

# Questioning the European Public Lending Right

by Mikael Bök\*

1.

The European [directive](#) on Public Lending Right was proposed by the EU Commission and adopted by the Council in 1992. Its full name was: *Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property*. This directive is important for, among others, the authors of books and for the reading public, because it introduces an 'exclusive public lending right' (PLR), which forces the library to pay the author a remuneration for each book-loan. Of course, much depends on how strictly and severely this Europe-wide law is implemented and enforced in the various national and local realities. The directive already has a whole history of its own, with amendments, lawsuits (e.g. EU Commission vs. member states), public debates and appeals for and against.

One institution which is particularly affected by the PLR-directive is *the public library*. However, what the directive is indeed speaking about, it fails to mention by its proper name. The EU has made a law about public lending right without mentioning the library! In order to avoid speaking about public libraries, the law uses the phrase '*establishments which are accessible to the public*'.

2.

The directive sets out to regulate real or assumed economic conflicts of interest between authors, publishers and libraries (and through libraries, the public). The consequence has in many cases been a sharpening of such conflicts. Thus the directive has led to heated debates in, at least, France, Italy, Spain and Portugal.

Opinions on the PLR have been divided among authors. In March 2000, 288 French authors published an appeal to demand that the gratis lending of their works be prohibited. On the other hand, Spanish, Portuguese and Italian authors, also numerous and many of them famous, have protested loudly against the directive. Thus Dario Fo, for instance, [has used](#) the word "barbaric" about the directive on the PLR.

Librarians in countries or regions where public library services are unevenly developed or neglected, have felt that the PLR directive is a catastrophe for their institutional and personal income. Thus the Italian Library Association [has come out](#) clearly against the public lending right.

In Spain, librarians who campaign against the PLR have formed the *Plataforma Contra el Préstamo de Pago en biblioteca*. Spain has also witnessed student action against the payment of book-loans from public libraries. On the World Book and Copyright Day 23 April 2007, during an occasion where Don Quijote was read to Prime Minister Zapatero, a group of university students from [ATTAC](#) Spain [declared](#): "to ask for money for the loan of a book is an act of piracy".

Protests against the PLR directive have also been heard in Portugal, and the Portuguese minister of culture, Isabel Pires de Lima, is reported to have supported these protests.

These campaigns against the PLR also enjoy the support of a number of authors, including

the world-famous Dario Fo and José Saramago. So far, however, the campaigns have been confined to Southern Europe. It seems that in Germany, the UK and the Nordic countries, as well as in Eastern Europe, the librarians and the public have swallowed the pill without much ado.

3.

Hitherto, when the EU bureaucrats have chosen the objects for their *harmonization policies* (harmonization is another of the stated purposes of the PLR-directive) their motives have often tended to be *economistic*. By economism, we refer to a view that is too narrowly focussed on the economic aspects of an issue, and therefore overlooking other, equally relevant aspects.

The library institution is obviously of fundamental importance for the whole of society, including, of course, the economy. The legislator who treats libraries as simply 'establishments which are open to the public' is making a gross and unfortunate mistake.

The PLR directive reminds us of the well established writer who was invited to sit on a state committee. The committee in question was to prepare a report on the prospects of "the graphical industry".

Feeling that the offer was based on a basic misunderstanding of her own role in society, the author decided to say no.

4.

[The European Library](#) is a website, which offers access to the catalogues and digitized materials of 47 European national libraries. In November 2008, its new service, which has been baptized [The Europeana](#) will launch, "bringing you digitized books, films, paintings, newspapers, sounds and archives from Europe's greatest collections". The European Library is the ground for the European Digital Library (EDL), which is to "provide cross-domain access to Europe's cultural heritage". In order to keep themselves informed in the so called society of information, the citizens of Europe might well need a European public library. Therefore, let's hope that "The European Library" will become more than a show-off for ministries.

Some EU-leaders - Nicolas Sarkozy, for instance - want to build a European military "defense" based on weapons of mass destruction (e.g. the French nuclear strike force). And his wife Carla Bruni [has said](#): "*Je veux avoir un homme qui a le pouvoir nucléaire*" (I want to have a man who has nuclear power). This French nuclear madness is a telling example (and not the only one) of where we have arrived today with our cultural heritage. It is time to oppose the market fundamentalism and militarism with a constructive proposal for the future, namely, a European Public Library Service.

5.

"*Librarians must co-operate with authors to solve the problems*" (quoted from the Final report (1999) of the [ECUP+ project of EBLIDA](#)). This is true. However, the underlying assumption must not be that the librarians owe the authors money for making their works accessible to the reading public. The co-operation ought instead to be based on the fact that the author needs the reader as much as the reader the author. The author, too, needs the

library, both in his/her role as a reader (most authors are heavy readers themselves), and because the library may be the sole place where his/her work is *permanently* available and accessible to all readers. The assumption that authors lose money because of library loans has never been proven. Indeed, it is reasonable to assume that public lending libraries actually help both authors and publishers to earn money! A public library with its open shelves and lending systems does in fact expose and promote the materials in its collection much more effectively than the book-store. Before the reader buys a book or journal, he/she must get some prior knowledge of it. The desire to read must be aroused. The public library plays a fundamental role in arousing and satisfying that desire.

## 6. A Dystopia

If [the news](#) are to be believed, the number of personal computers has now reached one billion, and will become two billion by 2014.

The electron inside the computer, which switches between 1 and 0, associates to the atom. A book or a journal is but a copy, a mere instance of what we read, 1 which might as well be 0.

States own state secrets, banks keep bank secrets, and corporations own their patents, but apart from this, who owns what we read? Technically and legally, the owner may be the one who controls the computer software, which renders the long row of 1 and 0 as a readable text.

The provider of the software may be (and often is) identical with the copyright holder.

When current information society laws such as the TRIPS of the WTO, the PLR of the EU, the Digital Millennium Copyright Act of the USA, etc. have been fully implemented, we will have global [Information Feudalism](#). Giant transnational corporations like Microsoft, Google, Yahoo, Nokia, Bertelsmann, Elsevier, Veolia etc. will own what we read. The arms traders and producers of nuclear missiles will also have their share. French newspaper publishing is dominated by Dassault and Lagardère.

And Monsanto will own the food, because they hold the rights to the biotechnological know-how needed to produce it.

Is what we read inside us like the 1 and the 0 inside the computer? No, because what is inside the computer can be owned by a corporation, but what is inside us can only be owned by ourselves.

*Odi et amo. Quare id faciam fortasse requiris.  
Nescio, sed fieri sentio et excrucior.* —Catullus.

The Roman poet, although dead for two thousand years, is still the owner of his verbal images of Lesbia. He is the moral rightsholder.

But every schoolboy owns what he has read, although he does not own the rights. The problem is, that he may not even own the right to read it without a license from the copyright owner. This could prove to be the true meaning of the slogan 'One laptop per child'.

We will always need a lot of information. The dystopia: that we shall always need a license to read.

7.

The EU directive on the public lending right also omits *reading*. It stipulates how the directive itself “should be read”, but it fails to confirm the right of the reader.

The directive does not mention libraries, nor reading, yet it threatens to expropriate the public property of European libraries and readers.

No wonder that the International Federation of Library Associations and Institutions, and organisation with 1700 members in 150 countries, has stated:

*IFLA does not favour the principles of 'lending right', which can jeopardize free access to the services of publicly accessible libraries, which is the citizen's human right. — [IFLA, April 2005](#).*

In many countries (including, for instance, the USA) the copyright holders do not have a 'public lending right' to the materials in public libraries. Why should we need to have this extension to copyright in the EU?

In 1992, the year of the introduction of the PLR, the librarians of the EU countries, represented by their national associations, founded a new umbrella organization, the European Bureau of Library and Documentation Associations ([EBLIDA](#)). The declared purpose of EBLIDA is to lobby for the interests of libraries and librarians in the EU.

Was the founding of EBLIDA a defensive reaction from the library associations against the PLR Directive? Or was it a preventive measure against more or less well perceived perils of the beginning digitalization of information and digitization of the libraries? Probably, it was both. One purpose of the PLR directive was undoubtedly to make the publishing industry ready for the digital revolution.

Back in the 1990s, the copyright lawyer Emmanuella Giavarra, a founder of EBLIDA, focussed on issues concerning the licensing of digital information. Giavarra and the other participants in the European Copyright Users' Platform (ECUP) project of EBLIDA did a great job researching and explaining the new digital environment to the European library community. This work needs to be continued, because the situation regarding our informational commons is far from good. The status of the public library in the so called information society remains uncertain. Generally, the library associations must be criticized for having been too shy and timid in their defense of the public interest.

This critique applies, in particular, at the European level.

Lobbying alone cannot break the obvious economism and the *de facto* (although usually hidden) nuclear and conventional militarism of the present EU. Nothing less than a European political movement is needed. If we succeed in giving them the place which they deserve in our European constitution, the public library and the Internet, which is an extension of the public library, will become the basis of democratic society and culture throughout Europe.

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