



INFORMATION NOTE

The Conflict Between the Public Lending Right and National Treatment Under International Copyright Law

Public Lending is the non-commercial lending of works by libraries to the public. The Public Lending Right (“PLR”) is a government mandated fee for the lending of such works by libraries.

PLR systems fall into two broad categories: as part of state cultural policy, or copyright policy. This note describes PLR under the second category, as an exclusive right under copyright.

Properly implemented, a PLR scheme based on copyright law would require national treatment, as set out in the Berne Convention¹ and the TRIPS Agreement². The principle of national treatment provides that a country’s copyright law cannot discriminate against foreign authors. In other words, it must not provide more favourable treatment to domestic authors than to foreign authors.

A copyright-based PLR scheme would therefore mean payment of fees to foreign authors³ as well as domestic authors. In many countries, this could mean significant royalty payments to authors and publishers in the Global North.

Many countries that have adopted a PLR scheme therefore provide PLR only to domestic authors, and the justification of the right is the promotion and sustainment of local culture and writing. To avoid a fundamental conflict between the use of the public lending right to promote local authors, and the principle of national treatment under international intellectual property agreements, these schemes typically are not treated as part of the country’s copyright laws because copyright would require national treatment.

If a country were to include in its copyright law a PLR that discriminated against foreign authors by providing lending fees only to domestic authors, other countries could initiate dispute resolution proceedings against the country before the World Trade Organization for violating the national treatment requirements of Article 3(1) of the TRIPS Agreement. The offending country could be subject to a variety of remedies, including compensation to the injured country.

Due to the incompatibility of the domestic cultural promotion objectives of the public lending right with the principle of national treatment, the Standing Committee on Copyright and Related Rights (SCCR) at the World Intellectual Property Organization is an inappropriate forum for consideration of the public lending right.

¹ Article 5(1) of the Berne Convention provides that “Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals....”

² Article 3(1) of the TRIPS Agreement provides that “each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own with regard to the protections of intellectual property....”

³ In addition to authors, other contributors to books can qualify for a share of PLR payments, *e.g.*, illustrators, visual artists, translators, editors, photographers, and publishers.