



Canadian Federation of Library Associations
Fédération canadienne des associations de bibliothèques

CFLA Public Lending Right Position Paper - February 23, 2024

Issue

Public lending right (PLR) is a system that provides payment to creators whose works are available in public libraries. In Canada, the public lending right system is administered by the PLR Commission, an advisory body of the Canada Council for the Arts, as a cultural support program. As media formats evolve, libraries need to participate in conversations about what works are included in PLR in Canada, and which contributors are compensated.

In the international context in 2020, Sierra Leone, Panama, and Malawi proposed a study of public lending right at the World Intellectual Property Organization, Standing Committee on Copyright and Related Rights. There is no international copyright treaty that requires public lending right, and international agreements of this nature would risk the future success of Canada's PLR system, which operates as a cultural support program outside copyright law.

PLR in Canada

Beginning in the 1970s, PLR started to expand from Scandinavian countries where it originated and began to be implemented by other countries beginning with the Netherlands in 1971 and Germany in 1973. In 1973, the newly created The Writer's Union of Canada (TWUC) made establishing PLR its top priority. Pressure increased in English-speaking Canada when Australia implemented PLR in 1974, followed by the United Kingdom in 1979.

In the beginning most Canadian librarians opposed PLR, concerned that it would complicate the *Copyright Act* and the right of libraries to lend books. The TWUC encouraged the Canadian Library Association (CLA) to support PLR, based on a belief that without multisector support, the federal government would not be likely to implement it. A compromise was eventually reached in 1976 that the CLA would support PLR as long as it was funded by the federal government, was not part of the *Copyright Act*, and was based on holdings data rather than circulation data. Federal funding was key, since most Canadian public libraries are predominantly funded by municipal or provincial governments. This approach would ensure there was no competition between government funding for libraries and funding for PLR.

In 1986, ten years after CLA agreed to support PLR, the federal government budgeted an initial \$3 million for the new program. The first cheques were mailed in 1987. PLR money was awarded based on the number of sampled libraries in Canada that hold a title.¹

¹ The Commission included holdings of both university and public libraries until 2004/05, when it was decided that including only public libraries more accurately represents access to books by the general public. See Canada Council for the Arts 2004-05 Annual Report, page 26.



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The current PLR program compensates Canadian citizens and permanent residents who contribute to books published in the last five years, in specified categories that are held by Canadian public libraries, including fiction, non-fiction, poetry, drama, children's literature and scholarly works. Works must include an ISBN and may be in print, eBook and audiobook format. The funding for the program in 2022-23 was \$14.8 million.

Analysis

Canadian libraries recognize the value of a vibrant Canadian writing and publishing sector, and the role of the federal government in providing cultural support directly to this sector to ensure its future. Canada's approach to a public lending right system has three key benefits:

- The funds provided directly support Canadian authors, illustrators and translators, recognizing their contributions to Canadian culture and learning.
- Using holdings in libraries as a basis for payment results in a compensation model that minimizes record keeping and technology requirements compared to a circulation-based system.
- The funding and administration of the Canadian program are provided by the federal government as a cultural support, fully separate from the provincial and municipal sources of funding and governance for Canada's public libraries.

Canadian libraries recognize that the evolving nature of publishing is creating new considerations for Canada's PLR program, increasing the variety of formats and adding complexity to the meaning of creator. The licences for digital content that have emerged for ebooks and digital audiobooks in public libraries are frequently limited to one to two years or a limited number of loans. This licensing model compensates rightsholders directly for the use of their works in libraries by sequential or simultaneous borrowers, suggesting that PLR compensation need not be applied to this licensing model.

In addition, artificial intelligence is rapidly expanding content creation. Canadian libraries anticipate that it will become increasingly difficult to determine whether a creative work is produced using generative AI. We recommend that PLR continue to support human creation, rather than creation using AI.

Conclusion and Recommendations

CFLA-FCAB supports the current structure of PLR as a program outside of the *Copyright Act*, administered by the Canada Council for the Arts, that prioritizes the contributions of creators and recognizes their role in building Canada's rich cultural heritage. CFLA-FCAB further supports the existing requirement that contributors be Canadian citizens or permanent residents, and that titles have ISBNs, as well as the existing exclusion of practical books, educational/textbooks, periodicals, and subsequent editions.



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The CFLA-FCAB recommends that:

1. The federal government increase funding to the Public Lending Right program to enable support for increasing numbers of self-published creators and to increase the funds available per creator.
2. Ebook and audiobook eligibility be limited to books owned by libraries, rather than books acquired under limited term licences.
3. PLR continue to compensate and promote only works created by humans.