7 WCT and

³³ Reinbothe, The WIPO Copyright Treaty, Art. 6 in: Reinbothe/von Lewinski, The WIPO Treaties on Copyright, 2nd edition 2015, 7.6.20.

³⁴ von Lewinski, The WIPO Copyright Treaty, Art. 8 in: Reinbothe/von Lewinski, The WIPO Treaties on Copyright, 2nd edition 2015, 7.8.24.

³⁵ van der Noll, Breemen and others, Online uitlenen van e-books door bibliotheken. Verkenning juridische mogelijkheden en economische effecten, in opdracht van het Ministerie van Onderwijs, Cultuur en Wetenschap, Amsterdam, 2012, www.ivir.nl/publicaties/poort/Online_uitlenen_van_e-books.pdf, p. 2

³⁶ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p. 10–19.

³⁷ CJEU, Judgment of 10 November 2016, VOB/Stichting Leenrecht, C 174/15.

³⁸ CJEU, Judgment of 10 November 2016, VOB/Stichting Leenrecht, C 174/15, para. 53.

³⁹ von Lewinski, Elektronischer „Verleih“ nach VOB/Stichting Leenrecht, in: v. Lewinski/Wittmann, Urheberrecht! Festschrift für Michel Walter zum 80. Geburtstag, Wien 2018, p. 64 – 80, 67; Grünberger, Verbreiten, Vermieten und Verleihen im Europäischen Urheberrecht, in: Festschrift für Schulze (2017), p. 71.

⁴⁰ It should be noted that the one-copy-one-user-model is not in practice in the pure form, also not in the Netherlands.

found that it refers to physical copies only and does not cover the act of lending.⁴¹ Rental and lending could, according to the CJEU, therefore be treated differently. The Court argues with the aim of a high level of protection (Art. 3 InfoSoc Directive).

It should be mentioned that the court didn't address whether making an e-book available for download would lead to exhaustion. Neither did it rule whether a library can "lend" (make available) a purchased copy. The VOB/Stichting Leenrecht Judgement also did not clarify whether there is an ownership for digital goods or questions of reproduction rights in digital lending, except mentioning, that the copy may not be from an illegal source.⁴²

National legislators might now under this ruling decide to provide for an exclusive right covering e-lending for library users, this would lead to licensing models. Alternatively, legislators under the EU frame may also opt to provide for a remunerated exception, however, in line with Art. 6(1) of the Rental and Lending Directive, not for films.⁴³ Such legal construction could be depending on the exhaustion of the distribution right, as foreseen under German Law (Sec. 27(2) Copyright Act) and Austrian Law (Sec. 16a(2) Copyright Act).

Digital exhaustion is complex also under common law,⁴⁴ however, as PLR is regulated under different constructions that allow covering e-lending without touching exhaustion at all, the details shall not be discussed here. Some even question whether the concept of digital exhaustion will have much relevance in the future, given the fact that markets concerning other digital goods such as software, games and film shift towards service and access regulating licensing models.⁴⁵

However, at least in copyright law based PLR systems, legal clarification seems necessary in the still developing landscape of digital "lending", shown by the statement of the European Parliament's Committee on Legal Affairs, that the copyright exceptions contained in the InfoSoc Directive had proven insufficient in providing a legal basis for libraries to engage in e-lending.⁴⁶

10 LEGAL CONCEPTS APPLIED FOR PLR SYSTEMS

Three forms of PLR can be distinguished:

- systems based in copyright law;
- systems as a special right to compensation, recognized in the library related legislation;
- systems designed as state culture support systems (as a part of national cultural policy).

Table 1 Overview of active PLR systems

Country	Copyright Law system	PLR specific Legislation	Broader arts and culture policy
Australia		YES	

⁴¹ CJEU, Judgment of 10 November 2016, VOB/Stichting Leenrecht, C 174/15, para. 35, 39.

⁴² CJEU, Judgment of 10 November 2016, VOB/Stichting Leenrecht, C 174/15, para. 66-72.

⁴³ von Lewinski, Elektronischer „Verleih“ nach VOB/Stichting Leenrecht, in: von Lewinski/Wittmann, Urheberrecht! Festschrift für Michel Walter zum 80. Geburtstag, Wien 2018, p. 64 – 80, 72, 77 doubts whether this would be in line with the idea of Art. 6(2) of the Rental and Lending Directive (2016).

⁴⁴ For a comparative view see Determann, Digital Exhaustion: New Law from the Old World; SSRN Electronic Journal, June 4, 2017; <https://ssrn.com/abstract=2980483>.

⁴⁵ Determann, Digital Exhaustion: New Law from the Old World; SSRN Electronic Journal, June 4, 2017; <https://ssrn.com/abstract=2980483>.

⁴⁶ European Parliament Committee on Legal Affairs (2015), p. 11-12, https://www.europarl.europa.eu/doceo/document/JURI-PR-582443_EN.pdf.

Austria	YES		
Belgium	YES		
Canada			YES
Croatia	YES		
Cyprus	YES		
Czech Republic	YES		
Denmark		YES	
Estonia	YES		
Faroe Islands		YES	
Finland	YES		
France	YES		YES
Georgia	YES		
Germany	YES		
Greece	YES		
Greenland		YES	
Hungary	YES		
Iceland			YES
Ireland	YES	YES	
Israel			YES
Italy	YES		YES
Latvia	YES		
Liechtenstein	YES		
Lithuania	YES		
Luxembourg	YES		
Malta	YES		
Netherlands	YES		
New Zealand		YES	
Norway		YES	YES
Poland	YES		
Slovak Republic	YES		
Slovenia		YES	
Spain	YES		
Sweden			YES
United Kingdom		YES	

The table shows that some systems are not clearly set within one of these three categories but combine their criteria.⁴⁷ It should be noted, that all three concepts, copyright law systems, PLR specific systems and systems under a general Arts and Culture Policy are equally acceptable from the authors' perspective as long as they provide for more than a symbolic payment.⁴⁸

Several other countries recognize the legal right of authors to authorize the lending of their works but have not set up systems to enable authors to receive PLR payments. The lack of an established organization, depending on the national legal requirements either an authors' organization or a collective management organization (CMO) to administer a PLR system may be a reason for this, also a lack of funding or lack of decisions about the sources of funding.

⁴⁷ von Lewinski, Die Bibliothekstantieme im Rechtsvergleich, GRUR Int 1992, p. 432, 435.

⁴⁸ Information by Nicole Pfister-Fetz and Nina George (EWC) on February 8, 2024.

11 COPYRIGHT LAW SYSTEMS

Copyright law PLR systems prevail in number. Twenty-eight active PLR systems have their foundation within European Law and are based on EU and EEA territory, within the framework European copyright law provides. This, however, does not necessarily mean that their system would be anchored in the national copyright act, **Sweden** and **Denmark** having a different approach.

Table 2 Active PLR systems within European Law framework

EEA States							
	EU Member States						
Iceland	Austria	Cyprus	Finland	Hungary	Lithuania	Poland	Sweden
Liechtenstein	Belgium	Czech Republic	France	Ireland	Luxembourg	Slovakia	
Norway	Bulgaria	Denmark	Germany	Italy	Malta	Slovenia	
	Croatia	Estonia	Greece	Latvia	Netherlands	Spain	

On 19 November 1992, the European Council adopted the Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (now replaced by Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property⁴⁹ – in the following referred to as “Rental and Lending Directive (2006)”), providing for an exclusive right to authorize or prohibit the rental and lending of originals and copies of copyrighted works.

As the Member States had already different legal provisions in place when the Directive was introduced,⁵⁰ the Directive rules in Art. 6(2) that Member States may derogate from the exclusive right to allow not-for-profit public lending, provided that at least authors obtain a remuneration for lending, and that Member States shall be free to determine this remuneration taking account of their cultural promotion objectives. Countries within the EEA Agreement also need to implement European Law and directives to ensure uniform application of laws relating to the Single Market, therefore, also **Norway**, **Iceland** and **Liechtenstein** work within the regime of the Rental and Lending Directive (2006).

Lending under the Directive is understood as the making available for use for a limited period of time not for direct or indirect economic or commercial advantage.

PLR systems under European copyright law either are constructed as an exclusive right or the right to lend is deemed to be exhausted and PLR is paid as a remuneration for the use of the works.

The legal argument of copyright law is based on the principle of a copyright royalty, an equitable remuneration for relevant uses that have economic implications for the rightholders. Authors’ organizations argue that PLR implements the principle that ‘every use must be remunerated’ and argue that this is based on the Universal Declaration of Human Rights on the basis that

⁴⁹ Directive 2006/115/EC of the European Parliament and of the Council, December 12, 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376/28).

⁵⁰ von Lewinski, Rental and Lending Rights Directive, in: Reinbothe/v. Lewinski, The WIPO Treaties on Copyright, 2nd edition 2014, 6.1.6.

writers (and translators where applicable) are entitled to receive remuneration from every use of their work.⁵¹

The International Federation of Libraries Associations and Institution (IFLA) takes the position that rather exceptions and limitations to copyright should rule the lending of published works in libraries and considers exclusive rights as a possible restriction to access of protected works. Ruling PLR within copyright laws is considered problematic by the library side. IFLA believes that exclusive rights can hinder free public access to works in public libraries, which is considered a most important objective.⁵²

However, outside of Europe these provisions are not provided for by copyright law; with the result that non-European legislators may choose to establish provisions outside of copyright legislation.

12 PLR SPECIFIC SYSTEMS

Other systems pay PLR to rightholders as a form of equitable compensation for the lending of their work based on specific PLR legislation. The **United Kingdom** and **Ireland** operate such systems under a specific PLR Act.

Australia	Denmark	Faroe Islands	Greenland	Ireland
New Zealand	Norway	Slovenia	United Kingdom	

13 PLR SYSTEMS AS A CULTURAL POLICY

A third group of countries makes PLR an issue of a general cultural support policy. The PLR systems in **Australia** and **Canada** also support authors who are nationals of those countries.

Canada	Iceland	Israel
Italy	Norway	Sweden

Their main purpose is to provide support and promotion to the local literary culture and specifically the local authors. These systems can also help in the preservation of small languages by financially supporting creators and publishers having to deal with small print runs of original editions and respectively smaller margins under a cost structure similar to larger languages. The strong support of local writers can have effects in children's literacy, it can help support the culture of minorities and supports diversity especially in multi-lingual countries such as **Canada**.

The **Canadian** system is a singular phenomenon from a legal perspective as it works without a detailed legal basis for PLR payments. The Canadian Status of the Artist Act (1992), however, recognizes in the Proclamation of General Principles under Article 2 e): "The Government of Canada hereby recognizes [...] the importance to artists that they be compensated for the use of their works, including the public lending of them."⁵³

⁵¹ Information by Nicole Pfister-Fetz and Nina George, European Writers' Council (EWC) on February 8, 2024.

⁵² IFLA Position on Public Lending Right (2006) <http://www.ifla.org/III/clm/p1/PublicLendingRigh.htm>.

⁵³ <https://laws-lois.justice.gc.ca/eng/acts/S-19.6/page-1.html#h-440263>.

Cultural support to the literary sector has a strong basis in several European countries (**Denmark, Sweden and Norway**) where PLR is only paid to authors writing in the respective national languages.⁵⁴

14 TYPOLOGY OF THE PLR

15 MAIN CHARACTERISTICS OF THE EXISTING PLR SYSTEMS

16 COVERAGE OF INSTITUTIONS BY PLR SYSTEMS

The scope of institutions and libraries covered by PLR systems defines the reach and impact of the compensation mechanism. The term “public lending right” has been misunderstood as to only include public libraries but derives from the early British draft using a term close to the “public performing right”.⁵⁵ The term “public libraries” lacks a specific international or European legal definition, and its interpretation varies among countries. This chapter explores the diverse categories of institutions covered by PLR systems, encompassing public libraries, scientific and research libraries, school libraries, and other specialized institutions.

- **Australia** operates two separate PLR systems, one for public libraries and another system for educational libraries, Educational Lending Right (ELR).

In the systems under the European legal framework, there appears to be a connection between the types of libraries covered by the system and the timing of the implementation of the European directives. Article 5 (3) of Directive 92/100/EEC allowed Member States to exempt certain categories of establishments from the payment of the remuneration. The Rental and Lending Directive (2006) reconstituted Directive 92/100/EEC in the interests of clarity and rationality as it had been substantially amended several times.⁵⁶ Countries already transforming Directive 92/100/EEC therefore often provided for respective regulations. The Rental and Lending Directive (2006) does not define the term “library” as such, but instead the term “lending” in Art. 2(1)(b): “lending’ means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.”

In Art. 6(3) of the Rental and Lending Directive (2006), Member States may exempt certain categories of establishments from the payment of the remuneration, but the article does not provide an enumerative list or a catalogue of such establishments.

The question, whether school libraries, prison libraries, hospital libraries and/or libraries for beneficiary persons under the Marrakesh Treaty (2013)⁵⁷ are accessible to the public and therefore are covered by PLR is interpreted differently, some with a rather broad interpretation:

- In **France**, municipal, departmental, university, works council, and other libraries lending to the public are included, as well as hospital, profit and non-profit organization libraries, the latter have a special relevance in the country where historically, larger enterprises provided for employee libraries.

⁵⁴ <https://www.internationalauthors.org/wp-content/uploads/2017/10/IAF-international-PLR-WEB.pdf> p. 22.

⁵⁵ von Lewinski, Die Bibliothekstantieme im Rechtsvergleich, GRUR Int 1992, p. 432, 433.

⁵⁶ By Council Directive 92/100/EEC (OJ L 346, 27.11.1992, p. 61); by Council Directive 93/98/EEC (OJ L 290, 24.11.1993, p. 9) - Article 11(2) only and by Directive 2001/29/EC of the European Parliament and of the Council (OJ L 167, 22.6.2001, p. 10) Article 11(1) only.

⁵⁷ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013, Art. 3 (<https://www.wipo.int/wipolex/en/treaties/textdetails/13169>), in the following: “Marrakesh Treaty”.

- The same is true for **Germany**, where church libraries, company libraries, the central federal and the individual state libraries and art libraries ("Artotheken") are covered.
- In the **Netherlands**, a very broad definition includes toy, CD and art lending libraries.
- In the **Czech Republic**, the system covers libraries, archives, museums, galleries, schools, colleges, and other non-profit educational and training facilities.
- In **Denmark**, public institutions and libraries including art libraries and museums are covered.
- **Spain** covers also museums, archives, libraries, newspaper archives, sound libraries or film libraries that are publicly owned or that belong to non-profit entities of general interest of a cultural, scientific or educational nature.

Some operate with a more restrictive approach:

- In **Estonia**, the National Library lends out books but is not included in the PLR, the same is true for educational institutions (universities and schools.)

Table 3 Library types covered by active PLR systems (other than Public Libraries)

Country	Scientific and research libraries	School libraries	Prison and hospital libraries	Libraries for beneficiary persons (Marrakesh Treaty)
Australia	YES	YES		
Austria	YES	NO		Separate system
Belgium	YES	YES	YES	YES
Canada	NO	NO	NO	NO
Croatia	NO	NO	NO	
Cyprus	YES	YES	YES	YES
Czech Republic	YES	YES	YES	
Denmark	NO	YES	YES	YES
Estonia	NO	NO	NO	NO
Faroe Islands	YES	YES		
Finland	YES	NO	NO	NO
France	YES	YES	YES	NO
Georgia*				
Germany	YES	YES	YES	Separate system
Greece	YES	YES	YES	YES
Greenland*				
Hungary	NO	NO	NO	
Iceland	YES	YES	YES	YES
Ireland	NO	NO	NO	NO
Israel	NO	NO	NO	NO
Italy	NO	NO	NO	NO
Latvia	YES	NO	NO	
Liechtenstein	YES	YES		YES
Lithuania	NO	NO	NO	

Luxembourg	YES	NO	NO	YES
Malta	YES	NO	NO	
Netherlands		YES	NO	YES
New Zealand	YES	NO	NO	NO
Norway	YES	YES	YES	YES
Poland	NO	NO	NO	NO
Slovak Republic	YES	YES	YES	YES
Slovenia	NO	NO	NO	
Spain	YES	YES	NO	NO
Sweden	NO	YES	YES	NO
United Kingdom	NO	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

17 PUBLIC LIBRARIES

Usually, public libraries are defined as institutions accessible to the public.⁵⁸ The interpretation of this term varies, leading to discussions about whether libraries for reference only, such as National Libraries, should be included in PLR systems. Rightholders argue that the use of works as a reference on site should be included because this use is covered by the purpose of the directive, as the aim is to protect authors' and performers' rights. On the other hand, as a "significant part of their collection, consisting of documents, maps, manuscripts, newspapers, magazines, prints and drawings, music scores, photographs, or old publications, is not subject to lending, due to their historical importance, state of decay, or uniqueness"⁵⁹ and such objects typically out of copyright protection in many cases, this could be used as an argument against including pure reference libraries in PLR systems, or at least in favor of a system that excludes unprotected material from loan figures counted for PLR payments.

By rightholders, on-site use of copyrighted material may be seen economically comparable to lending and this fact argues that an equitable compensation should also be paid for this. Most purely loan-based PLR systems do not mention reference libraries, simply as they would not be relevant for the calculation of loans. Some countries explicitly specify the types of libraries covered, while others leave room for interpretation. Ongoing debates in certain countries have prompted amendments to legal texts, showing the evolving nature of defining public libraries within PLR systems:

- In **Belgium**, in the **Slovak Republic** and recently, also in **Greece**, the National Library was explicitly included in the PLR system.
- In the **Czech Republic**, the system also explicitly covers the Senate and Parliament Library as well as the National Library by recent changes to the Law.
- **Malta** excludes the National Library with the argument that it serves as a reference library only.

⁵⁸ Such as the understanding used in the Rental and Lending Directive (2006),

⁵⁹ Dusollier, A manifesto for an e-lending limitation in copyright, 5 (2014) JIPITEC 213 chapter 2.1.

Other libraries are also open only to a limited public, such as prison or hospital libraries. In some countries, company libraries or libraries of workers' unions have special mention, **Austria** and **France** serving as examples. However, under loan-based systems, funded by the government, the limitation of public is reflected by the loan numbers and therefore does not justify a different treatment.

18 SCIENTIFIC AND RESEARCH LIBRARIES

Academic and university libraries fall under the category of scientific and research libraries with their inclusion in PLR systems sometimes subject to specific regulations. These libraries may operate under separate legal entities as they are often not entirely state-funded and may not always be open to the general public.

As Dusollier describes it, "academic and research libraries, as institutions associated with universities or research establishments, aim at supporting scholarly or scientific research. Their main activity is to constitute a collection of scholarly books, journals, or databases that will be mostly consulted on the premises of the library. Acts of lending happen but are more limited than in general libraries. Researchers and students will check out books from those libraries when they need more time to search in the book. The objective of the lending is, thus, research and thorough consultation, without necessarily an extensive reading of the book."⁶⁰

The distinct nature of these institutions prompts unique considerations within PLR frameworks, recognizing their role in primarily facilitating education and scholarly work. Reference is made to the question of whether academic reference literature should be included based on either stock count or lending, as the works used within these libraries might be commercially affected by lending and further by in library use. (see Chapter 6.2.6.1).

- In **Finland**, public and university libraries are included. However, PLR for E-lending is only applicable to public libraries.
- In **Iceland**, the National University Library and any school and library institution funded by the government are included.
- In **Germany**, also scientific and academic library uses are subject to PLR, the respective funds being distributed as an add-on to reprographic remuneration to rightholders, not on a loan count basis.

19 SCHOOL LIBRARIES

School libraries, catering primarily to students of educational institutions, contribute to the diversity of institutions covered by PLR systems. Unlike public libraries, school libraries are often more focused on reference materials than typical lending practices and are open not to the general, but a more limited public, i.e., students of the respective institutions, facts arguing against treating them in the exact same way as general public libraries.

Often, the stock is not catalogued or recorded in the same way as in public libraries, as these libraries are operated by teachers or volunteers. This makes it difficult to include them under detailed regulations.

⁶⁰ Dusollier, A manifesto for an e-lending limitation in copyright, 5 (2014) JIPITEC 213 chapter 2.1.

- In **Italy**, all state-funded and local government libraries are included, but school or university libraries are excluded by law. It should be noted in this context that the country pays only a rather small, fixed sum which is not distributed to individual authors.
- In **New Zealand**, where university and polytechnic libraries are included, but not school libraries, discussions about a revision of the law mainly urge for the introduction of Educational Lending Right according to the **Australian** model.⁶¹

20 OTHER LIBRARIES

PLR systems may extend beyond traditional libraries to include also other specialized institutions, including museum libraries and publicly funded entities like libraries operating under the Marrakesh Treaty. The inclusion of these institutions, too, can be a commitment to recognizing the broader cultural and educational landscape and to ensure compensation for rightholders across various formats. As these libraries often also produce and format-shift the content of works, special agreements between institutions and CMOs cover also for special compensation that also takes into account the important role of such use with reduced tariffs considering the aims of the Marrakesh treaty (**Germany** and **Austria** serve as examples).

- In **Iceland**, libraries for beneficiary persons under the Marrakesh Treaty were included recently.
- In **New Zealand**, where libraries for beneficiary persons under the Marrakesh Treaty are not included, the authors' organization urges to change the law arguing with an extended customer base, and specific uses by creating "accessible format copies".

Overall, defining the institutions covered by PLR systems involves a delicate balance between acknowledging the public's access to creative works and recognizing the unique roles and types of use in different types of libraries and doing justice to authors' rights. The ongoing discussions, amendments, and specific mentions within national legal texts show the dynamic nature of PLR legislation.

21 ELIGIBLE WORKS

22 IDENTIFICATION OF WORKS

Accurate identification of eligible materials is a cornerstone of effective PLR systems distributing to individual creators on a work title basis. Identifiers, especially, the International Standard Book Number (ISBN) which has emerged as the vital identifier, contribute to the efficiency of practically all active PLR systems worldwide. It could even be said that PLR systems have spread in parallel and in close symbiosis with the ISBN.

- In **Canada**, identification of works, including E-books is based on the 13-digit ISBN (post-2007 system).⁶²
- In **Finland**, PLR for e-lending covers all titles with an ISBN, also audiobooks for streaming and media distributed in connection with books carrying an ISBN.
- **Luxembourg, Poland** and **Spain** also cover all books carrying an ISBN.

⁶¹ <https://authors.org.nz/about/advocacy/public-lending-right/>.

⁶² <https://publiclendingright.ca/eligibility>.

The ISBN was introduced in 1966 at the Third International Conference on Book Market Research and Rationalisation in the Book Trade and established as an ISO standard in 1970. Over the years, it has become an essential tool for libraries, publishers, and the broader book industry to uniquely identify one publication or edition of a publication published by one specific publisher in one specific format. It also enables the integration of detailed metadata and covers digitally published works such as e-books, audiobooks as well as mixed media publications where the principal constituent is text-based, e.g. book with CD or book with DVD.⁶³ Educational or instructional software, films, videos, DVDs can be relevant for public lending and can also be identified via ISBN data. Metadata can also reflect usage constraints with regard to the lending right.

The official ISBN Users' Manual names PLR systems explicitly as a benefit of the identifier.⁶⁴ In some interviews conducted for the purpose of this study, interviewees defined "eligible works" by "every work that bears an ISBN."

While the ISBN has gained global acceptance, challenges persist in some regions. In these instances, alternative identification methods might be employed within national PLR systems.

Addressing the challenges and encouraging the adoption of ISBNs and other identifiers in regions where use of ISBN is not yet widespread can enhance the uniformity and effectiveness of PLR systems. It can also help in keeping administrative efforts for libraries to a minimum.

The availability of ISBN data may also be a factor in compensation calculation and distribution decisions that should be considered during implementation of a new system.

23 (PRINTED) BOOKS

As PLR systems have their roots in the idea of a compensation for literary book authors, literary works are included in all PLR systems. Other works in the form of printed books vary.

Table 4 (Printed) Books covered by PLR systems

Country	Literary works	Non-fiction	Comics / Graphic novels	Children's books (literary and non-fiction)	Schoolbooks (excluding university and higher education textbooks)	Scientific works (books including university and higher education textbooks)	Sheet music
Australia	YES	YES	YES	YES	YES	YES	
Austria	YES	YES	YES	YES	NO	NO	NO
Belgium	YES	YES	YES	YES	YES	YES	YES
Canada	YES	YES	YES	YES	NO	NO	NO
Croatia	YES	YES	YES	YES	NO	NO	YES
Cyprus	YES	YES	YES	YES	YES	YES	YES
Czech Republic	YES	YES	YES	YES	YES	YES	YES
Denmark	YES	YES	YES	YES	NO	NO	YES
Estonia	YES	YES	YES	YES	YES	YES	YES
Faroe Islands	YES	YES	YES	YES			YES

⁶³ ISBN International Users Manual, 7th edition, <https://www.isbn-international.org/content/isbn-users-manual/29>, p. 4.

⁶⁴ ISBN International Users Manual, 7th edition, <https://www.isbn-international.org/content/isbn-users-manual/29> p. 6.

Finland	YES	YES	YES	YES	YES	YES	YES	YES
France	YES	YES	YES	YES	YES	YES	YES	NO
Georgia*								
Germany	YES	YES	YES	YES	YES	YES	YES	YES
Greece	YES	YES	YES	YES	YES	YES	YES	YES
Greenland	YES	YES						
Hungary	YES	YES	YES	YES	NO	NO		YES
Iceland	YES	YES	YES	YES	YES	YES	YES	YES
Ireland	YES	YES	YES	YES	NO	NO		NO
Israel	YES	NO	NO	NO	NO	NO		NO
Italy	YES	YES	YES	YES	YES	YES		NO
Latvia	YES	YES	YES	YES	YES	YES	YES	YES
Liechtenstein	YES	YES	YES	YES	YES	YES		
Lithuania	YES	YES	YES	YES	NO	NO		
Luxembourg	YES	YES	YES	YES	YES	YES	YES	YES
Malta	YES	YES	YES	YES	YES	YES		NO
Netherlands	YES	YES	YES	YES	NO	NO		YES
New Zealand	YES	YES	YES	YES	NO	NO		NO
Norway	YES	YES	YES	YES	YES	YES	YES	YES
Poland	YES	YES	YES	YES	YES	YES	YES	YES
Slovak Republic	YES	YES	YES	YES	YES	YES		NO
Slovenia	YES	YES	YES	YES	NO	NO		YES
Spain	YES	YES	YES	YES	YES	YES		NO
Sweden	YES	YES	YES	YES	YES	YES	YES	YES
United Kingdom	YES	YES	YES	YES	NO	NO		NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

Literary works, non-fiction works, comics and graphic novels as well as children's books, whether literary or non-fiction are typically included in PLR systems.

Sometimes, eligibility requirements are more specific:

- In **Canada**, books must be at least 48 pages long (24 for a children's book), books not typically lent by public libraries or books mainly with content not protected by copyright are excluded, also "practical books" and educational books designed primarily for an educational market. **New Zealand** applies a similar definition of eligibility for books.
- In **Greenland**, books must be 32 pages and in **Iceland**, there is a minimum page count of 36 pages except for children's books where no restrictions apply.
- In **France**, the system covers all printed materials, including schoolbooks in school libraries with some limitations and identifies that self-published books sold by authors are to be excluded.

In many cases, eligible work is simply defined by the term "published work" (**Germany, Austria, Latvia**) or material with an ISBN (**Poland, Finland**).

Detailed definitions and sample catalogues of eligible material cover the criteria of

- length (minimum page count);
- publication of a work (self-published works or “grey material” to be included or not);
- the question of new editions to be included;
- works that typically contain material not protected by copyright (such as directories or index material).

As school textbooks, which excludes university and higher education textbooks as well as scientific works in the form of books, which includes university and higher education textbooks, are often exempt from PLR systems and may be subject to a specific legal framework for educational uses, it should be noted that other compensation systems may apply for such uses, especially if they happen in educational settings, such as school and university libraries.

- In **Australia**, a different system is applied to administer Educational Lending Right (ELR). Under ELR, payments are made to authors for books in the collections of school libraries. The system acknowledges the positive effects of a special investment in children’s books and their authors⁶⁵ while at the same time supporting the literacy of children and fostering reading promotion.

The landscape concerning the coverage of sheet music is also diverse. Often, PLR systems only include music in printed form as long as it is part of book with an ISBN and exclude musical scores.

24 (PRINTED) PERIODICALS

Table 5 (Printed) Periodicals covered by PLR systems

Country	Newspapers	Magazines	Special interest magazines	Scientific journals	Newsletters
Australia	NO	NO	NO	NO	NO
Austria	NO	NO	NO	NO	NO
Belgium	YES	YES	YES	YES	YES
Canada	NO	NO	NO	NO	NO
Croatia	NO	NO	NO	NO	NO
Cyprus	YES	YES	YES	YES	YES
Czech Republic	NO	NO	NO	NO	NO
Denmark	YES	YES	YES	YES	YES
Estonia	YES	YES	YES	YES	YES
Faroe Islands	YES	YES	YES	YES	YES
Finland	NO	NO	NO	NO	NO
France	NO	NO	NO	NO	NO
Georgia*					
Germany	YES	YES	YES	YES	YES
Greece	YES	YES	YES	YES	YES
Greenland*					

⁶⁵ ELR in Australia is well received by the literary children’s books community within the European Writers’ Council, by information of Nicole Pfister-Fetz and Nina George (EWC), February 8, 2024.

Hungary	YES	YES	YES	YES	
Iceland	NO	NO	NO	NO	NO
Ireland	NO	NO	NO	NO	NO
Israel	NO	NO	NO	NO	NO
Italy	YES	YES	YES	YES	YES
Latvia	NO	NO	NO	NO	NO
Liechtenstein*					
Lithuania	NO	NO	NO	NO	NO
Luxembourg	YES	YES	YES	YES	YES
Malta	NO	NO	NO	NO	NO
Netherlands	YES	YES	YES	YES	YES
New Zealand	NO	NO	NO	NO	NO
Norway	NO	NO	NO	NO	NO
Poland	NO	NO	NO	NO	NO
Slovak Republic	NO	YES	YES	YES	NO
Slovenia	NO	NO	NO	NO	NO
Spain	NO	NO	NO	NO	NO
Sweden	YES	YES	YES	YES	YES
United Kingdom	NO	NO	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

When it comes to the inclusion of periodicals, systems that encompass "all published works," must be distinguished from those relying on loan or stock counts, often excluding periodicals. Additionally, PLR systems emphasizing arts and culture policies may concentrate on literary writing, influencing decisions about the eligibility of periodicals.

In PLR systems operating under loan or stock count models, the exclusion of periodicals is a common practice. The argument often stems from the perception that periodicals, especially newspapers, are primarily used for reference purposes rather than being lent out. While this observation holds true for certain categories, such as daily newspapers, it may not align with the lending activity observed in magazines and journals, particularly within specialized interest sectors.

If a system includes periodicals, such as the system in **Germany**, **Belgium** or in the **Netherlands**, one of the key challenges lies in the difficulty of identifying individual authors. Unlike books, where authorship is clearly attributed to a specific work, periodicals typically involve contributions from multiple authors.

A possible solution is the adoption of a per-head basis distribution model. Instead of attempting to identify individual authors within periodicals, CMOs may allocate a share of the PLR funds based on the overall circulation or readership of the periodical. This approach acknowledges the collective contribution of authors to the publication without requiring the intricate identification of individual contributors.

Alternatively, as in the **Netherlands**, CMOs may explore a top-up fee mechanism integrated with other sources, such as reprographic levies. By supplementing PLR funds through a top-up fee, CMOs can address the challenges posed by the collective nature of periodicals and the

difficulty in pinpointing individual authors. This method provides a pragmatic solution, ensuring that authors contributing to periodicals receive additional compensation.

The debate surrounding the eligibility of periodicals relates to the distinction between reference use and lending practices. While newspapers may predominantly serve as reference materials, magazines and journals, especially those catering to special interest sectors, often witness active lending.

- Under the **United Kingdom's** PLR system which primarily focuses on loan counts, and under the system in **France**, periodicals are excluded. This exclusion aligns with the argument that periodicals, particularly newspapers, are more commonly used for reference purposes.
- In the **Netherlands**, where the PLR system has a strong emphasis on a broad coverage of works and rightholders, the inclusion of periodicals is facilitated by the fact that specialized CMOs carry out the distribution of PLR to journalists.

25 NON-BOOKS (PHYSICAL)

In examining the category of protected works on physical carriers that go beyond traditional printed materials, audiobooks are closest to the previously discussed categories, also, identification does not require additional effort as they also carry an ISBN. Most PLR systems recognize the significance of audiobooks on physical carriers and include them in compensation structures.

In Europe, this is also on the legal basis that Art. 6(2) of the Rental and Lending Directive (2006) provides for Music (CDs), audiobooks (CDs) and Films (DVDs, Blu-ray) that Member States that do not apply the exclusive lending right of Art. 6(1) to works in this form, shall introduce a remuneration at least for authors.

The treatment of software on physical carriers remains a difficult aspect within PLR systems. While Article 4 of the Rental and Lending Directive (2006) specifically addresses the rental of computer programs, lending is not mentioned in the context of these works. Computer games and video games, despite being subject to lending practices in public libraries, find representation in PLR systems in only a handful of countries. The absence of Collective Management Organizations (CMOs) to administer distribution for these works may contribute to their exclusion.

Board games, which may often involve protected works of illustrators and text authors are rarely mentioned in national PLR frameworks. Notably, the **Netherlands** stands out as a jurisdiction where individual remuneration for board games is implemented. In other systems that theoretically cover all protected works, such as the German system, there is no established distribution mechanism or CMO representing the relevant rightholders.

Table 6 Physical non-books covered by PLR systems

Country	Music (CDs)	Audiobooks (CDs)	Films (DVDs, Blu-ray)	Computer games/ Video games	Software	Board Games
Australia	NO	YES	NO	NO	NO	NO
Austria	YES	YES	NO	NO	NO	NO
Belgium	YES	YES	YES	YES	NO	NO
Canada	NO	YES	NO	NO	NO	NO

Croatia	YES	YES	YES	YES	NO	NO
Cyprus	YES	YES	YES	YES	YES	YES
Czech Republic	YES	YES	YES	YES	YES	NO
Denmark	YES	YES	YES	YES	NO	NO
Estonia	YES	YES	YES	NO	NO	NO
Faroe Islands	YES	YES	YES			
Finland	YES	YES	YES	NO	NO	NO
France	NO	NO	NO	NO	NO	NO
Georgia*						
Germany	YES	YES	YES	YES	YES	YES
Greece	YES	YES	YES	YES	NO	NO
Greenland		YES				
Hungary	YES		YES	NO	NO	
Iceland	NO	YES	NO	NO	NO	NO
Ireland	NO	NO	NO	NO	NO	NO
Israel	NO		NO			
Italy	YES	YES	YES	YES	NO	NO
Latvia	YES	YES	YES	NO	NO	NO
Liechtenstein	YES	YES	YES		NO	NO
Lithuania	NO	NO	NO	NO	NO	NO
Luxembourg				NO	NO	NO
Malta	NO	NO	NO	NO	NO	NO
Netherlands	YES	YES	YES	YES	NO	YES
New Zealand	NO	NO	NO	NO	NO	NO
Norway	NO	YES				
Poland	NO	NO	NO	NO	NO	NO
Slovak Republic	NO	NO	NO	NO	NO	NO
Slovenia	YES		YES	NO	NO	NO
Spain	YES	YES	YES	NO	NO	NO
Sweden	YES	YES	NO	NO	NO	NO
United Kingdom	NO	YES	NO	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

26 E-BOOKS

The integration of e-books within PLR systems is influenced by ongoing legal discussions (see Chapter 5.1.4), changing reading habits of library users and a shift of loan numbers from physical books towards e-books.⁶⁶

⁶⁶ EU Commission, DG Int, Research for Cult Committee, Public Libraries – their new role, Workshop Documentation of July, 26, 2016, IP/B/CULT/IC/2016-023/26/, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU\(2016\)585882_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU(2016)585882_EN.pdf) p.73 with examples of shifting loan data.

- **Canada**⁶⁷ and **Australia**, operating under a general arts and culture policy, have introduced a PLR funding for e-books, such systems allowing equitable compensation for authors without touching the licensing models between libraries and publishers.
- The Society of Authors stated in 2013, before the **United Kingdom** changed PLR to extend also to e-books, that library authorities, the government and publishers should ensure that authors receive fair remuneration also for e-books. Following a long campaign, and discussions with stakeholders, the inclusion of e-books and e-audiobooks was installed by the 2017 Digital Economy Act, and the first PLR payments were made in 2020.⁶⁸

In countries with copyright-based systems, where PLR traditionally covers works on physical carriers only, a regulation for PLR on e-books raises legal challenges that demand innovative solutions, such as the “one-copy-one-user” model discussed in the **Netherlands**.⁶⁹ The question whether to subject e-lending to an exception rather than operating under individual licensing models would trigger a discussion concerning a remuneration system that passes the three-step test under the Berne Convention and under EU Copyright Law.⁷⁰ Currently, an EU wide PLR regulation is not in sight.⁷¹

The cornerstones of the conflict can only be briefly touched within the scope of this study and should be subject to more thorough investigations in another context.

Most authors and publishers demand individual licensing models to apply for e-lending as opposed to making e-books subject to rules resembling those concerning library access of physical work copies. In their opinion, rightholders must be free to market e-book licenses for the first time after publication before making them available to library use (so called “windowing”), most relevant also for self-publishers or e-only publishers, similar mechanisms applying in the film sector, where primary markets (cinemas) are served first before subjecting works to streaming and less financially attractive models. Rightholders fear that conditions for e-lending under PLR systems might be economically much worse than the licensing conditions applied today.⁷²

Libraries, on the other hand, lobby for the right to license and/or purchase any commercially available e-book without embargo (windowing) to enable the public to access all published works. In their view, licensing for e-books must be available under reasonable terms and conditions and at a fair price for libraries and under conditions respecting copyright limitations and exceptions available to libraries and their users in national law.⁷³

The discussion is currently active in many countries, for example:

- In **Germany**, the Ministry of Justice is currently examining whether a legal regulation should be included in national copyright law for the lending of e-books by public libraries. Currently, the answers of stakeholders to a questionnaire are being evaluated. This survey

⁶⁷ Whitney, EBooks and Public Lending Right in Canada, submitted to the Public Lending Right Commission, 2011, www.canadacouncil.ca/en/council/research/find-research/2011/ebooks-and-public-lending-right , p. 12.

⁶⁸ <https://www2.societyofauthors.org/where-we-stand/public-lending-right-plr/>.

⁶⁹ Here, the e-lending is also subject to licensing under a one-copy-multiple-user-model.

⁷⁰ CJEU, Judgement of September 11, 2014, TU Darmstadt, C-117/13, para. 24-35 on Art. 5(3) Infosoc Directive, that excludes exceptions for works “subject to purchase or licensing terms”.

⁷¹ EU Commission, DG Int, Research for Cult Committee, Public Libraries – their new role, Workshop Documentation of July, 26, 2016, IP/B/CULT/IC/2016-023/26/, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU\(2016\)585882_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU(2016)585882_EN.pdf) p. 101 with further arguments.

⁷² Netzwerk Autorenrechte e.V., <https://www.netzwerk-autorenrechte.de/e-lending-FAQ.html>.

⁷³ IFLA Background Paper on e-lending, 2012; <https://www.ifla.org/news/ifla-releases-background-paper-on-e-lending/>.

is supplemented by a scientific study to examine the effects of e-lending on the book market, conducted by the Federal Government Commissioner for Culture and Media (BKM), which is also hosting Round Table discussions between relevant stakeholders.⁷⁴ The members of the Netzwerk Autorenrechte, “Network Authors’ Rights” (NAR) representing 16 associations and 16,000 professional authors and translators in the book sector from **Germany, Austria, and Switzerland** across all genres are examining aspects of both physical and digital lending in public libraries since 2018.⁷⁵

- In response to the legal challenge remunerating e-books, the **Netherlands** have developed a very specific, hybrid model that combines licensing with PLR. This innovative approach acknowledges the characteristics of digital content while providing a fair compensation for authors. Under this system, libraries acquire licenses for e-books on a per-loan basis, and authors receive PLR compensation for each qualifying loan.
- **Norway** pays PLR for e-books being lent by libraries,⁷⁶ distribution is, however, not made on a per loan or stock count basis.
- **Denmark** included e-books and e-audiobooks under the “eReolen” scheme in 2017, where libraries and publishers collaborate in making the works available, involving different license models, the one-copy one user model, but also one-copy multiple users and free-for-all models.⁷⁷

The discussion and the current examples demonstrate the difficulty of finding solutions for a compensation system for e-books that balances the interests of authors, publishers and libraries.

Table 7 E-books covered by PLR systems

Country	Literary works	Non-fiction	Comics / Graphic novels	Children’s books (literary and non-fiction)	Schoolbooks (excluding university and higher education textbooks)	Scientific works (books including university and higher education textbooks)	Sheet music
Australia	YES	YES	YES	YES	YES	YES	
Austria	NO	NO	NO	NO	NO	NO	NO
Belgium	NO	NO	NO	NO	NO	NO	NO
Canada	YES	YES	YES	YES	NO	NO	NO
Croatia	NO	NO	NO	NO	NO	NO	NO
Cyprus	NO	NO	NO	NO	NO	NO	NO
Czech Republic	NO	NO	NO	NO	NO	NO	NO
Denmark	YES	YES	YES	YES	NO	NO	
Estonia	NO	NO	NO	NO	NO	NO	NO
Faroe Islands*							

⁷⁴https://www.bmj.de/DE/themen/wirtschaft_finanzen/rechtschutz_urheberrecht/urheberrecht/urheberrecht_node.html

⁷⁵ https://www.netzwerk-autorenrechte.de/stellungnahme_e-lending.html.

⁷⁶ EU Commission, DG Int, Research for Cult Committee, Public Libraries – their new role, Workshop Documentation of July, 26, 2016, IP/B/CULT/IC/2016-023/26/, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU\(2016\)585882_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585882/IPOL_STU(2016)585882_EN.pdf) p. 101 detailing on the licensing scheme.

⁷⁷ The development of the e-lending system shown by Christoffersen, E-lending in Denmark, Presentation delivered at the EBLIDA Conference, Den Haag, 9th May 2016 <http://www.slideshare.net/MikkeChristoffersen/e-lending-in-denmark>.

Finland	YES	YES	YES	YES	YES	YES	YES
France	NO	NO	NO	NO	NO	NO	NO
Georgia*							
Germany	NO	NO	NO	NO	NO	NO	NO
Greece	NO	NO	NO	NO	NO	NO	NO
Greenland*							
Hungary	NO	NO	NO	NO	NO	NO	NO
Iceland	NO	NO	NO	NO	NO	NO	NO
Ireland	NO	NO	NO	NO	NO	NO	NO
Israel	NO	NO	NO	NO	NO	NO	NO
Italy	NO	NO	NO	NO	NO	NO	NO
Latvia	NO	NO	NO	NO	NO	NO	NO
Liechtenstein	NO	NO	NO	NO	NO	NO	NO
Lithuania	NO	NO	NO	NO	NO	NO	NO
Luxembourg	NO	NO	NO	NO	NO	NO	NO
Malta	NO	NO	NO	NO	NO	NO	NO
Netherlands	Specific system applies.						
New Zealand	NO	NO	NO	NO	NO	NO	NO
Norway	YES	YES	YES	YES	YES	YES	
Poland	NO	NO	NO	NO	NO	NO	NO
Slovak Republic	NO	NO	NO	NO	NO	NO	NO
Slovenia	NO	NO	NO	NO	NO	NO	NO
Spain	NO	NO	NO	NO	NO	NO	NO
Sweden	NO	NO	NO	NO	NO	NO	NO
United Kingdom	YES	YES	YES	YES	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

27 E-PERIODICALS

Online resources and interviews for the purposes of this study also asked, whether E-Periodicals were covered by the relevant systems. This covered E-papers, online access of web publications, E-magazines; electronic newspapers; special interest magazines in electronic form, digital scientific journals; electronic newsletters; blogs and knowledge databases.

- Currently, **Denmark** is the only country to include all of these publications in the system.

28 NON-BOOKS IN DIGITAL FORMAT

Audiobooks are not only subject to PLR systems when loaned on physical carriers but are increasingly made available by public libraries in digital format. They are included even in some systems that do not include e-books (**Croatia, Iceland and Faroe Islands**).

The streaming of music and films is included in the systems of **Croatia, the Czech Republic, Denmark, Finland and Liechtenstein**.

Despite the fact that many e-lending practices also incorporate educational courses and seminars, these formats are not subject to PLR in any of the active systems.

Table 8 Non-Books in digital format included by PLR systems

Country	Music	Audiobooks	Films	Educational courses/ Seminars
Australia	NO	YES	NO	
Austria	NO	NO	NO	NO
Belgium	NO	NO	NO	NO
Canada	NO	YES	NO	NO
Croatia	YES	YES	YES	NO
Cyprus	NO	NO	NO	NO
Czech Republic	YES	NO	YES	NO
Denmark	YES	YES	YES	
Estonia	NO	NO	NO	NO
Faroe Islands	YES	YES		
Finland	YES	YES	YES	NO
France	NO	NO	NO	NO
Georgia*				
Germany	NO	NO	NO	NO
Greece	NO	NO	NO	NO
Greenland*				
Hungary	NO	NO	NO	NO
Iceland	NO	YES	NO	NO
Ireland	NO	NO	NO	NO
Israel	NO		NO	NO
Italy	NO	NO	NO	NO
Latvia	NO	NO	NO	NO
Liechtenstein	YES	YES	YES	
Lithuania	NO	NO	NO	NO
Luxembourg				NO
Malta	NO	NO	NO	NO
Netherlands	NO	NO	NO	NO
New Zealand	NO	NO	NO	NO
Norway	NO	YES	NO	NO
Poland	NO	NO	NO	NO
Slovak Republic	NO	NO	NO	NO
Slovenia	NO		NO	NO
Spain	NO	NO	NO	NO
Sweden	NO	NO	NO	NO
United Kingdom	NO	YES	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

29 ELIGIBLE RECIPIENTS

30 TEXT CREATORS

Table 9 Text creators as eligible recipients under PLR systems

Country	Text authors (Books)	Original authors also in case of translated works	Compilation authors	Pseudonym authors	Translators	Editors	Journalists
Australia	YES	NO	YES		YES	YES	NO
Austria	YES	YES	YES	YES	YES	YES	NO
Belgium	YES	YES	YES	YES	YES	YES	YES
Canada	YES	YES	YES	YES	YES	YES	NO
Croatia	YES	YES	YES	YES	YES	YES	YES
Cyprus	YES	YES	YES	YES	YES	NO	YES
Czech Republic	YES	NO	YES	YES	YES	NO	NO
Denmark	YES	YES	YES		YES	NO	YES
Estonia	YES	YES	YES	YES	YES	NO	YES
Faroe Islands	YES	YES			YES	YES	YES
Finland	YES	YES	YES	YES	YES	NO	NO
France	YES	YES	YES	YES	YES	YES	NO
Georgia*							
Germany	YES	YES	YES	YES	YES	NO	
Greece	YES	YES	YES	YES	YES	YES	YES
Greenland	YES						
Hungary	YES	YES	YES		YES	YES	YES
Iceland	YES	NO	NO	YES	YES	NO	NO
Ireland	YES	YES	YES	YES	YES		NO
Israel	YES	YES	YES		YES	NO	NO
Italy**	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Latvia	YES	YES	YES	YES	YES	NO	NO
Liechtenstein	YES	YES	YES	YES	YES		
Lithuania	YES	YES	YES	YES	YES	NO	NO
Luxembourg	YES	YES	YES	YES	YES	NO	YES
Malta	YES	NO	YES	NO	YES	YES	NO
Netherlands	YES	YES	YES	YES	YES	YES	YES
New Zealand	YES	YES	YES	YES	NO	YES	NO
Norway	YES	YES	YES	YES	YES	NO	NO
Poland	YES	NO	YES	YES	YES	NO	NO
Slovak Republic	YES	NO	YES	YES	YES	NO	NO
Slovenia	YES	YES	YES		YES	NO	NO
Spain	YES	YES	YES	YES	YES	NO	NO
Sweden	YES	NO	YES	YES	YES	NO	NO
United Kingdom	YES	YES	YES	YES	YES	YES	NO

* Missing information.

** No distribution to individuals, PLR is granted for cultural purposes only.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

The inclusion of text authors and translators, particularly those of literary works, is a universal principle of PLR systems. However, the nuances lie in the diverse author contributions and the specific recognition accorded to different roles within the creative process.

- **Original Authors of translated works**

Systems vary in their approach to remunerating original authors when their works are translated. Systems emphasizing the promotion of national language and culture may opt not to compensate original authors for translations. As the international legal framework does not force them to national treatment (see 5.1), they may choose to adopt other regulations.

- The system **Australia** focuses on the purpose to make payments to Australian creators of books, and to publishers of books in Australia. It “aims to support the enrichment of Australian culture by encouraging Australian persons to create books and by encouraging publishers to publish books in Australia.” On this basis it does not pay PLR to other than Australian authors, illustrators, translators, compilers or editors.

Limited funds and national languages not widely spoken or translated can influence decisions to include only original authors in their own language.

- **Croatia, Greenland and Poland** restrict eligible recipients to those contributing to original publications and to publications translated into the respective language.

During the establishment of new systems, the exchange of fees under reciprocal agreements between governing CMOs can be considered as a way to compensate the original authors, as recommended by Recital 16(a) of the Rental and Lending Directive (2006) especially for those acting under a European Law regime. This was considered necessary in Europe, as the principle of national treatment under the Berne Convention is not applicable.⁷⁸

Reciprocal agreements also offer authors a significant advantage, particularly when robust markets allocate a proportional share to smaller markets. The funds allocated to other country by agreement, however, should, according to the European Writers' Council, always be capped relative to the total budget to ensure that authors from developing countries or languages with limited circulation benefit from being lent in nations with a high number of readers.⁷⁹

- **Compilation Authors**

Identification challenges occur with the works of authors in compilations. To streamline processes and manage costs, many PLR systems limit the inclusion of authors in compilations to a specific number, often ranging from 3 (**Sweden**) to 5 (**Canada**) as a pragmatic approach to the problem.

- **Pseudonymous Authors**

Authors writing under pseudonyms add another layer of complexity. PLR systems address this challenge by relying on the capabilities of CMOs and author organizations to match loan or stock data with their internal records.

⁷⁸ von Lewinski, Rental and Lending Rights Directive, in: Walter/von Lewinski, European Copyright Law, A Commentary, 2010, 6.0.9.

⁷⁹ Information by Nicole Pfister-Fetz and Nina George (EWC) on February 8, 2024.

- Editors' Contributions

Editors may contribute to a printed work in a copyrightable manner, however, on a collective basis it may be difficult to distinguish between such copyrighted works and others. Most PLR systems let editors only receive a share in PLR in case these editors have also contributed to the work as writers of text (i.e., introductory chapters). In these cases, Table 9 Text creators as eligible recipients under PLR systems” would not state an editor’s right but would recognize the editor's share as a compilation author share.

- In **Germany**, where editors received a share of PLR payments due to the possibility of a copyrightable share, there is currently a lawsuit pending about the question whether editors may take part in the distribution of remuneration such as PLR.⁸⁰

- Journalists

Aligning with the situation concerning periodicals in section 6.1.2.3, PLR frameworks rarely foresee a distribution to journalists for the lending of magazines and journals, even if periodical works on loan are covered by fees in theory.

31 VISUAL ARTISTS

The systems also differ in whether illustrators, photographers and visual artists receive a share of PLR payments if they are not named as co-authors in the title of the work as would typically be the case with picture books. While co-authoring visual artists, illustrators and photographers alike are typically eligible recipients under PLR systems, other contributors of visual art are more often explicitly excluded.

In countries that do not grant PLR compensation to other illustrators, such as graphic designers of book covers, it is argued that these illustrators do not participate in the success of the books on the primary markets, so no compensation is required for lending them in libraries.⁸¹ The lack of involvement of other visual artists who are not named as authors of the work often fails in suited distribution systems, as these authors are not named in the work and loan data.

If in some countries image collecting societies receive shares for illustrators and other visual artists who are not co-authors, determining this share needs an objective basis. This might be the examination of representative work samples, assessing the proportion of other images in these works in relation to text. Because it cannot be assigned to individual creatives, such payments could be made in the form of a flat surcharge.

- In **Germany**, the share of visual artist created works contained in books on loan has been determined once in an empirical study as described, however, reassessment has proven a challenge. Therefore, the share between text and image of the flat fee paid has remained stable by agreement of the CMOs concerned.

Other visual artists, especially in film and multimedia works are included in very detailed systems (**Netherlands**). Often, distribution to these film artists is administered by specialized CMOs. Under European Law, remuneration of said artists is mentioned as it is made clear in Art. 2(2) of the Rental and Lending Directive (2006) that the principal director of a

⁸⁰ OLG München, Judgement of July 27, 2023 – 29 U 7919/21, GRUR-Prax 2023, p. 570.

⁸¹ Information given in interview by Barbara Jozwiak, Copyright Polska.

cinematographic or audiovisual work shall be considered as its author or one of its authors. Other film artists may be remunerated as co-authors under national legislation.

As Art. 3(2) of the Rental and Lending Directive (2006) states that remuneration shall not cover rental and lending rights in relation to buildings and to works of applied art, many legal acts under European Law framework contain a mentioning of that fact, although practical use cases seem rare.

Table 10 Visual artists as eligible recipients under PLR systems

Country	Illustrators (Co-authors)	Photographers and fine artists	Other visual artists (film artists)
Australia	YES	YES	NO
Austria	YES	YES	YES
Belgium	YES	YES	YES
Canada	YES	YES	NO
Croatia	YES	YES	YES
Cyprus	YES	YES	YES
Czech Republic	YES	YES	YES
Denmark	YES	YES	YES
Estonia	YES	YES	YES
Faroe Islands	YES	YES	YES
Finland	YES	YES	NO
France	YES	YES	NO
Georgia*			
Germany	YES	YES	YES
Greece	YES	YES	YES
Greenland*			
Hungary	YES	YES	
Iceland	YES	YES	NO
Ireland	YES	YES	NO
Israel	NO	NO	NO
Italy	NO	NO	NO
Latvia	YES	YES	YES
Liechtenstein	YES	YES	YES
Lithuania	YES	YES	YES
Luxembourg	YES	YES	NO
Malta	YES	YES	NO
Netherlands	YES	YES	YES
New Zealand	YES	YES	NO
Norway	YES	YES	
Poland	YES	YES	NO
Slovak Republic	YES	YES	NO
Slovenia	YES	YES	YES
Spain	YES	YES	YES
Sweden	YES	YES	NO
United Kingdom	YES	YES	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

32 OTHER COPYRIGHT HOLDERS AND HOLDERS OF RELATED RIGHTS

PLR systems covering audiobooks, music CDs and films typically also distribute to the relevant creators, namely, music composers and authors of song lyrics. These systems often also distribute to holders of neighboring rights such as audiobook producers, film and music producers, acknowledging that producers play a significant role in bringing these works to library audiences.

Under European Law, Art. 3(1)(d) of the Rental and Lending Directive (2006) explicitly mentions and defines film producers.

Table 11 Other copyright holders and holders of related rights as eligible recipients of PLR

Country	Audiobook producers	Film and music producers	Actors/ Narrators of audiobooks	Composers; music text authors and musicians
Australia	NO	NO	NO	NO
Austria	YES	YES	YES	YES
Belgium	YES	YES	YES	YES
Canada	NO	NO	YES	NO
Croatia	YES	YES	YES	YES
Cyprus	NO	NO	NO	NO
Czech Republic	NO	NO	NO	NO
Denmark	YES	YES	YES	YES
Estonia	YES	YES	YES	YES
Faroe Islands				YES
Finland	NO	NO	YES	NO
France	NO	NO	NO	NO
Georgia				
Germany	YES	YES	YES	YES
Greece	NO	NO	YES	YES
Greenland*				
Hungary*				
Iceland	NO	NO	NO	NO
Ireland	NO	NO	NO	NO
Israel		NO		NO
Italy**	n/a	n/a	n/a	n/a
Latvia	NO	NO	NO	NO
Liechtenstein	NO			
Lithuania	NO	NO	NO	NO
Luxembourg	NO	NO	NO	YES
Malta	NO	NO	NO	NO
Netherlands	YES	YES	YES	YES
New Zealand	NO	NO	NO	NO
Norway	NO	NO	NO	NO
Poland	NO	NO	NO	NO
Slovak Republic	NO	NO	NO	NO
Slovenia	YES	YES		YES

Spain	NO	NO	NO	NO
Sweden	NO	NO	NO	NO
United Kingdom	YES	NO	YES	NO

* Missing information.

** No distribution to individuals, PLR is granted for cultural purposes.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

33 PUBLISHERS

In traditional PLR systems, the focus primarily revolves around compensating individual authors for the lending of their works. Consequently, publishers are not recognized as direct beneficiaries of PLR in all systems. The rationale behind this exclusion is grounded in the principle of directing compensation to the primary creators, authors, who contribute to the artistic and intellectual content of literary works. While publishers play a crucial role in the realization and commercialization of these works, PLR frameworks traditionally prioritize individual authors in their eligibility criteria.

In cases of shared languages and book markets, such as in **Germany** and **Austria**, distribution to the publishers of the respective other country under bilateral agreements may provide for additional positive effects of PLR systems.

Publishers may, however, also profit indirectly from systems that do not reward them directly. Especially in the Nordic Countries, where substantial PLR income is received by authors, less financial pressure is on publishers in pre-financing projects.⁸²

The definition of eligible publishers and the applicable share of publishers varies in PLR systems. Especially in those countries with restrictions also for authors (see 6.1.3.5) as to the nationality or residency, restrictions also apply to eligible publishers.

- In **Australia**, eligible publishers are companies whose business consists wholly or substantially of the publication of books and who regularly publish in Australia. Payments are only made to publishers if an eligible creator is receiving a payment.
- In **Belgium**, publishers are defined as “the natural or legal persons who, within the framework of a professional activity and through an organized corporate structure, invest in authors’ works, who prepare and produce these works for publication, who are responsible for their publication, exploitation, marketing and distribution and who may assert specific rights (including remuneration rights) to these works by virtue of the law, a transfer or license.”
- In **Estonia**, publishers only receive a remuneration if they acquire exclusive rights for PLR by the creators.
- In **France**, all publishers are eligible to PLR if their books have been sold to a library.
- In **Belgium, Austria** and **Greece** eligible publishers receive 30% of PLR sums; in the **Czech Republic**, book publishers receive 25% of PLR sums.

⁸² Interview Information given by Anne Bergman-Tahon (FEP) on February 6, 2024.

Table 12 Publishers as eligible recipients under PLR systems

Country	Book publishers	Newspaper publishers
Australia	YES	NO
Austria	YES	NO
Belgium	YES	YES
Canada	NO	NO
Croatia	YES	YES
Cyprus	NO	NO
Czech Republic	YES	NO
Denmark	YES	YES
Estonia	YES	NO
Faroe Islands	YES	
Finland	NO	NO
France	YES	NO
Georgia*		
Germany	YES	NO
Greece	YES	YES
Greenland*		
Hungary	NO	NO
Iceland	NO	NO
Ireland	NO	NO
Israel	NO	NO
Italy**	n/a	n/a
Latvia	NO	NO
Liechtenstein	NO	NO
Lithuania	NO	NO
Luxembourg	NO	NO
Malta	NO	NO
Netherlands	YES	YES
New Zealand	NO	NO
Norway	NO	NO
Poland	YES	NO
Slovak Republic	NO	NO
Slovenia	NO	NO
Spain	NO	NO
Sweden	NO	NO
United Kingdom	NO	NO

* Missing information.

** No distribution to individuals, PLR is granted for cultural purposes.

34 ELIGIBILITY RESTRICTIONS

It is common for PLR systems to restrict PLR to nationals, residents or writers in the specific language. These restrictions exist even under European Law, where after intense discussions involving the European Commission, restrictions were not challenged in front of court.⁸³

Table 13 Eligibility restrictions of PLR systems

Country	Nationals	Residents	Writers in the specific language
Australia	YES	YES	NO
Austria	NO	NO	NO
Belgium	NO	NO	NO
Canada	YES	YES	NO
Croatia	YES	YES	NO
Cyprus	YES	YES	NO
Czech Republic	NO	NO	NO
Denmark	NO	NO	YES
Estonia	NO	NO	NO
Faroe Islands	NO	YES	YES
Finland	NO	NO	NO
France	NO	NO	NO
Georgia*			
Germany	NO	NO	NO
Greece	NO	NO	NO
Greenland	NO	NO	YES
Hungary	NO	NO	NO
Iceland	YES	NO	YES
Ireland	NO	NO	NO
Israel	NO	YES	YES
Italy	NO	NO	NO
Latvia	NO	NO	NO
Liechtenstein	NO	NO	NO
Lithuania	NO	NO	NO
Luxembourg	NO	NO	NO
Malta	NO	NO	NO
Netherlands	NO	NO	NO
New Zealand	YES	NO	NO
Norway	NO	NO	YES
Poland	NO	NO	YES
Slovak Republic	NO	NO	NO
Slovenia	NO	NO	YES
Spain	NO	NO	NO
Sweden	NO	YES	YES
United Kingdom	NO	YES**	NO

⁸³ Muffat-Jeandet, Danièle; Report on the European Directive on Lending Right, in: Public Lending Right Today, 6th Int. PLR Conference, 2005, p. 19, 21.

* Missing information.

** Residents and citizens of EEA countries are eligible.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

35 FUNDING OF PLR SYSTEMS

Under this chapter, the financial situation of PLR will be covered with a perspective on the funding.

36 RESPONSIBLE ENTITIES

In most countries, PLR systems are funded directly by the state. Others provide for the funding on a more regional basis, in this case, invoicing and payment procedures can be the duty of a CMO appointed with the administration of this task. It should be noted that the more debtors a PLR system has, the higher are the administrative costs on the revenue side.

- **Spain** is an example where the legal entities behind the libraries have to pay PLR to CEDRO as the managing CMO.
- In **Belgium**, debtors are regions and individual libraries with the intention of library users being charged.

Table 14 Funding of PLR systems – liable entities

Country	State (National/Lander)	Commune	City	Individual library	Library user
Australia	YES	NO	NO	NO	NO
Austria	YES	NO	NO	NO	NO
Belgium	YES	YES	YES	YES	indirectly
Canada	YES	NO	NO	NO	NO
Croatia	YES	NO	NO	NO	NO
Cyprus					
Czech Republic	YES	NO	NO	NO	NO
Denmark	YES	NO	NO	NO	NO
Estonia	YES	NO	NO	NO	NO
Faroe Islands	YES				
Finland	YES	NO	NO	NO	NO
France	YES	NO	NO	NO	NO
Georgia*					
Germany	YES	NO	NO	NO	NO
Greece	YES	NO	NO	NO	NO
Greenland	YES	NO	NO	NO	NO
Hungary	YES	NO	NO	NO	NO
Iceland	YES	NO	NO	NO	NO
Ireland	YES	NO	NO	NO	NO
Israel	YES				
Italy	YES	NO	NO	NO	NO
Latvia	YES	NO	NO	NO	NO
Liechtenstein	YES	NO	NO	NO	NO
Lithuania	YES	NO	NO	NO	NO

Luxembourg	NO	NO	NO	YES	NO
Malta	YES	NO	NO	NO	NO
Netherlands	YES	NO	NO	YES	NO
New Zealand	YES	NO	NO	NO	NO
Norway	YES	NO	NO	NO	NO
Poland	YES	NO	NO	NO	NO
Slovak Republic	YES	NO	NO	NO	NO
Slovenia	YES	NO	NO	NO	NO
Spain	NO	YES	NO	YES	NO
Sweden	YES	NO	NO	NO	NO
United Kingdom	YES	NO	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

37 SOURCES OF FUNDING

According to libraries,⁸⁴ but also according to CMOs and authors' organizations administering PLR,⁸⁵ it should be a principle that the funding of PLR should be secured without diminishing the library budgets. Countries looking towards the establishment of a PLR system should assess their objectives. In case of small budgets, they should look for alternative funding of PLR where possible in order to be able to provide both a well working public library service covering educational needs and information services in the fields of public health and other public values and support to the literary community by paying PLR.

- In **Spain**, the institutions in charge of the libraries and other centers that lend protected works must pay the PLR (municipalities). Payment exemption apply to municipalities with less than 5,000 inhabitants and those that are part of the educational system, as well as those that loan for the benefit of people with disabilities. When the owners of the establishments are the Municipalities, the PLR sums will be paid by the Provincial Councils. Where they do not exist, the PLR sums will be paid by the Administration that assumes their functions.

National tax laws may allow innovative funding schemes to solve the dilemma:

- **Poland** is funding the PLR system out of gambling tax.⁸⁶
- In **France**, booksellers contribute a substantial part of PLR, but independent bookstores have obtained access to the library book market in return, the law having limited the discount rate between zero and 9 percent of the book price sold to a lending library..
- In **Greece**, the funding for the new system is provided by the state and only covers state libraries. Private libraries must negotiate tariffs with rightholder organizations.

⁸⁴ The Public Library Service, IFLA/UNESCO Guidelines for Development, 2001, p.17.

⁸⁵ Parker; The Public Lending Right and what it does, WIPO Magazine 2018 (3); p. 37-41.

⁸⁶ Information given in Interview by Barbara Jozwiak.

38 FUNDING CRITERIA

The total amount needed for funding PLR systems needs to consider administrative costs both for the collection of the monies as well as for the distribution of funds.

The study shows that in many countries the calculation of the exact amount payable by a state is entirely at the discretion of the relevant Ministry and is therefore not assessed and adjusted on the basis of transparent and objective factors. It may be an advantage not tying a system closely to exact numbers, e.g. in cases of decreasing number of loans or, what has been reported, in pandemic times when libraries were closed for longer periods of time. The disadvantages of such funding are on the other hand that often, these funds are not adjusted to inflation for very long periods of time and negotiations by authors' organizations and CMOs do not have a backing in statistical data and are therefore unsuccessful.

The recipient side is often dissatisfied with such fixed sum financing. Irrespective of the amount, sums that are not adjusted are perceived as a symbolic contribution and not as an actual compensation for use.

Objectively measurable criteria can make the internal political discussion about increases and adjustments easier on the part of the financing state and can also help policymakers.

- In **Latvia**, 10% of the libraries' acquisition sum is reserved for PLR payments.
- In **Lithuania**, the total amount of PLR is allocated annually by the Ministry of Culture but calculated based on the data provided by 64 Lithuanian public libraries.

Table 15 PLR System Funding Criteria

Country	Flat fee grant	Number of library card holders	Number of loans	Value of acquisitions	Stock count	Page count
Australia					YES	
Austria	YES	NO	NO	NO	NO	NO
Belgium	YES	NO	YES	NO	YES	NO
Canada	NO	NO	NO	NO	YES	NO
Croatia	NO	NO	YES	NO	NO	NO
Cyprus*						
Czech Republic	NO	NO	YES	NO	NO	NO
Denmark	NO	NO	NO	NO	YES	YES
Estonia	YES	NO	NO	NO	NO	NO
Faroe Islands	NO	NO	NO	NO	YES	NO
Finland	NO	NO	YES	NO	NO	NO
France	NO	YES	NO	YES	YES	NO
Georgia*						
Germany	YES	NO	NO	NO	NO	NO
Greece	YES	NO	NO	NO	NO	NO
Greenland	NO	NO	NO	NO	YES	
Hungary	NO	NO	YES	NO	NO	NO
Iceland	NO	NO	NO	NO	NO	NO
Ireland	YES	NO	NO	NO	NO	NO
Israel	NO	NO	YES	NO	NO	NO
Italy	YES	NO	NO	NO	NO	NO
Latvia	NO	NO	NO	NO	YES	

Liechtenstein	NO	NO	YES	NO	NO	NO
Lithuania	NO	NO	YES	NO	NO	NO
Luxembourg	NO	YES	NO	NO	NO	NO
Malta	YES	NO	NO	NO	NO	NO
Netherlands	NO	NO	YES	NO	NO	NO
New Zealand	NO	NO	NO	NO	YES	NO
Norway	NO	NO	NO	NO	YES	NO
Poland	NO	NO	NO	YES	NO	NO
Slovak Republic	YES	NO	NO	NO	NO	NO
Slovenia	NO	NO	YES	NO	NO	NO
Spain	NO	YES	YES	NO	NO	NO
Sweden	NO	NO	YES	NO	NO	NO
United Kingdom	NO	NO	YES	NO	NO	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

France applies a rule of mixed components to PLR funding. The scheme implemented by the French law has been adopted with the view to opening the access of independent bookstores to the book market of libraries by prohibiting any discount rate exceeding 9 per cent on the fixed price of books in France. Book suppliers have to register and declare all books purchased for lending as one base of funding PLR. Libraries must declare their purchases and booksellers their sales of books to libraries to the governing CMO, SOFIA. Based on these declarations, book suppliers pay a royalty of 6% of public price excl. tax of books sold to lending organizations. The state contributes with a fee calculated on the number of users registered in libraries. So, payment per copy purchased is 6% of the book price (booksellers' contribution) and Euro 1.5 per library member, and 1 Euro for university library members (state contribution).

Table 16 Assessment of flat sum payments in PLR systems

Country	Number and size of libraries	Number of loans	Number of library card holders	Other
Austria	NO	NO	NO	Negotiation of an agreement with the State.
Estonia				Negotiation and empirical data.
Germany	NO	YES	NO	Negotiation based on national official library statistic of number of loans.
Greece	YES	YES	YES	Government decision based on commissions assessment.
Ireland	NO	YES	NO	Ministry decision.
Italy				Decision of the Ministry of Culture.
Malta	NO	YES	NO	Negotiation based on the actual number of loans.

Slovak Republic

NO

NO

NO

Decision of the Ministry of
Culture and negotiations with
CMO.

39 ADEQUACY OF FUNDING

Assessing the adequacy of funding PLR systems extends beyond the legal frameworks of European jurisdictions. In particular outside the European Union, fair use principles shape the evaluation of funding adequacy. Fair use, as a legal doctrine, seeks to balance the rights of copyright holders with the public's right to access and use of creative works. In the context of PLR, this means ensuring that the compensation provided is fair and equitable, considering both the interests of authors and the public's access to literary resources.

- In **Canada**, legal principles governing fairness, equity, and recognition of the public service rendered by authors underpin the evaluation of PLR system adequacy.

The legal basis for this consideration lies in the recognition of authors' rights and the acknowledgment that a public benefit is derived from their contributions.

Beyond Europe, various legal structures worldwide guide PLR systems, each reflecting the unique cultural, legal, and economic landscapes of their respective countries.

Under European Law, purely symbolic payments under a PLR system are specifically problematic as the legal framework provides for relevant restrictions. The CJEU dealt with the case of the Belgian situation in 2011 and found that Art. 5(1) of Directive 92/100 precludes legislation, which establishes a system under which the remuneration payable to authors in the event of public lending is calculated exclusively according to the number of borrowers registered with public establishments, on the basis of a fixed flat-rate amount per borrower per year.⁸⁷

The Court held that due to the fact that lending as such does not have a direct or indirect economic or commercial character an assessment of the remuneration in the light of its value in trade would not be adequate and may even be fixed on a flat-rate basis. However, it must at the same time be capable of allowing authors to receive an adequate income. Its amount cannot therefore be purely symbolic.⁸⁸

The CJEU gave guidelines on the most relevant criteria for Member States to determine the remuneration. It should be assessed

- in accordance with the Member States' own cultural promotion objectives.
- The extent to which those works are made available, a factor to which would be
 - o the total number of libraries;
 - o the total number of works in their collections;
 - o the number of borrowers registered,
 - o as well as the number of loans made by these borrowers.⁸⁹

⁸⁷ CJEU Judgement of June 30, 2011, Case C-271/10, Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA).

⁸⁸ CJEU Judgement of June 30, 2011, Case C-271/10, para. 33, 34, Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA).

⁸⁹ CJEU Judgement of June 30, 2011, Case C-271/10, para. 32 - 40, Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA), the criteria for quantifying the remuneration also discussed by Bonadio/Bellezza, Exceptions to public lending rights and authors' remuneration: the CJEU in *Veva v Belgium*; *Journal of Intellectual Property Law & Practice* 2011, p. 768–770, <https://doi.org/10.1093/jiplp/jpr141>.

Under European law, the criteria should be taken into account when assessing the sums paid under PLR systems: but they should also be taken into account in case of readjustment and recalculation.

- When **Greece** recently prepared a Ministerial Decree regulating PLR by a committee and considered the criteria.
- In **Luxembourg**, the CMO LUXORR is discussing a reassessment of PLR payments on the basis of the criteria. The country still has a PLR remuneration that relies only on a flat fee per member with a library card and at least one loan per year.⁹⁰
- Sums paid under the PLR systems in **Italy**, the **Slovak Republic**, **Austria** and other countries are not adjusted based on regular review of statistical information and actual usage data but pay flat amounts instead.

Table 17 PLR sums per Capita

⁹⁰ Article 4 Règlement Grand Ducal of January 8, 2007
https://www.stradalex.lu/fr/slu_src_publ_leg_mema/toc/leg_lu_mema_200701_3/doc/mema_2007A0029Av.

Country	Population 2021 (in Mio.)	PLR Sum 2021 (in Mio.)	Relation (PLR in USD per capita based on whole population)
Australia	25,69	6,5820 USD	0,256 USD
Austria	8,96	0,5810 USD	0,065 USD
Belgium	11,61	2,9089 USD	0,251 USD
Canada	38,25	11,1151 USD	0,291 USD
Croatia	3,88	0,2869 USD	0,074 USD
Cyprus	1,24	0,0000 USD	0,000 USD
Czech Republic	10,49	4,0040 USD	0,382 USD
Denmark	5,86	26,2820 USD	4,487 USD
Estonia	1,33	0,1337 USD	0,100 USD
Faroe Islands	0,05		
Finland	5,54	9,4402 USD	1,704 USD
France	67,75	16,1930 USD	0,239 USD
Georgia	3,73	0,0162 USD	0,004 USD
Germany	83,24	16,2100 USD	0,195 USD
Greenland	0,06		
Hungary	9,71	0,4536 USD	0,047 USD
Iceland	0,37	1,3001 USD	3,486 USD
Ireland	5,03	0,2175 USD	0,043 USD
Israel	9,36		
Italy	59,11	4,3090 USD	0,073 USD
Latvia	1,88	0,2690 USD	0,143 USD
Liechtenstein	0,04	0,0000 USD	0,000 USD
Lithuania	2,80	0,3471 USD	0,124 USD
Luxembourg	0,64	0,0428 USD	0,067 USD
Malta	0,52	0,0600 USD	0,116 USD
Netherlands	17,53	7,7970 USD	0,445 USD
New Zealand	5,12	1,4773 USD	0,288 USD
Norway	5,41	12,1470 USD	2,246 USD
Poland	38,04	1,0630 USD	0,028 USD
Slovak Republic	5,45	0,3256 USD	0,060 USD
Slovenia	2,11	1,1568 USD	0,549 USD
Spain	47,47	0,2051 USD	0,004 USD
Sweden	10,42	17,0635 USD	1,638 USD
United Kingdom	67,33	8,5650 USD	0,127 USD

The table shows that the sums paid per capita (per inhabitant) ranged up to 4,48 USD in the case of **Denmark** but were an average of 0,52 USD and a median value of 0,124 USD. The median value, as the middle value in a set of numbers when they are arranged in numerical order, seems to be more meaningful in the context, as it is not influenced by extreme values in the data set.

40 PAYMENT EXEMPTIONS

Whereas under International Law, there is no obligation to include and no prohibition to exclude certain institutions in calculating PLR funding, the Rental and Lending Directive (2006) contains relevant rules for European countries.

The Directive grants flexibility to Member States as it introduces provisions for exemptions from the obligation to pay remuneration. Article 6(3) of the Rental and Lending Directive (2006) allows Member States to exclude certain establishments from the remuneration obligation, provided that a remuneration system has been adopted. The rationale behind these exemptions is to balance the interests of authors and the public, recognizing the unique roles played by specific institutions in promoting cultural and educational objectives.

Several European Court of Justice cases have set a landmark as to the provisions related to library payment exemptions. Notable cases include C-198/05⁹¹, C-53/05⁹², C-36/05⁹³, and C-175/05⁹⁴. In these cases it was held, that the respective States failed to fulfill the obligation under the then applicable Lending Directive by exempting from the public lending right all or practically all categories of lending establishments accessible to the public. This “would deprive authors of remuneration allowing them to recoup their investments, with inevitable repercussions for the creation of new works.”⁹⁵ Even the exemption of relevant classes of institutions (in the case of **Ireland** all public, educational and academic institutions to which members of the public have access) was not considered a fulfillment of the Directive.

So, striking the right balance between the interests of authors and the public, ensuring adequate remuneration for creators, and fostering broad access to knowledge and culture are ongoing considerations, and exemptions are usually applied concerning libraries for beneficiary persons under the Marrakesh Treaty and for school and educational libraries.

To assess which of the European countries have made use of such exemption is not a straightforward task, as exemptions are often rather a matter of practice. Also, other agreements may be in place that fill a supposed gap, this is often not visible in statutory law.

- **Germany** and **Austria** for example do not count loans in libraries for beneficiary persons under the Marrakesh Treaty or school libraries but do have separate agreements covering and remunerating their uses.⁹⁶
- **Belgium** has made use of the exemption explicitly in § 9 Article 5 of the Royal Decree for several types of libraries (educational institutions, scientific research institutions healthcare institutions and institutions under the Marrakesh Treaty).⁹⁷
- **Luxembourg** has also exempted from payment educational, university or scientific research establishment or any other institution and establishment practicing specialized, thematic lending or open to a targeted public.⁹⁸

Table 18 Payment exemptions of PLR systems

⁹¹ CJEU Judgment 26 October 2006, Case C-198/05 – Commission/Italy.

⁹² CJEU Judgment of 6 July 2006 Case C-53/05 – Commission/Portugal.

⁹³ CJEU Judgment of Case C-35/05 – Commission/Spain.

⁹⁴ CJEU Judgment of 11 January 2007 C-175/05 – Commission/Ireland.

⁹⁵ CJEU Judgment of Case C-35/05 para. 27 – Commission/Spain.

⁹⁶https://www.vgwort.de/fileadmin/vg-wort/pdf/dokumente/Gesamtvertraege/Mediengemeinschaft_fuer_blinde_und_sehbehinderte_Menschen_e.V/Gesamtvertrag_27_medibus.pdf.

⁹⁷ Belgium Code of Economic Law, Art. XI, § 5.4. <https://www.reprobel.be/wp-content/uploads/2023/06/Reprobel-rapport-annuel-FR-gecomprimeerd.pdf>, p. 22.

⁹⁸ Art. 5 Règlement Grand Ducal of January 8, 2007

https://www.stradalex.lu/fr/slu_src_publ_leg_mema/toc/leg_lu_mema_200701_3/doc/mema_2007A0029A

Country	Libraries for beneficiary persons under Marrakesh Treaty		
	School libraries	Other	
Australia	NO		
Austria	Exemptions irrelevant in PLR assessment		
Belgium	YES	YES	YES
Canada	Exemptions irrelevant in PLR assessment		
Croatia	Exemptions irrelevant in PLR assessment		
Cyprus	Exemptions irrelevant in PLR assessment		
Czech Republic	NO	NO	NO
Denmark	YES	NO	
Estonia	Exemptions irrelevant in PLR assessment		
Faroe Islands	Exemptions irrelevant in PLR assessment		
Finland		NO	
France	NO	NO	
Georgia	Exemptions irrelevant in PLR assessment		
Germany	YES	YES	
Greece	NO	YES	YES
Greenland	Exemptions irrelevant in PLR assessment		
Hungary	Exemptions irrelevant in PLR assessment		
Iceland	NO	NO	
Ireland	Exemptions irrelevant in PLR assessment		
Israel	Exemptions irrelevant in PLR assessment		
Italy	Exemptions irrelevant in PLR assessment		
Latvia	NO	NO	NO
Liechtenstein	NO	NO	
Lithuania	Exemptions irrelevant in PLR assessment		
Luxembourg	YES	YES	YES
Malta	Exemptions irrelevant in PLR assessment		
Netherlands	YES	NO	YES
New Zealand	Exemptions irrelevant in PLR assessment		
Norway	NO	NO	
Poland	Exemptions irrelevant in PLR assessment		
Slovak Republic	Exemptions irrelevant in PLR assessment		
Slovenia	Exemptions irrelevant in PLR assessment		
Spain	YES	YES	
Sweden	YES	NO	
United Kingdom			

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

41 DISTRIBUTION OF PLR

In order to be able to weigh arguments for or against certain distribution mechanisms, the simple comparison of common criteria used seems insufficient to draw conclusions as to best practices and recommendations. In most countries it is not just numbers of loans, stock count or

other usage criteria that play the decisive role, but social and cultural criteria are also included or considered even more important.

- In **Finland** and **Norway**, PLR is used to finance social and cultural funds for authors.
- In the **Nordic countries**, especially in countries with small languages, such as **Iceland** PLR is an instrument to promote national cultural and heritage.

Some other systems also combine usage-related criteria and cultural and social support. Systems in which a part of PLR is distributed according to usage data and another part according to social or cultural criteria currently exist in **France, Iceland, Sweden** and **Germany**. In **Germany** and **France**, contributions to pension funds and even health insurance have proven to be an important help for authors.

Table 19 Main distribution criteria used in PLR systems

Country	Number of published works in library	Number of works loaned	Flat fee per creator
Australia	YES	NO	NO
Austria	NO	YES	NO
Belgium	YES	NO	YES
Canada	YES	NO	NO
Croatia		YES	
Cyprus			
Czech Republic	NO	YES	NO
Denmark	YES	NO	
Estonia	YES	YES	NO
Faroe Islands	YES	NO	NO
Finland	NO	YES	NO
France	YES	NO	NO
Georgia*			
Germany	NO	YES	YES
Greece	NO	YES	
Greenland	YES	NO	NO
Hungary	NO	YES	NO
Iceland	NO	YES	NO
Ireland	NO	YES	NO
Israel	NO	YES	NO
Italy	NO	NO	NO
Latvia	YES	YES	NO
Liechtenstein	NO	YES	NO
Lithuania	NO	YES	NO
Luxembourg	NO	YES	NO
Malta	NO	YES	NO
Netherlands	NO	YES	NO
New Zealand	YES	NO	NO
Norway	NO	NO	NO
Poland	NO	YES	NO
Slovak Republic	NO	YES	NO
Slovenia	NO	YES	NO

Spain	NO	YES	NO
Sweden	NO	YES	NO
United Kingdom	NO	YES	NO

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

The table can not show in how far the choice for a distribution system also depends on practicability and cost arguments valid at the time of the system's establishment. It must be mentioned that there is not a single known case of a country that substantially changed it's PLR distribution system after installation. Therefore, special consideration should be given to arguments for distribution criteria, as these are most relevant for ensuring a system's fairness in the long run.

42 LOANS-BASED VS. STOCK COUNT SYSTEMS

The debate between loans-based and stock count systems within Public Lending Right (PLR) frameworks sparks ongoing discussions, with each approach presenting unique advantages and challenges.⁹⁹

- Book market mirroring

Loans-based systems are criticized for mirroring book market success, with the potential consequence that popular authors might benefit disproportionately. Where government objectives direct towards cultural funding of new and niche works of emerging writers, stock count distribution might distribute funds more evenly, per capita payments may favor these creators even better.

- Definition of library use

As libraries are not defined by loans only, reference works are left out when distributing PLR on loans only. Reference works are typically those works that are too expensive and voluminous to be taken out of house, these works are also typically printed in small numbers and have niche primary markets. It can be argued that they disproportionately suffer economically from public availability in libraries. Of course, this can be challenged by the thought that prices of such works already reflect potential library uses and a large number of works in library stocks are neither lent nor used for in-house reference on the other hand.

Stock count distribution rather reflects the library's curatorial decision and possibly the cultural value of a publication.

- Budget allocation concerns

It can be argued that in loans-based systems, a significant portion of the PLR budget must be spent on administrative costs especially for distribution reducing the funds available for those who should receive the equitable compensation (see Chapter 6.2.8 for more detail).

⁹⁹ For the Canadian system, the comparison between the advantages and disadvantages of loans-based or stock count system, has been conducted thoroughly, see MacSkimming, Public Lending Right in Canada, Policy Foundations, Research paper for the Canada Council for the Arts, December 2011 [Research Reports \(publiclendingright.ca\)](http://publiclendingright.ca).

Digitization and centralization of library loans data has, where this exists, can however, weaken this argument of a cost intensive documentation considerably. Prospectively, also AI systems involving meta data and identifier information might be used for better and easier identification of works and authors. Software solutions have significantly reduced the administrative burden of calculating loans, making a cost-effective loans-based system more feasible.

- **Creators and other recipients perspective**

Creators and other PLR recipients often consider a loans-based system a matter of respect to their works, especially in European copyright law-based countries the principles that all uses should be remunerated is put forward in favor of a loans-based distribution.

- **Library perspective**

IFLA emphasizes the challenge of recording and reporting accurate loans data, especially in development countries where even digital catalogue data is not self-evident. While there is an international standard for library catalogue data, the actual establishment of working IT infrastructure, programming software and interfaces and the necessary personnel may be a factor for developing countries to decide against a loans-based distribution.¹⁰⁰

- **Representativity**

Even in times of digitally recorded data, systems based on loan counts do not record all libraries through a complete survey. In most cases, a sample of library locations is determined together with the library representative and only the loans at the selected locations are recorded with exact title. An attempt is made to include factors in the selection that should ensure that the sample is representative, such as locations in large cities and in the countryside and in different parts of the country (**Germany, Austria**).

From a statistical perspective, however, it can be discussed how large the sample really needs to be in order to then be able to distribute funds based on the loans of an exact work title. In times of better data availability, it may be advisable to expand the sample size or introduce corrective special distributions for authors whose works "fall through the cracks" due to the sample selection.

Stock count system sometimes also use a sample of libraries to assess the availability of specific titles, while in other cases they assess every single library's titles.

- **Growth rate considerations**

Stock count systems need to consider that the sums needed for funding grow automatically if new acquisitions are simply added to eligible works. Therefore, mechanisms may be needed to adapt. In some cases, for distribution schemes based on stock count, PLR is paid only to living authors (**Australia**) and for a limited period of time, also to spouses or children continue to receive compensation when the creator dies (**Iceland**).

Loans based systems are self-correcting in that as the actual number (at least of physical) loans typically decreases rather than increasing over time changes in funding are relatively predictable.

To summarize, the loans-based vs. stock count debate within PLR systems involves nuanced considerations of budget allocation, fairness to creators, and the practicalities of measuring public use. Data-driven studies on the organizational details of library data collection, software

¹⁰⁰ Information given in interview by Christina de Castell, IFLA, on January 30, 2024.

solutions and data exchange, involving the identification of works and creators would be necessary to assess which type of distribution suits a country's PLR system best.

43 CORRECTIVE FACTORS IN PLR DISTRIBUTION

- Flat fees per creator or per work

To foster inclusivity and support emerging authors, some PLR systems incorporate flat fees per creator or per work as corrective measures. This approach ensures that all authors, including those with less prominent careers, receive a basic sum. This mechanism is not restricted to stock count-based systems; it can be implemented based on the factor that a work has been recorded at least once. By reserving a percentage of the total distribution amount for flat fees, some PLR frameworks aim to balance distribution, preventing what they consider overcompensation for bestsellers or "best-lenders" and promoting a more favorable median value per author.

- Weighting criteria (work types)

PLR systems encompassing a diverse array of eligible materials (books of different genres and with a typically different group of eligible rightholders as well as works in the form of audiobooks, music and film) often employ weighting criteria to achieve equitable compensation distribution. These criteria, decided through collaborative commissions involving relevant stakeholders, should be grounded in empirical information, and should take into account the individuals typically contributing to a specific type of work. By considering the intrinsic value and impact of various work types, weighting criteria can contribute to a more just and balanced allocation of PLR funds.

- Thresholds

In systems reliant on loan counts, thresholds, whether defined by a minimum count of loans or a minimum sum payable to an individual, can be an important correcting factor. Thresholds can help prevent the PLR payments to individuals diminishing to insignificant levels, ensuring that the benefits positively impact relevant creators and other rights holders. By establishing thresholds, PLR systems can offer a meaningful impact on recipients while avoiding the dilution of payments.

- Caps/Ceilings

Implementing caps or, as they are sometimes called, ceilings on PLR sums paid represents a strategic approach to foster even distribution and encourage diversity in library content. By imposing a maximum limit on the amount an author can receive, some PLR systems aim to prevent what they consider to be disproportionate compensation for highly successful works. This corrective factor acknowledges that culturally significant, yet less popular works may benefit from a more evenly distributed pool. Despite personal implications for successful authors, caps are often supported as they contribute to the broader objective of promoting a diverse and culturally rich library collection. Caps can be applied across various distribution regimes, be it loans-based, stock count-based, or employing other factors, and are generally well-received even by authors directly affected by such limitations.

- In the **United Kingdom** PLR Scheme, both thresholds and caps are applied by law, the current cap being 6,000 GBP currently. This is used to ensure that PLR has the widest possible effect on authors, illustrators and audiobook narrators, eligible under the system.

- Restrictions to living authors and close relatives as heirs

The question whether PLR can be subject to inheritance is regulated differently in various systems. Restrictions on the inheritance of the claim follow the objective to promote living authors rather than their heirs and compensate active contributors to the public good.¹⁰¹ Especially countries in the copyright systems tie the remuneration right to the duration of copyright in the work.

- In **Lithuanian** law, heirs are mentioned as eligible recipients explicitly.
- In **Sweden**, in the case of death, the remuneration is paid to the heirs, in compliance with the law of succession, for as long as copyright exists.
- In **Iceland**, due to cultural policy, heirs do not receive an amount, this does not apply for spouses and children under 18 receiving 50% of the PLR sum. The exclusion of heirs of a creator has been introduced to concentrate funding on contemporary, “living” authors.
- In **New Zealand**, heirs only receive PLR in the year after the eligible person’s death and only in case the person has registered before.

44 GOVERNANCE

The governance structure and the choice of the relevant governing body plays an important role in ensuring fair and effective collection and distribution. Three main approaches to PLR governance prevail:

45 CMO ADMINISTRATION

In several countries, PLR is administered by CMOs alongside other authors’ and publishers’ rights. Notable examples include **Germany**, the **Netherlands**, **Spain**, the **Slovak Republic**, and **Lithuania**. The CMO model centralizes the management of PLR with other compensation schemes, streamlining processes and facilitating collective representation. This approach often proves efficient in countries where CMOs are well-established and experienced in managing diverse authors’ rights.

- In **France**, the PLR system is managed mainly by the CMO SOFIA, the organization is approved by Ministry of Culture for collective management of library lending rights, and for equal remuneration of authors and publishers.
- In **Germany**, the CMOs representing eligible rightholders form a partnership (“Zentralstelle Bibliothekstantieme” (ZBT)), translating: Central Organization for PLR) and administer the sums paid collectively. VG WORT is commissioned by ZBT to collect the sums and for distribution to the further CMOs. These distribute to the individual rightholders according to their individual distribution rules.
- **Ireland** presents an original combination of governing organizations. PLR collection is managed by the Local Government Management Agency (LGMA) and paid to authors by the Irish Copyright Licensing Agency (ICLA). Since 2012, the British Library runs the

¹⁰¹ von Lewinski, Die Bibliothekstantieme im Rechtsvergleich, GRUR Int 1992, p. 432, 436.

system in Ireland, meaning any UK registration may include Irish PLR payments (opt-in of author).

46 GOVERNMENT BODY

In countries with PLR legislation or those operating under a broader Arts and Culture policy base, the PLR system often is administered by a government body, in most cases located within the Ministry of Culture, in other cases organized by the National Library (**New Zealand**).

Commissions consisting of authors, translators, librarians, and, if relevant in the system, publisher representatives or representatives of specific language communities. This model ensures a collaborative and inclusive decision-making process. The involvement of multiple stakeholders reflects a commitment to balanced representation and consideration of diverse perspectives.

- In **Canada**, the PLR Commission was set up under the Canadian Council for the Arts. The commission consists of voting members (majority writers, also editors, librarians, publishers, translator) appointed by selected organizations. It also includes a board of non-voting representatives, related to governmental associations of cultural/heritage/linguistics institutions. The commission oversees the criteria, policies, and the administration of PLR.
- In **Greenland**, the National Library organizes the fund and the distribution of PLR.

47 NGO ADMINISTRATION

Certain PLR systems are entrusted to Non-Governmental Organizations (NGOs), primarily writers' organizations.¹⁰² In these cases, NGOs may be tasked with collecting and distributing PLR. Often, these organizations have played a central role in advocating for the introduction of such a system. This model emphasizes the role of the author's community in managing and overseeing PLR. The efficiency of this approach depends on the strength and capability of the involved NGOs.

- In **Iceland**, the Office of the Writer's Union of Iceland maintains and distributes the government fund. An allocation committee for payments for the use of books in libraries appointed by Ministry of Education for three years is additionally in place.
- **Israel** presents a unique case where the government has commissioned a commercially operating entity with the task of administering PLR. This approach highlights a hybrid model that combines government oversight with the potential operational efficiency of a commercially oriented entity – however, CMOs or NGOs without their own commercial interest in the administration might provide for lower administrative costs and be closer to the interests of rightholders.

It can be said that the governance of PLR systems varies globally, reflecting the diverse cultural, legal, and administrative landscapes. The choice between CMO administration, government body oversight, or NGO administration depends on factors such as the country's legal framework, cultural policies, and the question whether there is an existing infrastructure, either CMO or authors' rights management organization in place.

Table 20 Governing body of PLR systems

¹⁰² <https://www.internationalauthors.org/wp-content/uploads/2017/10/IAF-international-PLR-WEB.pdf> , p. 10.

Country	CMO	Government body	NGO
Australia		YES	
Austria	YES		
Belgium	YES		
Canada		YES	
Croatia	YES		
Cyprus			
Czech Republic	YES		
Denmark	YES		
Estonia			YES
Faroe Islands	YES		
Finland	YES		
France	YES		
Georgia*			
Germany	YES		
Greece	YES		
Greenland		YES	
Hungary	YES		
Iceland		YES	YES
Ireland		YES	
Israel		YES	
Italy	YES		
Latvia			
Liechtenstein	YES		
Lithuania	YES		
Luxembourg	YES		
Malta		YES	
Netherlands	YES		
New Zealand		YES	
Norway		YES	
Poland	YES		
Slovak Republic	YES		
Slovenia		YES	
Spain	YES		
Sweden		YES	
United Kingdom		YES	

* Missing information.

Empty cells mark cases where information as to the inclusion of specific types of libraries was not available or not mentioned in the legal provision.

48 Administrative costs for distribution

The assessment of administrative costs in PLR systems is a complex task, influenced by various factors such as governance models, collection methods, and distribution mechanisms.

During data collection and through the interview information, it became apparent that comparing publicly available administrative costs would not provide reliable comparisons.

For these reasons, this chapter only names administrative cost factors that could be helpful in a more general manner.

Costs that may arise for the initial establishment of the system will not be taken into account here.

49 LIBRARY COSTS FOR STOCK COUNT AND LOAN ASSESSMENT

In PLR systems operating on a stock count or loan count basis, library costs play a crucial role. Countries like **Germany**, the **Netherlands**, and the **Slovak Republic** follow these models. These costs encompass efforts for assessing loans and stock count, as well as investments in software interfaces for transferring identifiable information to the governing administrator. The continuous need for software updates and data administration incurs personnel and IT costs.

50 COSTS FOR COLLECTION OF FUNDS

Differences in the collection mechanisms also influence administrative costs. In cases where PLR is raised from regional entities running libraries (**Spain**) or at least partly from individual libraries (**Belgium**), costs for the collection of funds become pertinent. These costs may occur at the government level (where there is rarely any PLR specific cost data on record) or within the CMOs or NGOs responsible for collecting monies.

The percentage-based assessment made transparent in annual reports is a common practice, but it's crucial to note that these costs remain fairly stable, irrespective of the collected sums. In the end, the percentage of actual expenses in relation to income has little meaning. The efforts needed for collecting often do not vary, no matter whether the sums collected are small or large.

- **Spain's** PLR system involves regional entities contributing to fund collections. Administrative costs related to this collection mechanism are influenced by regional variations and the challenges of small-scale invoicing and communication of tariffs and reporting.

51 DISTRIBUTION COSTS FOR GOVERNING INSTITUTIONS

Assessing distribution costs for governing institutions presents challenges, particularly in cases where the same entity handles both collection and distribution. When PLR funds are centrally collected and then distributed to specialized CMOs or NGOs, additional administrative expenses may arise during the intermediary steps. The complexity of these processes impacts the overall efficiency of the distribution mechanism. On the other hand, where work types of audiobooks, music and films are included, fair and equitable compensation has to involve fair distribution to rightholders such as composers and film directors as well as to holders of neighboring rights such as narrators and music, film and audiobook producers requiring additional distribution expenses.

- **Germany's** PLR system, managed by CMOs, provides an example where distribution costs are intricately tied to the collective management of authors' and publishers' rights. The CMOs involved centralize and share costs for negotiation and collection but distribute

separately. This includes CMOs for visual art (VG Bildkunst), music and musicians (GEMA, GVL) as well as various collecting societies for film artists and producers.

52 FIXED SUM DISTRIBUTION ON A DETAILED BASIS

Countries like the **Slovak Republic** adopt a system where a fixed sum is distributed based on a detailed loan count. In such cases, administrative expenses do not proportionally change concerning the distributed amount. The personnel required for identification of works and rightholders, IT and software development, communication, and payment processes remain constant, offering a unique perspective on administrative efficiency.

- The **Slovak Republic's** PLR system, utilizing a fixed sum distribution on a loan count basis, illustrates how administrative costs remain consistent regardless of the distributed amount, providing insights into the cost dynamics of such systems. LITA, the governing CMO has developed a well-working software in close collaboration with the libraries and invested in experts for IT and author identification.

This shows that administrative costs within PLR systems are shaped by diverse factors, ranging from library operations and fund collection mechanisms to distribution processes. The country examples emphasize the need for tailored assessments based on the unique characteristics of each PLR system. As countries continue to refine their PLR frameworks, understanding and optimizing administrative costs is crucial for fostering sustainable and equitable compensation for rightholders. Administrative costs should also be considered when assessing the sums paid by governments.

53 MAIN DIFFERENCES AND SIMILARITIES OF EXISTING PLR SYSTEMS

PLR systems share as a similarity an underlying value system that recognizes the importance of equitable compensation for authors and creators and aims to provide economic support for the public lending of their works. Legal systems for PLR try to balance the rights of creators with public access to cultural works. Most PLR systems on European or EEA territory are funded by the government directly and operate under copyright law. All systems cover public libraries. A distribution to at least text authors (including literary and non-fiction authors as well as children's book authors) as well as to visual authors in their role of co-creators.

All systems not based on a grant or subsidy-based distribution also share the need for effective identification and assessment mechanisms, whether based on loans, stock counts, or other metrics. Most of them work with ISBN as an identifier and use a sample of library loan data.

Most systems also cover audiobooks at least in a physical lending format and distribute not only to the authors, but also to narrators and producers.

PLR systems show, however, more differences than similarities, reflecting diverse legal frameworks, cultural contexts, and approaches to an equitable compensation for lending. The main differences include the governance structures and the eligibility of different stakeholders, differentiated by work types such as creators and rightholders in music and film works, as well as publishers and producers of such works.

Differences exist also in the type of libraries covered, the eligibility of materials, including variations in the treatment of periodicals, non-books and e-books as well as other works. Distribution mechanism have the largest possible variation and reach from simple per capita

payments to complex systems involving correcting mechanisms and social and cultural contributions.

54 BEST EXPERIENCES RESEARCHED FROM EXISTING SYSTEMS

55 COLLABORATION OF RELEVANT STAKEHOLDERS

Iceland, Australia, Canada, Poland, Germany and other countries have successfully implemented national commissions of relevant stakeholders working regularly and collaboratively on established PLR systems. The commissions involve government representatives, author and creator representatives as well as librarians. In **Canada**, the commission also includes non-voting representatives from the Department of Canadian Heritage, the Canada Council for the Arts, Library and Archives Canada, and Bibliothèque et Archives nationales du Québec ensuring the consideration of further cultural objectives.

56 INNOVATIVE FUNDING SOURCES OF PLR SYSTEMS

Poland and **France** provide for interesting models on how to finance PLR systems without diminishing library budgets. In Poland, funds are drawn from state income derived from gambling tax, intending not to draw budget from library funds. The amount is assessed by the library acquisition budget and should be 5% thereof. The scheme implemented in **France** has been adopted with the view to opening the access of independent bookstores to the book market of libraries by prohibiting any discount rate exceeding 9 per cent on the fixed price of books in France, the system is partly funded by the state and partly by book sales to libraries. Book suppliers must register and declare all books purchased for lending as one base of the remuneration. Libraries must declare their purchases or booksellers their sales of books to libraries to the governing CMO SOFIA. Based on these declarations, book suppliers pay a royalty of 6% of public price excl. tax of books sold to lending organizations. The state contributes with a fee calculated on the number of users registered in libraries. However, such innovative systems must be checked for compliance with national subsidy law and tax law restrictions.

57 CONTRIBUTION TO CULTURAL AND SOCIAL FUNDING

PLR systems can contribute to cultural and social support systems. They can serve this function even in cases where there is not enough funding for a use-based distribution to individual recipients as is the case in **Italy**.

Without being reduced to that function, individual distribution can also be combined with contributions to cultural and social support systems. The system in **France** can serve as best practice. A relevant contribution is made to social purposes (supplementary Pension funds) to support authors who often work as freelancers. A similar system applies in **Germany**, where an annually fixed percentage of PLR income is invested in grants for private pension schemes for literary authors (“Stiftung Autorenversorgungswerk”) as well as in scholarships for scientific authors (“Förderungsfond Wissenschaft”).

Scholarships and grants for an investment in future works are also supported through PLR systems in **Norway, Sweden** and in **Slovenia**. In **Norway**, payment is made to the various rightholder associations which then allocate the payments to authors via the relevant funds, including the Sami Non-Fiction Writers and Booksellers Association and the Sami artists' and authors' remuneration fund as grants, e.g., for travel and study. Authors in **Norway** can apply for new works to be funded. The law in **Slovenia** provides for detailed information on the grant of scholarships.

58 DISTRIBUTION ALSO TO OTHER RELEVANT CREATORS AND RIGHTHOLDERS

Where specialized CMOs are active, the distribution can cover creators and rightholders (producers and holders of neighboring rights) in visual arts, film and music as well as to publishers with great specificity and without further administrative cost, as CMOs administer their members' information. They can distribute PLR income also as an additional quota paid together with license income or reprographic levies. Best practices can be observed in **Belgium** and **Germany**.

59 COVERAGE OF EDUCATIONAL LENDING

The coverage of lending in school libraries and lending in academic institutions can help in creating a cultural effect on the availability of nationally authored children's books and the promotion of educational material tailored to regional requirements. For developing countries, this could be useful in view of national heritage fiction works and scientific and non-fiction works reflecting specifically national needs. Such additional compensation can include reference material used in libraries, such as in **Sweden**. As such material tends to be expensive and is therefore less distributed on primary markets, PLR may compensate for the effect of library availability. **Australia** established a separate Educational Lending Right (ELR) to cover school, university and technical education libraries. This scheme tends to include material which is less distributed in primary markets.

60 DEVELOPMENT OF LOAN DATA ASSESSMENT

Loan data-based systems that have been established in times of limited technological infrastructure and restricted computing capacity are often relying on a relatively small sample of libraries. In times of big data technology, these systems now can be successfully developed to include full or at least a broader scope of loan data. The **United Kingdom** has now evolved the sample-based assessment of loan data to a system where all available library loans are assessed. **Slovenia** has developed an online registration system connecting the author registration database with the loans data.¹⁰³ The opportunity to do this will vary depending on the degree to which library administration is centralized.

61 GOVERNMENT ADMINISTERED EMPIRICAL STUDIES

Estonia can serve as a best practice example of a country where the government reassessed usage and payment data to better accommodate the actual uses. A comprehensive study by the Government assessed a large number of relevant loans - suggesting a much higher sum to be adequate. As a consequence, the funding of PLR was raised substantially. For loans in 2023, a sum of 1.5 Mio. € will be paid under the system. (2022: 500,000 €; 2021: 123,000 €).

62 WELL DOCUMENTED TRANSPARENCY REPORTING

The CMOs in **Austria**, **Belgium** and the **Slovak Republic** can serve as examples of a thorough and easy to read documentation of PLR income and distribution figures. Transparent reporting helps the recipients of distributed money to trust in mechanisms and ensure compliance.

¹⁰³ Pirš: Public Lending Right System in Slovenia: A Comparison With Foreign Practices, 15–41 Knjižnica, 59 (2015) 4 <https://journals.uni-lj.si/knjiznica/article/view/13894/12204>.

63 PLR SYSTEMS IN DEVELOPMENT

This chapter shall give an overview of PLR systems in development, based on information from PLR International, and is not restricted to systems in developing countries.

The application of PLR systems in developing countries is, however, controversial among stakeholders:

The library perspective, represented by IFLA argues that *“the introduction of PLR Lending right should be rejected in the greater public interest in situations where a country can not afford to fund PLR without diverting resources earmarked to fund more fundamental public services. It should also be rejected in countries that have low literacy rates or lack a reading culture, as diversion of funds for PLR may reduce available funds for more resources, infrastructure and technology to raise literacy rates. In particular, lending right should not be established in countries that are not considered high or middle income by the World Bank.”*¹⁰⁴

IFLA argues that funds needed for basic education, including literacy efforts, should be a higher priority than PLR systems and that the creation of PLR might divert funds from libraries. It also recommends *“that in developing countries it is imperative that any PLR programme introduced should only compensate authors who hold national citizenship or who are legally resident in the country; an approach consistent with a number of existing PLR programmes.”*¹⁰⁵

The authors' perspective (here represented by EWC) is of the opinion that also in developing countries, *“the authors and several providers of the book sector play a vital role in direct and indirect benefits they generate for every economy (employment, tax, regional development) and the society. Appropriate funding of loans is a safeguard for the preservation of cultural heritage, diversity of languages, written culture, and enables fair access to literature and culture across different population groups - the access to create and to raise their own voice, therefore protecting cultural and intellectual resources for future generations (intergenerational equity).”*¹⁰⁶

Also, from an author's perspective a restriction of PLR systems to a general arts and culture policy can be acceptable whereby national authors or authors resident in the country or writing in a specific language might receive special conditions. EWC suggests exploring the possibility of reciprocal agreements as set out in more detail under Chapter 6.1.3.1.

64 OVERVIEW OF PLR SYSTEMS IN DEVELOPMENT

Table 21 Overview of PLR systems in development

Country	Legal Basis	Status
Albania	Copyright Act 2016, last amended 2022 (Art. 32)	Lack of a CMO. No PLR system yet. Exclusive lending right and right to equitable remuneration.
Andorra	Copyright Act 1999 (Art. 5(1) (d))	No PLR system yet. Exclusive lending right as an economic right in Copyright Act.
Armenia	Copyright Act 2006, last amended 2013	No PLR system yet

¹⁰⁴ IFLA position on Public Lending Right 2016, <https://www.ifla.org/publications/the-ifla-position-on-public-lending-right-2016/>.

¹⁰⁵ IFLA position on Public Lending Right 2016, <https://www.ifla.org/publications/the-ifla-position-on-public-lending-right-2016/>.

¹⁰⁶ Information by Nicole Pfister-Fetz and Nina George (EWC) on February 8, 2024.

Bhutan	Copyright Law 2001 (Art. 4 XII; Art. 8(1)(d, e))	No PLR system yet
Bosnia and Herzegovina	Copyright Act 2010, Art. 34	Lending right is deemed to be exhausted, remuneration right with library exceptions.
Bulgaria	Copyright Law 1993, 2000	No licensing arrangements are understood to be in place to enable payment to be made for lending
Burkina Faso	Law No. 032-99/AN of December 22, 1999, on the Protection of Literary and Artistic Property, Art. 16, Art. 74.	Lending right is an exclusive right, to be granted by a CMO.
Comoros	Copyright and Related Rights Act 1957	No PLR system yet
Ethiopia	Copyright and Neighboring Rights Protection Proclamation No. 410/2004, Art. 7	Lending right is an exclusive right.
Hong Kong	Copyright Act 1997 last amended 2023	PLR system not set up yet. Pending is the go-ahead from government and a decision on rules
Kazakhstan	Copyright Act 1996 last amended 2018	No PLR system yet
Kenya	Copyright Law 2001 last amended 2019	No PLR system yet. Copyright Act 2001 contains the proposition to set up a CMO.
Kosovo	Copyright Act 2011 LAW No. 04/L-065, Art. 37.	No PLR system yet
Malawi	Copyright Act, 2016 (Act No. 26 of 2016)	Draft PLR system, Copyright Society of Malawi (COSOMA) is responsible for the implementation
Mauritius	Copyright Act 2014 (Act No. 2 of 2014), Art. 27	Lending right is deemed to be exhausted.
Moldova	Draft Law	No PLR system yet
Mozambique	Law No. 9/2022 of June 29, 2022, on Copyright and Related Rights and Repealing Law No. 4/2001 of February 27, 2001.	No PLR system yet
North Macedonia	Copyright Law 2010, Art. 29 (5)	Lending Right is an exclusive right, explicitly not exhausted.
Portugal	Code of Copyright and Related Rights last amended 2021	No PLR system yet
Romania	Law No. 8 of March 14, 1996, on Copyright and Neighboring Rights (amended up to Law No. 69/2022), Art. 94(2)	No PLR system yet
Saint Lucia	Copyright Act (Chapter 13.07, Act No. 10 of 1995, as amended by Copyright (Amendment) Act, 2000, Revised Edition 2015), Art. 8(1)	Lending right is an exclusive right.

Samoa	Copyright Act 1998 (Act No. 25 of 1998, as amended by Act No. 10 of 2011), Art. 2, Art. 6(1)	Lending right is an exclusive right.
Serbia	Law on Copyright and Related Rights (Official Gazette of the Republic of Serbia No. 104/2009, 99/2011, 119/2012, 29/2016 and 66/2019)	No PLR system yet
Singapore	No provision for PLR in Copyright Act 2021 (Act No. 22 of 2021, amended by the Statutes (Miscellaneous Amendments) Act 2022)	No PLR system yet
South Africa	No provision for PLR in Copyright Act, 1978 (Act No. 98 of 1978, amended up to Act No. 9 of 2002)	
Switzerland	Federal Act of October 9, 1992, on Copyright and Related Rights under review	No PLR system yet
Turkey	Code of Intellectual and Artistic Works ("CIAW")	No PLR system yet
Ukraine	Copyright Act 2018, last amended 2023)	No PLR system yet
Zanzibar	Copyright Act 2003, Art. 6(1)(d) and Procedures for Rent or Reproduction of Copyright Works) Regulations, 2019	No PLR system yet. Copyright Society of Zanzibar (COSOZA), gives rightholders the right to "be compensated by the Public Library for the use or lending out of their Copyright Protected Works in Public Libraries free of charge."

65 EXAMPLE CASES OF PLR SYSTEMS IN DEVELOPMENT

66 Romania

Romania has had provisions for PLR in Articles 13 and 17 of the Romanian Copyright Law since 2004¹⁰⁷, but since libraries in all educational institutions and all public libraries with free access are exempt from the payment of PLR, there has not been a collection or distribution either. This was not changed by legal amendments to the Copyright Act in 2018.¹⁰⁸ Currently, the system is not functional yet, and issues concerning the definition of lending as a non-profit activity have to be solved, as a commercial entity ("Bookster") purports to be "public library" or at least an "intermediary" between libraries and consumers, but provides books for subscription fees to company employees.¹⁰⁹ Such fees would, under the Rental and Lending Directive (2006) not be seen as a non-commercial lending activity. The local CMO has addressed the issue. The

¹⁰⁷ Legea nr. 8 din 14 martie 1996 privind dreptul de autor și drepturile conexe, modificată până la Lege nr. 69/2022, 14 iunie 2018.

¹⁰⁸ Marinescu, The Public Lending Right (PLR), Challenges of the Knowledge Society, 2018, p. 920; <https://www.proquest.com/openview/9b7ce56171dc0f6cf45c6ef8a2cd7361/1.pdf?pq-origsite=gscholar&cbl=2036059>.

¹⁰⁹ <https://library.bookster.ro/info/termeni-conditii>.

company has been sued by a Romanian publishing house for infringement of the right of rental.¹¹⁰

The example shows how important the role of the national legislation and CMOs is concerning definitions and supervision of copyright relevant activities such as lending and renting.

67 South Africa

In South Africa, an active author community represented by the Academic and Non-Fiction Authors' Organisation of South Africa (ANFASA) promotes the introduction of PLR in public libraries, however, the current copyright legislation, after the recent Copyright Amendment Bill (CAB) does not recognize lending.¹¹¹ The stakeholders follow the objective to promote particularly writers in the 11 national indigenous languages, including works in stock and also for loans, as books in these languages are rarely present in library stock. Works in other languages such as English and Afrikaans would be compensated on a loan count basis only, and thresholds and caps would apply.¹¹² There has been an ongoing discussion about funding a PLR system in South Africa in a way that does not diminish the very small library budget and about other concerns such as equipment of libraries and having enough staff to maintain the necessary data collection.¹¹³

The example of South Africa shows that a balancing of interests is required in case of a new implementation of PLR systems. Ideally, the public discussion might lead to a promotion of both library and creator interests as it draws focus to the importance of national literary works being available in public libraries and also works in the indigenous languages.

68 IMPLEMENTATION ASPECTS

This chapter mentions key aspects related to the establishment and execution of PLR programs in developing nations, focusing on administrative and financial considerations.

69 INFORMATION AND GUIDANCE ON ESTABLISHING A PLR SYSTEM

To facilitate the establishment of Public Lending Right (PLR) systems in developing countries, detailed information and guidance mechanisms are essential. This subchapter outlines various resources that can be explored:

70 COUNTRY REPORTS IN ANNEX

The country reports appended to this study (the annex can be found under document [SCCR/45/7/ANNEX](#) on the WIPO 45 SCCR page) within the Annex offer in-depth insights into active PLR systems and links for further research. These reports serve as valuable references, mapping out specific details and providing examples of legal instruments adopted by different nations. Examining these reports can offer a practical understanding of the diversity in PLR implementations.

¹¹⁰ <https://www.romania-insider.com/bookster-publishing-houses-court-case>.

¹¹¹ Seeber, ANFASA, Letter to Authors, 2022, <https://www.anfasa.org.za/letter-to-authors/>

¹¹² Kuhmalo, ANFASA Annual Report 2023, p. 28, <http://www.anfasa.org.za/wp-content/uploads/2023/10/AnnualReport2022-23v3.pdf>.

¹¹³ Masango /Nicholson/Debuxe, Public lending right: prospects in South Africa's public libraries? SA Jnl Libs & Info Sci 2008, 74(1); p. 55. <https://sajlis.journals.ac.za/pub/article/view/1257/1404>.

71 SUPPORT FROM PLR INTERNATIONAL, WRITERS' AND PUBLISHERS' ORGANIZATIONS

PLR International and authors' and publishers' organizations, such as the European Writers' Council (EWC), European Visual Artists (EVA) and the International Publishers' Association (IPA) offer a wealth of expertise and a global network of administrative member organizations. These entities can provide invaluable support by offering advice, guidance on unresolved issues, and insights into organizational intricacies.¹¹⁴ Moreover, many national organizations administering PLR systems express a willingness to actively support developing countries by offering advice, information visits, and mentorship programs.¹¹⁵

72 QUANTITATIVE ONLINE SURVEYS

The PLR community may decide to conduct quantitative online surveys. These surveys are a valuable, fast and cost-effective tool for collecting relevant information, understanding the unique challenges faced by developing countries, and gauging the requirements and preferences of stakeholders involved in the PLR process.

73 INITIAL EFFORTS AND FINANCING

The survey shows the importance to invest time and effort initially to make sure to establish a fair and well-working system aligned with the country's specific cultural policy. Therefore, the implementation of a new system needs

- Identification of the governmental bodies responsible for the assessment of funding and administration of PLR programs, also competent on culture policy.
- Identification of challenges specific to the country implementing the PLR system, such as limited resources, infrastructure or technological constraints.
- Analysis of the various funding mechanisms such as possible government budget or partnerships with cultural organizations with the aim of not diminishing library or basic educational budgets.
- Identification and analysis of specific eligibility criteria, such as citizenship or language requirements, ensuring an understanding of the local context.
- Consideration of the role of government bodies or CMOs in the administration of PLR, including their role and capacities in data collection, payment distribution, and negotiations with libraries.
- Assessment of the capacity and effectiveness of these organizations in managing the complexities of PLR implementation.
- Exploration of the range of works covered by PLR systems, including books, periodicals, e-books, audiobooks, and other creative works such as music and films.
- Examination of the processes for authors and publishers to register their works for PLR, considering accessibility and inclusivity.
- Examination of the criteria and methodologies employed to assess and allocate PLR funds, ensuring transparency and fairness in resource distribution.
- Communication about the system (good practice: websites of **Australia** and **Canada**).

¹¹⁴ Including written information directed at countries seeking to improve or develop PLR systems <https://plrinternational.com/public/storage/resources-languages/September2020/LagV8yiYHL4JtPxHOQcP.pdf>.

¹¹⁵ As has been practice also when new Member States joined the EU and developed new PLR systems, see Parker; IFLA PLR Update 2002, p. 4; <https://archive.ifla.org/IV/ifla68/papers/105e-Parker.pdf>.

74 REGULAR NECESSARY EFFORTS

PLR systems require regular efforts to ensure acceptance, fairness and adequacy for all stakeholders. Therefore, the following considerations should be taken into account:

- Stakeholder Committees should get together for discussion in regular and structured meetings to enable adjustments to the system.
- Implementation of transparency reporting about funding and distribution should not be restricted to governing CMOs where (at least in Europe), detailed reports are required by law. Best practices can be observed in countries like **Austria** and the **Slovak Republic**.
- Evaluation mechanisms should consider factors such as changing uses in libraries, wider scope of material on loan, the economic environment of creators and publishers as well as libraries. It should also involve a cultural impact assessment as part of the regular evaluation process to gauge the PLR system's contribution to cultural diversity and the enrichment of national literary landscapes.
- Regular legal reviews should address legal ambiguities of definitions and should keep track of technological and economic changes.
- Investment in data quality improvement to ensure accurate and reliable information for fair distribution. This should take into account also technological solutions that can improve and facilitate data collection and work and recipient identification.
- Countries implementing a PLR system are encouraged to make use of international collaboration and knowledge-sharing with countries that have successful PLR systems. The network, especially within PLR International enables the exchange of best practices and learnings to continuously improve the national PLR system.

75 LIBRARY INFRASTRUCTURE

For the implementation of a PLR system, libraries play a vital role. They have to be equipped with the necessary capacities (personnel and IT infrastructure) for the provision of data where distribution is based on loan count or stock count.

This may be done by way of representative sampling, which requires that data must be submitted to the CMO, NGO, or government body distributing PLR.

76 DISTRIBUTION INFRASTRUCTURE

77 INDIVIDUAL DISTRIBUTION, FLAT SUM, LOAN OR WORK TITLE BASED

If funds allow for an individual distribution of PLR, whether based on flat-rate payments per head, or rather loan or work title based, the following aspects should be considered:

- Development of a solid and transparent legal framework (“distribution plan”) defining eligible material, recipients and calculation of monies.
- Fostering collaboration with diverse stakeholders, including authors, publishers, libraries, and cultural institutions, ensuring a comprehensive and inclusive approach.
- Implementation of corrective factors (as shown under chapter 6.1.6.2) in order to ensure alignment with system objectives.
- Investment in user-friendly and efficient IT and software solutions tailored to the needs of the distribution system. Open-source software solutions or collaborative development approaches may be used to manage costs and enhance adaptability.¹¹⁶

¹¹⁶ As mentioned by Christina de Castell, IFLA, open source software does exist for library catalogue administration.

- Regular audits of the distribution system to identify areas for improvement and ensure compliance. System audits contribute to ongoing refinement and optimization based on performance evaluations.
- Regular assessment and adaptation of corrective mechanisms to align with the distribution system's objectives that takes into account factors such as the diversity of authors, cultural representation, and the promotion of emerging talents, regular evaluation of the impact of corrective measures on achieving these objectives.
- Launch of public awareness to inform authors, publishers, and the general public about the individual distribution mechanisms. Transparent communication fosters understanding and trust, encouraging active participation in the system.
- Development of a transparent and accessible dispute resolution mechanism to address potential conflicts to avoid court litigation.

In case of stock count or loan count-based distribution:

- Establishment of a robust identification system, preferably based on globally recognized standards like ISBN or ISSN, developed with libraries and stakeholders.

78 CULTURAL SUBSIDY SCHEMES

Best Practices for cultural subsidy schemes in the form of grants and social subsidies, could, derived on experiences of other PLR systems, involve the following aspects:

- Adoption of flexible funding models that do not diminish library budgets.
- Engagement of cultural experts, representatives from diverse communities, and relevant stakeholders in the decision-making process.
- Integration of measures to safeguard artistic freedom within subsidy programs.
- Establishment of eligibility criteria that encourage inclusivity and representation of underrepresented cultural forms and minority languages.
- Assessment of specific requirements of individual creators and cultural entities, taking into account financial need, the socio-economic background of creators, and the potential impact on cultural diversity.
- Transparent and accessible application process for cultural subsidies, clearly outlining eligibility criteria, application requirements, and evaluation criteria to ensure fairness and openness.
- Regular reviews of cultural subsidy programs to check legal compliance, fairness, effectiveness and relevance of the program, involving feedback from both beneficiaries and the cultural community, leading to program enhancements and adjustments.

79 EMPIRICAL INFORMATION

The interviews showed that empirical studies on the effects of PLR systems on the publishing sector and cultural diversity provide a good basis for the modification of systems over time (best practice: **Estonia**). They can help governments in assessing correct funding and alignment with cultural objectives. Empirical studies can help the systems acceptance and adjustment to the stakeholders' needs.

- Keeping track of overall lending figures in a longtime comparison can be a first step to objective analysis of adequate system funding.
- An analysis on income sources of creators and publishers, distinguishing between PLR payments, direct sales, licensing, and other revenue streams can add an important

perspective. This should assess how PLR contributes to the overall income structure of authors, illustrators, translators, and publishers.

- An analysis of book market dynamics, including shifts in demand for specific genres, formats, and types of works may offer the opportunity to assess to what degree public lending activities affect primary markets.
- Special attention can be given to assess the cultural diversity of published works, considering factors such as language, genre, author background, and subject matter. This can also involve the impact of PLR on small and independent publishers, as well as niche genres.
- Studies should be discussed with policymakers to suggest potential adjustments and improvements.

80 METHODOLOGY

The study was commissioned with the deliberate exclusion of the topic of orphan works and out of commerce works regulations and compensation for relevant uses.

Estimations are based on stakeholder information, which were mainly provided in the form of personal online interviews by kind help and introduction of PLR International.

Stakeholder interviews that would have enabled a thorough investigation of the methods used to collect data on library loans, including the technologies and software systems in place have not been possible so far. Covering this aspect would help to analyze the reporting requirements for libraries and authors, including the frequency and accuracy of reports submitted to PLR distributing organizations.

English translations of legal acts, decrees and regulations are included in the country reports where possible. The reports indicate in the footnotes whether these translations derive from the WIPO collection of international laws¹¹⁷ or whether machine translations or other resources were used.

[End of document]

¹¹⁷ <https://www.wipo.int/wipolex/en/main/legislation>.