

# Public lending right: prospects in South Africa's public libraries?

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Received: 7th September 2007

Accepted: 5th November 2007

*This paper examines the origin of the Public Lending Right and the UK Public Lending Right Act 1979. It analyses whether the public lending right (PLR) that exists in some European countries, Canada and Australia may form the basis of establishing a PLR in South Africa's public libraries following a debate by the Academic and Non-Fiction Authors' Association of South Africa (ANFASA) as to whether South African libraries needs to lobby for a PLR. The paper discusses possible obstacles that may inhibit the implementation of a PLR in South Africa's public libraries.*

**Key words:** Public Lending Right; UK Public Lending Right Act 1979; Public Libraries.

## Introduction

The Public Lending Right is 'a subsidy paid out of public funds to authors whose books are lent out from public libraries' (Prytherch, 2000: 597). The rationale of this paper is to examine whether the Public Lending Right (PLR) that exists in some European countries, Canada and Australia may form the basis of establishing a PLR in South Africa's public libraries. The PLR systems in Canada and Australia are considered because although these countries are not part of the European Union they have PLR schemes. Some of the PLR features in these countries may be germane for South African libraries. The *raison d'être* for the examination emanated from an e-mail from the Director of the Academic and Non-Fiction Authors' Association of South Africa (ANFASA) that stated that 'on behalf of South African authors, ANFASA is opening the debate as to whether we need, want and aim to lobby for PLR in this country' (Seeber, 2007a).

In order to examine whether the PLR models in the above-mentioned countries can form the basis of a PLR scheme in South Africa's public libraries, this paper first examines the origin of PLR and the UK Public Lending Right Act 1979. The purpose of the PLR and the UK Public Lending Right Act 1979 are revealed. Secondly, the paper discusses how the public lending right operates in some European Union countries, Canada and Australia. The paper attempts to propose a model of PLR for South African public libraries based on ideas adopted from some European countries, Canada and Australia. Finally, the possible obstacles that may inhibit the implementation of the PLR in South Africa's public libraries are considered.

## Origin of Public Lending Right and the UK Public Lending Right Act 1979

Before 1946 there was no public lending right in any libraries in the world. The first country to introduce a public lending right in its library was Denmark in 1946, followed by Norway and Sweden. The motivation for the establishment of PLR came 'from literary authors who believed they were losing income from sales due to the availability of their books in the emerging system of public lending libraries' (eIFL, [n.d.]). In order therefore to recuperate perceived lost income, authors whose books were in public lending libraries had to be remunerated. This idea spread from country to country with a slightly different approach as to the criteria to be followed for remuneration. For example, countries such as the UK, Germany, the Netherlands, and Israel base their PLR payments on library book loans. Countries like Canada, Australia, and Denmark base payments on library holdings, regardless of whether the books are borrowed. Countries such as Germany and Austria have linked their PLR to their copyright legislation, whilst the UK provides for the PLR in a separate Act. Regardless of the method of compensation, in all cases there is some form of payment to registered writers in recognition of the free public access to their works through libraries (Evaluation of the Public Lending Right Program, 2003; IFLANET, 2005a).

In establishing the Public Lending Right as a separate Act in the UK, the first scheme was proposed in 1951. This was for authors to be 'paid from a central pool funded by charging borrowers one penny for every library loan' (Russell &

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Davies, 1979: 430). In 1960, there was an unsuccessful attempt to incorporate the public lending right into the copyright legislation. In 1961 and 1964 there seemed to be some development in this regard with the amendment of the public libraries' legislation. In 1967, an Arts Council Working Party sought the formation 'of a centrally funded scheme, under which payments would be made to authors on the basis of selective sampling of public library holdings' (Russell & Davies, 1979: 430). In 1971 a Government Working Party was established to see how the copyright legislation could be amended in order to implement the public lending right. In 1974, a Bill to amend the UK Copyright Act 1956 was unsuccessful because it did not gain a second reading in the Commons. From 1974 onwards there were other efforts envisaged to introduce the public lending right. Among these was the establishment of a separate Act that finally culminated in the Public Lending Right Act 1979 (Russell & Davies, 1979: 431).

### **Rationale for PLR and UK Public Lending Right Act 1979**

The PLR was intended to remunerate authors whose books were in public lending libraries. The PLR and especially the UK Public Lending Right Act 1979 established a right which authors 'have been long denied' (Russell & Davies, 1979: 437). This is a right to directly compensate authors whose books are housed in public lending libraries. Following the promulgation of the first Copyright Law of 1710, its purpose was to encourage 'learned men to compose and write useful work' (Leaffer, 1989: 3) and not to protect commercial interests. This was evident when the Statute stipulated that 'copyright was no longer the privilege of the Stationers' Company' (Phillips, Durie & Karet, 1997: 6). Notwithstanding the objective of the Statute, the law rewarded commercial publishers instead of authors, because 'by the middle of the seventeenth century it had become customary for publishers to offer honoraria to the writers whose works they agreed to print' (Woodmansee, 1984: 434). In the seventeenth century authors could not publish their works because they could not afford to purchase a printing press. In order to therefore publish their works, they took their works to publishers who paid them whatever they wished and subsequently published the work. As commercial publishers bought and published creators' works, the publishers transformed themselves into copyright holders and enjoyed copyright on works they published for a limited period.

Following that the PLR was to directly remunerate authors whose books are in public lending libraries, the UK Act states, '...there shall be conferred on authors a right, known as "public lending right", to receive from time to time out of a Central Fund payments in respect of such of their books as are lent out to the public by local library authorities ...' (Public Lending Right Act 1979). It can be argued that the introduction of the Public Lending Right in 1946 by Denmark and the UK Public Lending Right Act 1979, establishes 'an intellectual property right, entirely separate from copyright' (Parker, 2006). The Public Lending Right and the Public Lending Right Act 1979 does not interfere with the rights that commercial publishers acquire from copyrighted works. The Public Lending Right and the 1979 Act implicitly allow commercial publishers to continuously reap the benefits of copyrighted works from the works they publish. The Public Lending Right Act 1979 stipulates that authors will receive payments from a Central Fund provided by parliament (Public Lending Right Act 1979). The disbursement of funds to authors from a Central Fund establishes separate rights for authors as publishers are bypassed and authors are remunerated directly. With the Public Lending Right and the UK Public Lending Right Act 1979, publishers have been ignored altogether as authors are compensated directly. However, publishers benefit separately from national copyright laws in that they collect copyright fees for reproduced works.

### **Incentives of Public Lending Right: invalid assertions?**

The purpose of Public Lending Right is for an author 'to receive monetary compensation for the public lending of his or her work' (IFLANET, 2005b). According to Russell & Davies (1979: 434), the supporters of the public lending right are of the opinion that the system is 'designed to help the academically and artistically meritorious'. This is because some writers 'rely on their library loans as much as their book sales for their livelihoods' (Report on the Public Lending Right Scheme 2003-2004). Although the former reason may be true in the academic environment – as 'an inadequate publication record can prevent one from gaining promotion' (Effendi & Hamber, 2006: 113) – the latter reason is questionable. There is no evidence to justify that most writers rely on library loans and sale of their books for their livelihoods. In the ancient times, certain authors, scholars and monks in the Middle Ages wrote not because they intended or relied on their library loans or sales of their works for their livelihood. It is not probable that most writers can be expected to live on £5, 000 or £6, 000 or even £6, 600. This is because according to Parker, (2006)

to ensure that the most successful authors are not allowed to take all the money the Scheme provides for a maximum payment. This was set at £5, 000 in the original Scheme but was raised to £6, 000 in 1989 to take account of inflation. In 2006, 281 authors qualified for the maximum payment. The £6, 000 cut-off freed around £1, 000, 000 for redistribution among other authors. The maximum payment threshold will be raised to £6, 600 in February 2007.

Another questionable assertion of Public Lending Right is that the greater availability of 'works in public libraries leads to a drop in sales and subsequent losses for the authors and holders of copyright-related rights' (Memorandum on the application and implementation of European Directive 92/100/EEC from a Belgian and European legal perspective, [n.d.]). This view is corroborated by Whelan & Cullen (2007) as they are of the opinion that public lending remuneration scheme is to compensate 'authors and performers for the potential loss of sales from their work being available in public libraries'. The justification for PLR that the use of copyright works through public libraries detracts from primary sales is unproven and doubtful (IFLANET 2005b; Nasri, 1985: 9). There is no empirical evidence to show any link between the use of works in public library collections and possible losses or even gains by the authors. On the contrary 'lending by publicly accessible libraries often assists in the marketing of copyright works and encourages sales' (IFLANET, 2005b). According to eIFL, [n.d.], 'libraries are major purchasers of published works, often buying in multiple quantities. They enable borrowers to discover new authors through book promotions or serendipity, providing a platform for nationwide dissemination of an author's work'. According to Nasri, (1985: 9), 'library users are heavy book purchasers and ...those who don't buy books usually do not use libraries'. The assertion of loss of sales is equally unproven in the digital environment. In *A & M Records, Inc. v. Napster, Inc.*<sup>3</sup>, that was to determine whether online peer-to-peer downloading of digital content would damage a future market for the commercial sale of recorded music online, it was found that although the sales of music CDs fell near colleges and increased elsewhere, 'Internet merchants such as Amazon and CDNOW increased their CD sales during the period of Napster's growth' (Liebowitz, 2002: 12). Given the difficulty in drawing firm conclusions from this contradictory sales pattern, Napster's negative impact on the sale of CDs could hardly be considered to have been conclusively proven (Liebowitz, 2002: 13).

Supporters of the public lending right argue that 'by rewarding authors for loans of their books from public libraries it helps to develop and sustain writing talents' (Daines, [n.d.]). This view is further supported by the statement that the 'Public Lending Right payments ensure writers can afford to continue writing' (Supporting a Creative Nation, [n.d.]). These assumptions lack any foundation. Authors all have different motives for writing. Some authors may want to develop their writing talents not because they want to obtain direct payments from their writings but because their profession obliges them to develop such talents. Writers for example in the academic profession are subjected to the 'publish or perish' syndrome which affects their tenure and promotion prospects. They are obliged to develop writing skills because they must write in order to be promoted (Effendi & Hamber, 2006: 113). Academic authors seldom write for any direct monetary reward. They are employees who earn a salary and/or receive research grants from academic institutions. They seldom derive any personal income from their journal publications and the percentage they receive from sales of books is remarkably low in relation to the percentage that rights holders – publishers – earn from their books (Nicholson, 2006a: 313).

Furthermore, when the Budapest Open Access Initiative was created in 2001, scholars and scientists agreed to write and publish their works without payment (Fishman, 2002: 18). The positive benefits of sharing their research outcomes and other writings to a global audience were far greater incentives than wanting personal monetary compensation.

### Public Lending Right models

In the European Union (EU) there is a legal requirement that members of the Union establish a PLR. The European legislator introduced a Directive on Rental and Lending right in 1992. The European law 'required that authors of books, films and any other copyright works and (at Member States' discretion) other right holders, either have the right to authorize or refuse lending of their works by institutions such as public libraries, or that they are remunerated for such public lending' (eIFL, [n.d.]). The Directive was to be implemented by the twenty-five Member States of the European Union and non-member nations that wanted to profit from the single European market. According to eIFL, ([n.d.]), the countries that had not or incorrectly implemented the Directives were taken to the European Court of Justice (ECJ) by the European Commission that had to issue a status report on the implementation in 1997. In the ECJ, Belgium was successfully prosecuted 'and proceedings were initiated against France, Ireland, Italy, Luxembourg, Portugal and Spain in 2004' (IFLANET, 2005a).

Notwithstanding the implementation of the Directive by various member states of the EU, there are different approaches to the manner that various countries practice public lending right. While countries such as Germany and Austria link their PLR to copyright legislation, others such as the UK 'treat PLR as separate' (Evaluation of the Public Lending Right Program, 2003). The Scandinavian countries apply PLR in a discriminatory manner. The Scandinavian Public Lending Right 'operates as a direct form of State support for culture' (IFLANET, 2005a). In Sweden PLR is only granted for

3. *A & M Record, Inc. v. Napster, Inc.*, United States Court of Appeals 239 F.3d 1004 (9th circuit, 2001).

national or resident authors. In Denmark and Finland, PLR is only granted 'for items published in the national language' (eIFL, [n.d.]).

### **The UK model**

In the UK, the Public Lending Right Act 1979 confers on authors a right 'to receive from time to time out of a Central Fund payments in respect of such of their books as are lent out to the public by local library authorities in the United Kingdom' (Public Lending Right Act 1979). According to Keenan & Johnston, (2000: 202) the public lending right allows authors resident in the UK to register and 'receive up to 5000 per year from a government fund based on the number of times copies of their books are borrowed from a public library'. In the UK, PLR payment to authors is based on library book loans (Evaluation of the Public Lending Right Program, 2003). The PLR in the UK does not cover academic authors. This is because

unlike fiction writers, many academic writers have salaries as lecturers and there is not the same pressure on them to earn money from loans of their books. Another important point is that there is no strong writers' organisation ...representing the interests of non-fiction and academic writers as in countries like Norway. The Society of Authors and Writers Guild ...represent mainly fiction and screen writers (Parker, 2007).

In the UK, although money that is to be paid to the authors has to be from a Central Fund provided by Parliament, PLR is 'funded by the Ministry of Culture' (IFLANET, 2005a). The categories, classes and descriptions of books in respect of which public lending rights subsists, and the scales of payments to be made is determined by or in accordance with a scheme. In preparing the scheme, the Secretary of State consults with representatives of authors and library authorities and those who would likely be affected by it (Public Lending Right Act 1979).

Also, in the UK model, there is a Registrar who is charged with the duty of establishing and maintaining the books for 'which public lending right subsists and the persons entitled to the right in respect of any registered book' (Public Lending Right Act 1979). The Registrar also determines the sums due by way of public lending right, 'and any sum so determined to be due shall be recoverable from the Registrar as a debt due to the person for the time being entitled to that right in respect of the book' (Public Lending Right Act 1979). Public lending right in the UK model is not in perpetuity. According to the UK Public Lending Right Act 1979,

...the duration of public lending right in respect of a book shall be from the date of the book's first publication (or, if later, the beginning of the year in which application is made for it to be registered) until 50 years have elapsed since the end of the year in which the author died.

### **Germany and the Netherlands**

In the EU countries, there are countries – Germany and the Netherlands – that do not treat PLR as separate but link their PLR to copyright legislation (Evaluation of the Public Lending Right Program, 2003; IFLANET, 2005a). These countries in their PLR copyright system make cross border payments to nationals of all countries which offer reciprocal schemes. Also, these countries 'make payments on a payment per loan basis according to how often an author's work is borrowed' (IFLANET, 2005a).

Although Germany and the Netherlands have some similar characteristics in their PLR, they do not practise a similar funding regime. Since 1993, the cost of PLR in the Netherlands 'has been funded entirely by libraries, which negotiate licensing direct with collecting societies' (IFLANET, 2005a). In Germany, in order 'to remunerate the lending of books in libraries the German federal states pay a "library royalty" to the collecting societies that act on behalf of the authors and artists' (Copyright Administration PG I, [n.d.]).

### **Scandinavian model**

Although the Scandinavian countries are part of EU countries, these countries have a different PLR model. In the Scandinavian countries, PLR payments are restricted to support literature in their national language. This is to encourage new literature in that language, as well as preventing the bulk of PLR payments going to foreign language especially to English language authors (IFLANET, 2005a). These countries were permitted 'by the European Commission to restrict PLR payments to books written in their own languages' (Parker, 2006). Hence, in Sweden the Public Lending Right is only for nationals or resident authors, while in Denmark and Finland the public lending right is for authors who publish in the national language (eIFL, [n.d.]).

Notwithstanding that the Scandinavian countries PLR payments are to support their national language, these countries differ in their funding practices. In Sweden, PLR provides 66% of the fund for pensions, long-term grants and emergency funds for writers. In Norway, government funds are negotiated with author organizations that then distribute it as grants to members. In Finland, authors apply for a government grant from fund equating to a percentage of government expenditure on library books (IFLANET, 2005a).

### **Australian model**

Australia, unlike Germany, does not link PLR to its copyright legislation yet there are similarities between their PLR schemes. Both countries compensate publishers and authors in their PLR (Whitney, 2000), and have similar funding principles. The German and Australian remuneration payments and cost of administration are met by the State. The PLR in Australia is funded by the Ministry responsible for the arts, and 'authors may not prohibit or license the lending of their books' (IFLANET, 2005a). In Germany, PLR provide 55% of a fund for health and insurance schemes and emergency funds for authors (IFLANET, 2005a). However, Australia, unlike the UK, includes domestic authors in its PLR scheme.

### **Canadian model**

In the Americas, the United States, Mexico and countries in South America do not have the PLR. Canada is the only country to have a PLR program (Public Lending Right Commission, 2003). Canada, like Australia, New Zealand, and Denmark, bases its PLR payments on library holdings, regardless of whether the books are borrowed (IFLANET, 2005a; Evaluation of the Public Lending Right Program, 2003; Whitney, 2000). Canada, like Israel and New Zealand, does not have its PLR backed by legislation (IFLANET, 2005a).

Also, there are similar PLR practices among countries that are in the EU and those that are not members of the EU. Although Canada and Australia do not link their PLR to copyright legislation, Canada practises a similar PLR with the Scandinavian countries. The Canadian PLR just as those of the Scandinavian countries avoids PLR payments going to foreign authorship. This is because the majority of books held in Canadian libraries are of foreign authors (IFLANET, 2005a). However, there are some differences in the PLR practices between countries that are members of the EU and those that are not members of EU. Canada, not a member of EU, avoids libraries being made responsible for funding PLR, while in the Netherlands libraries fund PLR (IFLANET, 2005a). In Canada, the PLR is funded by the government 'through the Canada Council for the Arts and administered by the Public Lending Right Commission' (Evaluation of the Public Lending Right Program, 2003).

### **Potential PLR model for South Africa's public libraries?**

Although there are sound reasons – as we shall see – for not implementing PLR in South African public libraries, an appropriate PLR scheme could be considered if certain conditions are clarified, e.g. would the PLR cover

material produced in the country concerned (domestic authors) or also foreign authors; only authors or also translators, illustrators, composers, singers, publishers or other groups of rights owners; only public or also research and other libraries; who will pay for the remuneration, the libraries, the government or some third party (Tammaru, 2000).

The argument against funding of a PLR scheme is supported by the Director of Academic and Non-Fiction Authors' Association of South Africa in her communication stating that the funds to be used to pay authors 'must not come from library budgets' (Seeber, 2007b). The only possible option would be for the money to be paid to the authors from a Central Fund provided by Parliament – as is the practice in the UK. The UK model of exempting academic authors should also be applied since they acquire compensation through other channels, e.g. salaries, research grants, conference honoraria. The PLR would then focus on and compensate those authors who earn their living directly from sales and loans of their books, i.e. mainly fiction and non-fiction and not academic writers. The Fund would need to be administered by the Ministry of Arts and Culture, since libraries fall within its portfolio.

Furthermore, it may be germane for South Africa to establish the most appropriate way of calculating the payment of public lending rights. It would be necessary to clarify whether payments should be based on library book loans, as it is done in the United Kingdom, Germany, the Netherlands, and Israel. Or whether payments should be based on library holdings regardless of whether the books are borrowed as is the case in Canada, Australia, and Denmark; or both as it is practised in Iceland (Evaluation of the Public Lending Right Program, 2003). Also, it would be necessary to decide whether the public lending right should be incorporated in the country's copyright law as is in Germany and Austria; or whether the public lending right should be treated as a separate law, as it is the case in the United Kingdom (Evaluation of the Public Lending Right Program, 2003).

One danger with a system where calculations are made on the total collection rather than usage, and where libraries have to fund the scheme, is that the scheme may prove too expensive for some libraries and lesser used but still worthwhile material may be weeded just to reduce the cost of a PLR. On the other hand, basing a system on usage, may indicate how much material is used, or not used; what material is more in demand than other material; what is topical and what is more permanent reading material. This could provide positive information for collection development projects, whilst benefiting the authors whose works are genuinely being used by many users.

Another concern is that there may be duplication of payments to authors. Compensation may be received via the PLR scheme, as well as through copyright fees payable to rights holders for reproduction of the same works loaned from public libraries.

The South African PLR if adopted should firstly be considered only after empirical research has been done to show that it is essential for authors to have such a system in South Africa. If adopted, it must be limited to local living authors. This type of public lending right is germane and operates in Slovenia (Bahor, 2007). Were this type of policy to be adopted in South Africa, it would promote local authors and prevent huge amounts of foreign exchange leaving the country. This idea is positively corroborated by Seeber, (2007b) as she says '...we have to abandon any idea of a right that demands national treatment under the Berne Convention because that will result in the majority of the funds leaving the country'.

Also, the South African PLR should be restricted to local living authors or resident authors who write in one of the national languages. In applying this type of PLR, a differentiated scale of payments should be considered to encourage and benefit authors who write in the other nine official languages. This is because South Africa has eleven official languages among which are English and Afrikaans literatures that are better served than the other nine indigenous languages on the book market (Jordan, 2007). The rationale for this type of method is that it would 'support the development of national culture' (eIFL, [n.d.]) that is yet to be equated to English and Afrikaans literatures literary.

### **Why Public Lending Right may not apply in South Africa's Public Libraries**

South Africa does not have any policy on PLRs, nor does the South African Copyright Act 98 of 1978, which regulates copyright and 'provides for matters incidental thereto' (Copyright Act No.98 OF 1978), have any provision for a Public Lending Right.

In light of the different PLR models discussed above and the lack of a Public Lending Right in South Africa, it is worth examining whether it may be germane to lobby for Public Lending Right in South Africa's public libraries at this stage of South Africa's socio-economic transformation.

Following the examination of various PLR schemes practised by different countries, it can be argued that none of them provide an ideal model for South African public libraries. For example, the PLR system practised in Germany and the Netherlands where cross border payments are made to nationals of all countries that offer reciprocal schemes might be detrimental to South Africa. This is because the majority of authors who would benefit from the PLR scheme would be foreign authors, not South Africans, since the collections of public libraries are mostly made up of foreign authors' works. According to statistics obtained from the Western Cape Provincial Library Service that purchases materials for public libraries in the Western Cape Province, during the 2006/07 financial year, 40 percent of local authors' books and 60 percent of overseas authors' books were purchased for public libraries (De Villiers, 2007). This scenario is likely to be the same with the content of the Johannesburg Public Library which 'has over 1.5 million books in its collection (Libraries, [n.d.]). Hence, if authors whose books are lent out are to be compensated in accordance with the goals of the public lending right, payment for public lending right to foreign authors would exceed those of nationals (IFLANET, 2005b). It would therefore be much more expensive 'if foreign authors are covered' (Tammaru, 2000). The whole purpose of assisting local authors would therefore be defeated.

Also, if the public lending right system that compensates publishers and authors – as is implemented in Germany and Australia – is applied in South Africa's public library, it will benefit foreign publishers and not local publishers. This assertion is corroborated by the fact that in the financial year 2006/07, 20 percent of local material as opposed to 80 percent of overseas publications were purchased for public libraries in the Western Cape Province by the Western Cape Provincial Library Service (De Villiers, 2007). The rationale for purchasing 80 percent of overseas publications is that South Africa as compared to foreign publishers has a small publishing industry. If publications for public libraries were to be based on what is published locally, 'it will be impossible to provide the broad spectrum of information needed by users' (De Villiers, 2007) of the libraries. Since public libraries are 'a living force for education' (IFLANET, 2004), as its use 'is not restricted to any class of persons in the community but is freely available to all' (Prytherch, 2000: 598), publications from foreign publishers must be bought as there is a large publishing industry abroad and local publishers cannot meet the needs of users.

In the above examples, the outflow of large amounts of foreign exchange on an annual basis would be an added burden to the PLR fund, whether funded by the State or the Libraries.

Furthermore, following that PLR payment is to be borne by the government as is practised in the UK, Germany, and Australia for example, this type of funding may be difficult for the South African government to implement. South African libraries have been facing financial hardship for some time. During the apartheid period, public libraries were maintained by municipal governments. In the post apartheid government and before the formation of a new constitution for South

Africa in 1996, schedule 5 of the constitution demarcated 'libraries other than national libraries' as 'areas of exclusive provincial legislative competence' (South African Constitution, 1996). Notwithstanding the provision of schedule 5, this competence was never backed by funding. The competence for maintaining libraries was shifted from a municipality to a province without a shift of funding. Libraries were made the responsibility of the provinces but there was no national government funding for the libraries (Anderson, 2005).

According to Anderson, (2005), although the maintenance of libraries was allocated to provinces without any provisions for funding, partnerships between provincial and municipal authorities still prevail. In the partnership, the province provides books and materials for the libraries while the municipalities pay the staff and maintain the buildings and equipment where the libraries operate. Notwithstanding the terms of the partnership, the financial support from the provincial governments to purchase books and materials is limited. In 1999/2000, for example, 'the City of Cape Town Council allocated R127m for its public libraries and Province allocated R50m for the entire province' (Anderson, 2005). Furthermore, 'analysis from all nine provincial governments shows that in 2004 municipalities were still contributing 79% of the funding of public libraries' (Anderson, 2005).

It can be argued that the South African public libraries are encountering major difficulties because of budgetary restrictions. Although provincial and municipal authorities are involved in the functioning of public libraries, provincial governments are not fully involved in maintaining public libraries. The provincial governments could have been playing a more active role in maintaining the public libraries in South Africa as they 'receive the overwhelming bulk of their funding from nationally collected revenue' and because 'there are only nine provinces, compared to 284 municipalities' (Anderson, 2005). Following that the government made an additional R200 million for libraries in 2007 for 'the nine provinces as conditional grants for upgrading of libraries' (Jordan, 2007), is acknowledgement that South African libraries have been experiencing financial hardship.

It can be said that the PLR system that is based on funding by libraries – as is practised in the Netherlands – may be difficult to implement in South African public libraries. Although in 2006 there was the provision of R1 billion to recapitalize community library system, it was the 'largest and most ambitious project till 2009' (Jordan, 2007). Notwithstanding this budget, if South African public libraries are given the responsibility to fund the PLR, their already restricted budgets would be further reduced resulting in closure of libraries, reduction of staff, cuts in journal subscriptions and less purchases of books, multimedia and equipment. To make up the shortfall in their budgets, they may also be forced to introduce 'user fees that will impact most on the people without the financial resources' (De Villiers, 2007). This would discourage or turn away users, rather than encourage them to use libraries and develop a reading culture. Without adequate access to information resources, education and literacy levels would be affected detrimentally.

According to Anderson, (2005) public libraries are desperate for more staff and many libraries have had no new books for years. Some public libraries have to depend on donations because they do not have budgets to buy any books at all.

It can also be said that if the PLR were to be implemented in South African public libraries, it would in fact necessitate the hiring of more staff to maintain such a scheme. The PLR impacts on the duties of librarians. Librarians have to 'supply the data on book loans, stock holdings or numbers of registered users to the PLR administrators or licensors to enable payments to be calculated' (IFLANET, 2005a). Library systems – whether manual or computerized – would need to be modified to accommodate a PLR system to ensure proper records are kept to compensate authors. Catalogues generally do not stipulate whether authors are South African or foreign, so to implement a proper record system, library catalogues would need to be upgraded to include a code to indicate the origin of authors. This would involve an additional budget to recatalogue whole collections. Extra professional cataloguers would need to be employed for this purpose.

Not only would authors themselves be negatively affected by libraries not purchasing their books, but all efforts to promote literacy, the promotion of reading, and information provision to learners would be impossible. Libraries and their services are extremely important and play a pivotal role in the education of South African citizens. It is a major concern of the Government and the publishing industry that there is hardly a reading culture in South Africa. This is corroborated by the fact that '51% of South Africans have no books in their homes. A mere 14% of the population read books and only 5% of these read to their children' (Jordan, 2007). It can therefore be said that introducing a PLR where there is little or no reading culture is not feasible at this stage of South Africa's transformation. Although it is said that 'public lending is essential to culture and education (IFLANET, 2005b), it can equally be said that this can only be effectively be achieved where there is a reading culture, where unemployment levels are low, where the government does provides adequate books and resources to its citizens, and where there is unlimited access to information. In South Africa this is not the case. In fact because this is not the situation, the demand on libraries is far greater than ever before. The majority of the population lives in the rural areas and do not have adequate access to information resources for personal, educational, health or other purposes. In South Africa,

there is hardly a reading culture ... More than 50% of the total adult population has not completed a general level of education. Unemployment levels are high ... 42.5% of the total population is under the age of 19 years, thus the demand for libraries and information constantly grows. 43% of government schools in South Africa do not have electricity, nor do they have adequate books or basic resources. Only 19.8% have libraries or media centres. 7% of South Africans have access to the Internet, according to two independent studies in 2004/2005. Access to information is limited (Nicholson, 2006b: 14).

Following that there is a high level of illiteracy in South Africa (Nicholson, 2006a: 310), it may be reasonable for South African public libraries 'to focus their ... meager budgets on improving literacy rates' (IFLANET, 2005b), rather than funding PLR. Furthermore, if libraries were to fund PLR, it would have a major impact on library collections, resources and utility (Nicholson 2006b: 14). The money that could have been used to provide library resources will be used for PLR.

Also, as IFLA states in its position paper on PLR,

if PLR were introduced in developing countries, the State may be unable to divert funds to pay for it without severely compromising other services, such as primary health care, which may be considered more essential to the public interest. Publicly accessible libraries in such countries are likewise not in a position to be able to pay for PLR without fatally undermining their already fragile cores services' (IFLANET, 2005b).

The PLR that is restricted to support literature in the national language – as is practised in the Scandinavian countries – would not be practical in South Africa. The Republic of South Africa has eleven official languages among which are English, an international language. If South Africa were to implement a PLR that supports national languages, English and Afrikaans language authors would be claiming the majority of payments. This is because English and Afrikaans 'literature are better served ... than indigenous languages on the book market' (Jordan, 2007).

## Conclusion

It is clear from the arguments on Public Lending Right that it ignores publishers as authors are financially compensated directly. However, authors stand to benefit twice, since apart from remuneration from PLR when their works are loaned, they should receive a share of copyright fees collected by publishers when their same works are reproduced.

Notwithstanding the achievements of PLR schemes in developed countries, the incentives advanced for the establishment of PLR in developing countries are questionable.

Considering the situation of South Africa, it can be said that although it may be possible to establish a public lending right for South Africa by limiting the right to local living authors or resident authors who write in the national language, it can be concluded that PLR can only be implemented when other conditions have been carefully investigated and clarified. Among the issues to be investigated and clarified are whether material for such a right should involve domestic and foreign authors; or whether only local authors or translators, illustrators, composers, singers, publishers or other groups of rights holders should be considered; and how payments should be made (Tammaru, 2000). Furthermore, it may be germane to thoroughly investigate the most appropriate type of payment scheme for a PLR (Evaluation of the Public Lending Right Program, 2003), in the context of South African public library services and funding priorities in the country. Also, whether authors writing in official languages, other than English or Afrikaans, should be treated the same as or differently from those who write in English and Afrikaans.

It can be argued that if these issues are not addressed prior to the implementation of a PLR in South Africa's public libraries, it may negate the qualitative difference made by public libraries in 'enabling individuals to develop wings of the mind and thus transcend their circumstances' (Jordan, 2007). Only when empirical research provides strong evidence that proves that a PLR would be beneficial to authors as well as the public libraries in South Africa, should such a scheme be considered.

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