European Commission: Inconsistent Use of Public Lending Right

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A report by the European Commission of 12 September draws attention to the considerable differences still existing between EU Member States' provisions regarding the public lending right (PLR), despite the 1992 Council Directive on the Rental and Lending Right and Certain Related Rights. Member States have traditionally interpreted public lending activities in widely divergent ways.

The 1992 Rental and Lending Directive sets out to harmonise the implementation of the public lending right in order to ensure the proper functioning of the Internal Market (see IRIS 2000-2: 15). Article 1 grants rightholders an exclusive right to authorise or prohibit lending copyright works and other protected subject matter. However, Article 5 provides Member States with the opportunity to derogate significantly from this exclusive lending right. It allows them to replace the exclusive right by a remuneration right, under certain conditions, and to exempt certain establishments from paying the remuneration. Article 5 also leaves room to differentiate between different objects of lending (such as books or films) and to regulate the payment method in varying ways.

According to the Commission's assessment of the functioning of the public lending right across the EU, the public lending right is not being applied properly. Nearly all Member States have replaced the exclusive lending right by a remuneration right with respect to some lending institutions. Several countries have exempted certain libraries (Ireland, Italy, the Netherlands) from being subject to the public lending right, while others provide a broad exemption covering most lending institutions open to the public (Spain, Portugal). The Member States have also laid down different rules for specific objects of lending, eg. by applying the exclusive lending right to cinematographic items (Denmark, Finland, Sweden) and a remuneration right to books (Denmark, Sweden). Furthermore, some countries do not pay the rightholders concerned any remuneration (Belgium, France, Greece and Luxembourg), while others restrict payment to national authors or authors living in a specific territory (Sweden) or to books published in the national language (Denmark, Finland). The Commission has initiated an infringement procedure against Belgium for its failure (to date) to transpose certain provisions of the Directive into its national legislation.

However, despite the limited degree of harmonisation, it remains unclear what effects this actually has on the proper functioning of the Internal Market. The Commission recently received some information about the existence of certain obstacles that may be the result of the relatively low degree of harmonisation and it will continue to examine such considerations closely.

In conclusion, the report refers to future developments related to public lending rights in the digital environment. The emergence of new products and the use of new technologies (eg. online lending) are likely to affect the functioning of the Internal Market and lending activities. Such changes may require further action.

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, OJ No L 346, 27 November 1992

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0100:EN:HTML

Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the public lending right in the European Union, COM(2002) 502 final of 12 September 2002

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0502:EN:HTML