



# **Report on Public Lending by Libraries**

**FESABID's Library and Intellectual Property Group**

## **Introduction**

The **Library and Intellectual Property Group, FESABID** has written the following report concerning the present limit in favour of public lending contemplated in article 37.2 of the Reviewed Text of the Intellectual Property Law (TRLPI).

We wish to express with this document our conviction in the **need to maintain the 37.2 limit in its present terms**, as we consider that it not only complies with what the 92/100/CEE Directive established on rental, lending and other related rights, but it also responds to the specific situation that the Spanish public library system finds itself in.

The debate which has begun as a result of the European Commission's infringement procedures against Spain concerning the implementation of the 92/100 Directive can be contemplated, according to our understanding, in many different ways.

One possible angle is to maintain that the Spanish library sector does not want to accept remuneration for public lending. This view is completely wrong since it would tantamount to saying that professionals from the world of libraries and related institutions neither share nor understand properly the rightholders' rights to protect and live off their works.

Our sector, as part of the same cultural world that rightholders also belong to, is totally sensitive to their interests and in this sense work on a daily basis to achieve with our actions to benefit all those who invest their time and resources in writing.

A second way of approaching this debate is to say that the Spanish library sector does not want the introduction of remuneration for public lending because it considers it would not be able to meet such costs with their current budget allocations. It confirms then, that really the professionals' standpoint in our sector responds to a mistaken vision of the solution to the problem, seeing as though it would not be a question of depleting libraries' and related institutions' budgets, but of pooling efforts to apply for an increase in the culture budget from our public authorities.

This angle does not exactly describe the reasons for our standpoint either. Although our sector is very aware of present limitations public libraries suffer, we are of the opinion that the debate on its improvement is and should be independent of the debate on remuneration for the lending of works we are presently doing.

**This is not about demanding more public budget in order to cope with new expenditure, but analysing the reason and appropriateness that accepting that new expense which introducing a lending charge would bring about.**

Discarding these two hypotheses from the beginning, it remains to justify our sector's opposition towards lending charges and such a justification is no other than the belief in the **suitability of the present 37.2 limit to the reality of Spanish public libraries.**

The 92/100 Directive itself gave each Member State the possibility to exempt certain types of establishments from paying the public lending charge. Such a possibility was nothing other than the fair response to a disparate situation in which each European Union country's public libraries system is. The European Commission report itself in September 2002 focused its concern over public lending in **countries with a well-established infrastructure of public libraries.**



Thus, for the Spanish library sector the question to debate is if the situation in our country can really be described in such terms. To compare the situation in Spanish public libraries, even the amount of use and lending, with those countries that already implement lending charges leads us to confirm that it cannot be described in those terms.

Much the opposite to the opinion of other sectors involved in this debate, libraries are very conscious of the importance of their work as a source of enrichment for the rightholders. Such enrichment is based on our basic role as bodies disseminating culture and creators of both new and faithful readers. Unfortunately, measures like those they are insisting on introducing do not appear to take into account the level of development of our library system or **the real benefits that are received by the rightholders in the short, medium or long term thanks to our services.**

To conclude, before debating how much and who should pay, the question whether it is necessary to pay for a **service which does not collect revenue or clash with the normal exploitation of works** and provides in exchange great benefits to all parties involved, should be answered.

This is the standpoint of the professionals represented by FESABID and this is also how more than 300 writers have understood it, who have signed a manifesto against introducing this measure and EBLIDA itself (European Bureau of Library, Information and Documentation Associations), an especially representative organisation of the EU library sector which has recently appealed to the European Commission for the need **to recognise the flexibility given by the 92/100 Directive to each Member State when it comes to charges exemption for certain types of institutions depending on their cultural and educational aims.**<sup>1</sup>

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<sup>1</sup> The full text of EBLIDA's stance, [EBLIDA Statement on the infringement procedures over Public Lending Right](http://www.eblida.org/position/PLR_Statement_March04.htm), can be found at [http://www.eblida.org/position/PLR\\_Statement\\_March04.htm](http://www.eblida.org/position/PLR_Statement_March04.htm)

## Concerning the 92/100/EEC Directive

The Council 92/100/EEC Directive, November 19<sup>th</sup>, 1992, on rental and lending rights and related rights in the area of intellectual property, gave a number of rightholders the exclusive right to authorise or prohibit the lending of original copies of protected works. This right can be transferred, assigned or subject to the granting of contractual licenses (Art. 2, section 4)

According to the Directive, terms for an act to be considered a loan are the following:

- That there should be available (“objects” according to the Directive, article 1, section 3), originals or copies, for use and for a limited time. In this respect, buildings and works of applied art are excluded (Article 2, section 3)
- That there be no economic commercial advantage, direct or indirect, associated with making works available. It is understood that there is no such benefit if the amount charged does not go beyond the necessary amount to cover the operating costs of the establishment. (Proviso 14)
- That they be carried out by establishments accessible to the general public.

The Directive explicitly refers to the following acts which will not be considered for lending (Proviso 13):

- The making available of originals or copies for on the spot reference use (for example, consultation in the library rooms by readers).
- Availability between establishments which are accessible to the public (as would be the case of interlibrary loans).

Concerning rightholders who hold this exclusive right, the Directive points out the following: (Article 2, section 1)

- Writers (they hold the right in respect of the original and copies of their works).
- Artists, actors or performers (hold the right in respect of fixations of their performances).
- Phonogram producers (hold the right in respect of their phonograms).
- Producers of the first fixation of a film (hold the right in respect of the original and copies of their films)

Once the lending right is established, Article 5 of the Directive introduces the possibility that each Member State establishes a limit to it. Such a limit or exemption becomes subject to the payment of remuneration which benefits:

- The author of the work
- The author of music included in a phonogram, in the case of lending such types of works.
- The author of a work fixated in a film, in the case of lending such type of works.
- The author of computer programs, in the case of lending such type of works.

According to the Directive, the amount of such remuneration can be decided freely by each Member State using as criteria “**its cultural promotion objectives**”.

Finally, Article 5 itself authorises each Member State to exempt particular categories of establishments from payment of such remuneration.

As far as related rights are concerned, authors who are the interpreting artists or performers, record producers and producers of first fixations of a film, the Directive recognises that their authors have the exclusive distribution right (Article 9).

The processes of distribution are defined as the act of making available to the public, by means of selling or otherwise, of originals or copies of works - “objects” according to the Directive. It is understood that another of “those ways” of making available to the public would be lending, just as our current article 19 of TRLPI states.

Also, in relation to this distribution right it indicates that it can be transferred, assigned or made subject to the granting of contractual licenses. Also related to this right is that each Member State can establish limits or exemptions in their respective legislations when the ways of distribution respond to one of the following ends or situations (Article 10, section 1):

- Private use<sup>2</sup>;
- When it involves the use of short excerpts in connection with the reporting of current events;
- When it involves ephemeral fixations by a broadcasting organisation by means of its own facilities and for its own broadcasts;<sup>3</sup>
- Use solely for the purposes of teaching or scientific research.

From what has been said above, it follows that in the case of audiovisual works (phonograms and films,) a limit in favour of lending could be established when such lending is for teaching purposes, scientific research or when such a loan is for private use.

If a limit is established, a payment would have to be considered as established in Article 5, section 2. This Article also contemplates the possibility of exempting from payment establishments that carry out the loans with those purposes in mind (these purposes could be used both to limit the right and exempt from remuneration).

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<sup>2</sup> This limit for private use shall be without prejudice of the legislation that Member State may establish on the remuneration for private copying (Article 10, section 3)

<sup>3</sup> This limit is in accordance with what the 2001/29/EC Directive would set out years later in Article 5.1

## What is the Directive's aim concerning public lending?

An initial conclusion we can come to after a detailed reading of the 92/100/EEC Directive provisos and of the Commission for lending rights in the European Union's Report (the latter dated 12<sup>th</sup> September 2002) is that one of the Commission's main concerns in relation to this kind of activity was on the effects it would have on phonograms and films and, in particular, in **the possible clash between the lending of audiovisual materials and the commercial rental of such works.**

For example, the Directive's fourth proviso reads as follows:

*"Whereas rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films; whereas piracy is becoming an increasing threat.*

The Commission's Report, in section 3.2, also took this approach:

*"According to this majority, a Directive on the harmonisation of the rental right alone would have been incomplete if it did not also cover non-commercial lending. Indeed, **from an economic point of view, the public lending right complements the rental right. In some cases, public lending might even replace rental.**(...)*

*In its reasoning for the need for harmonising the public lending right, the Commission focused, amongst others, on the legal and economic link between the activities of rental and public lending. It was pointed out that, if rental and lending rights were not addressed together, **the steady increase in public lending activities in the music and film sector might have a considerable negative effect on the rental business** and thereby deprive the rental right of its meaning."*

The second big worry the Commission showed it had was **the lending activity carried out by public libraries.** In this respect, it defended binding mainly this type of institutions to the payment of remuneration for loans made because they were considered to be the type of establishments that perform this kind of activity most.

Thus, in section 3.3 of the Commission's Report the following is stated:

*"Article 1(3) defines lending as "making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments that are accessible to the public". Such establishments are in the first place public libraries. Depending in particular on the definition of the term "public" under national law, university libraries and those of educational establishments may also be covered. Even if this is the case, however, **these two latter categories of libraries will represent, at least in Member States having an established infrastructure of public libraries, a rather small proportion of all the lending establishments accessible to the public, in so far as they are only open to a rather limited and specific part of the general public.**"*



Focusing on these two main points (the danger that public lending of audiovisual works represents and the public library's role in developing public lending activities), we would like to make the following observations.

### **Concerning the loan of audiovisual works (phonograms and films.)**

Although it is certain that the loan of audiovisual works (music Cds, Dads and video tapes of films) has meant that in the last few years a larger number of users has been attracted to public libraries, we consider it important to evaluate the impact of this activity in normal commercial circuits of this type of works in the light of two criteria:

- On the one hand, the current volume of audiovisual holdings in our libraries;
- On the other hand, the purpose for which this type of material is lent.

Referring to audiovisual holdings, the data provided by Culture Figures in Spain: Statistics and Indicators Report (2002 edition), published by the Ministry for Education, Culture and Sport, shows that the presence of this type of works remains small in Spanish public library collections.

In **1998** (and according to data from that report), the distribution of holdings in Spanish public libraries was the following<sup>4</sup>:

Books and periodical publications: **38,451,949**

Video graphic, phonographic and multimedia audiovisual material: **1,511,472**

That is to say, audiovisual material only accounted for **3.8%** of works that can be being lent in public libraries.

In **2001**, data offered by the **LIBECON**<sup>5</sup> project show that the situation remained practically the same: Spanish public libraries totalled a collection of **42,817,561** books, whilst the audiovisual collection was **1,583,579** (so, audiovisual materials only represented **3.7%** of works available for lending).

Let's now compare the audiovisual collection present in Spanish public libraries with that of the six countries studied in the Commission's Report as the first to put remuneration for public lending into effect (Denmark, which introduced it in 1946, Sweden, in 1955, Finland, in 1961, Holland, in 1971, Germany, in 1972 and the United Kingdom which introduced it between 1979 and 1982.<sup>6</sup>

So we should turn again to the data offered by the LIBECON project. Data from 2001 from this source are the following (Holland is not included since the LIBECON project does not have data available on the size of the audiovisual collection in that country's public libraries):

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<sup>4</sup> Las cifras de la cultura en España: Estadísticas e indicadores (edición 2002); page 104, table 7.6 "**Distribution of existing holdings by material and library type**"

<sup>5</sup> Project funded under the auspices of the European Commission whose aim is to develop and maintain a database holding the main indicators relating to the activities carried out by libraries (further details at <http://www.libecon.org/>)

<sup>6</sup> Data collected from the Commission Report, page 4, section 2 ("Public Lending Right Legal Situation prior to the Directive")

	Audiovisual Material	% of the Collection <sup>7</sup>
<b>Spain</b>	<b>1,583,579</b>	<b>3.7%</b>
Denmark	2,988,653	9.9%
Sweden	2,619,965	5.6%
Finland	4,353,661	10.5%
Germany	10,598,899	9.2%
United Kingdom	7,348,000	6%

The main conclusions we can draw from this comparison are:

- On the one hand, **the situation in Spanish public libraries** (as far as their audiovisual resources are concerned) **is far removed from being comparable to those of European countries which have already implemented lending charges.**
- On the other hand, **Spanish public libraries' audiovisual resources make up an insignificant part of the total stock held by libraries.**

Continuing with the line of discussion started at the beginning of this section, let's now consider the aim pursued by public libraries when lending audiovisual material.

In the first instance, **the loan of audiovisual works** (rather than their rental through commercial establishments) **does not pursue a commercial end** nor does it presuppose carrying out such type of activity.

The aim behind lending this type of works (which is in fact the same as that pursued by public lending in general) is no other than that of bringing culture and knowledge (as well as leisure) closer to the citizens these institutions serve.

This statement, far from being demagogic, aims to be the answer to the present tendency to see any type of public service as going into direct competition with private initiative.

It should not be forgotten that a public service, apart from not being free - another current belief: to think that a public service is free because the citizen does not pay directly at the moment of using it, failing to remember that in fact that citizen has already paid for the service via his/her taxes – meets some **social aims** that benefit its users and that is in fact beyond private interests, whether they may be by individual people or business groups.

Secondly, although it is true that, as the Commission's Report shows, a large volume of audiovisual lending could clash with the rental of these works on coming into direct competition, we should take into account the real impact that lending such material is having on the rental market for audiovisual material in Spain.

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<sup>7</sup> Calculated on the sum of audiovisual materials plus the materials included in the LIBECON project under the heading "*books&bound periodicals*" (which is equivalent to the what is used by the Ministry in the "*Culture Figures in Spain...*" document under the "**books and periodicals**" heading)

In the SGAE Yearbook of Performing, Musical and Audiovisual Arts 2003<sup>8</sup> some data about the sales and rental of video and DVD in our country can be found:

- Video graphic consumption in Spain: In **2002**, the global statistics for expenditure on video graphic consumption (sales and rental of VHS and DVD) grew by **6%** compared to 2001<sup>9</sup>.
- Sales figures: In **2002**, the number of DVD's sold to consumers rose by **66%** (from 6.8 million DVD's in 2001 to 11.3 million in 2002.)<sup>10</sup>
- Rental statistics: In **2002**, expenditure on DVD rental increased by **203%** (from €6.2 million in 2001 to €18.8 million in 2002). Similarly, the fact remains that DVD rental grew **193%**, from 2.9 million rentals in 2001 to 8.5 million in 2002.  
The Report also shows that expenditure per capita on renting audiovisual material in Spain also grew in **2002** (in fact, **18%** more than in 2001). In the same way, DVD rental by Spanish households increased by **176%** in 2002 if compared to statistics from the previous year<sup>11</sup>.
- The amount of distributors' invoicing: In **2001**, rental and sales of DVD reached almost **€100 million** in Spain (accounting for **31%** of the distributors' total invoicing)<sup>12</sup>.

Thus, none of the statistics appear to reflect **any negative effect by public lending activity on the audiovisual rental market** - in fact, at no time is public lending referred to as a worrying or misleading element in this market.

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<sup>8</sup> Found at <http://www.artenetsgae.com/anuario/anuario2003/home.html>

<sup>9</sup> Anuario SGAE de las artes escénicas..., Chapter 2, "El mercado del vídeo en España", page 379

<sup>10</sup> Anuario SGAE de las artes escénicas..., Chapter 2, "El mercado del vídeo en España", page 380

<sup>11</sup> Anuario SGAE de las artes escénicas..., Chapter 2, "El mercado del vídeo en España", page 381-382

<sup>12</sup> Anuario SGAE de las artes escénicas..., Chapter 1, "Introducción: Datos globales del vídeo en Europa", page 377

### Concerning the public library system in Spain

The second important focus of attention in the 92/100/EEC Directive and especially in the Commission Report, is public libraries. The latter, clearly indicates that it is on this type of library that payment for lending should mainly fall since other types of public libraries (such as university libraries or those in educational institutions generally), only offer their services to a limited or specific part of the general public.

Next, we find it curious that the Report uses the expression “**Member States with a well established infrastructure of public libraries**” on several occasions, this bringing us again to the need to carry out a comparison between the situation the Spanish library system finds itself in with that of the six countries that first implemented payment by remuneration.

In the document Culture Figures in Spain: Statistics and Indicators (2002 edition), the following statistics can be found in a comparative table of the situation in different EU countries (the data shown are from 1997).

In **1997**, a total of **4,519** libraries were assessed in Spain with a total stock of **37,538,000** million volumes (only books) and carrying out a total of **24,154,000** million loans.

In the same year, the statistics for the other countries were the following:

	Total of libraries	Stock	Loans
<b>Spain</b>	<b>4,519</b>	<b>37,538.000</b>	<b>24,145.000</b>
DENMARK	250	31,433.000	85,880.000
SWEDEN	324	46,295.000	71,005.000
FINLAND	436	36,832.000	102,130.000
HOLLAND	579	41,489.000	158,286.000
GERMANY	6,313	149,205.000	310,778.000
UNITED KINGDOM	169	131,680.000	573,391.000

With the passing of time the situation in Spanish libraries has not improved compared to the rest of the countries indicated here.

According to the report Statistic Analysis of Spanish Public Libraries' Collections: Spain 1999-2000 carried out by the Germán Sánchez Ruipérez Foundation<sup>13</sup> (FGSR) in the year **2000** there were a total of **4,008** public libraries in Spain with a stock of **44,022,066** items<sup>14</sup>.

Moreover, in **2000**, **61%** of Spanish municipalities did not have a public library (affecting **7.2%** of the population.) Such a percentage especially affected small boroughs (**6.8%** of the boroughs with a population between 5,000 and 20,000) thus meaning a clear breach of Law 7/1985 which set out the Bases for Local Government.

<sup>13</sup> Found at <http://www.bibliotecaspublicas.info/>

<sup>14</sup> This figure includes books, audiovisual and electronic and other type of materials (table 2.3.10 from the FGSR Report, “Índice de rotación de las colecciones en BP. España, 2000”)

Another trait which characterised collections in our country's public libraries was their poor state of resources, not only reflected in the total number works contained in their collections but also in their need for updating.

Thus, in the year **2000**, the FGSR Report highlighted that **55%** of libraries had a collection of less than 7,500 documents.

15	Total PL<	PL< 7.500 vols.	%
<b>SPAIN</b>	<b>4,008</b>	<b>2,205</b>	<b>55%</b>
POP. < 5.001	2,109	1,568	74%
POP. 5.001 TO 20.000	968	325	34%
POP. 20.001 TO 100.000	521	183	35%
POP. 101.000 TO 500.000	273	82	30%
POP.> 500.000	137	47	34%

From the data shown in the table, it is worth also pointing out the fact that **34%** of public libraries serving towns of more than 500,000 inhabitants lend stock of less than 7,500 volumes.

Concerning the age of Spanish public libraries' stocks, the FGSR study offered a revealing data: that **43%** of the collections **were more than 10 years old**.

In relation to loans made by this type of institutions, in the year **2000**, they made more than **31,550,380**.

If we compare these data with the other countries indicated above, we see that in **1999** the statistics for these countries were still way above the Spanish data for the year 2000.

16	Holdings	Loans
<b>SPAIN (year 2000)</b>	<b>44,022,066</b>	<b>31,550,380</b>
DENMARK	32,086,647 <sup>17</sup>	72,996,911
SWEDEN	46,669,916 <sup>18</sup>	79,412,722
FINLAND	40,626,358 <sup>19</sup>	99,268,261
HOLLAND <sup>20</sup>		
GERMANY <sup>21</sup>		
UNITED KINGDOM	134,432,000 <sup>22</sup>	460,010,000

<sup>15</sup> Table 3.1.5 from the FGSR survey on public libraries with less than 7,500 volumes by population brackets, Spain 2000

<sup>16</sup> Data taken from Unesco Institute for Statistics ([http://www.uis.unesco.org/ev.php?URL\\_ID=3754&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201](http://www.uis.unesco.org/ev.php?URL_ID=3754&URL_DO=DO_TOPIC&URL_SECTION=201)). See section "Libraries: Selection of Indicators on Public Libraries, 1996-1999"

<sup>17</sup> Includes books, audiovisual and other type of material (not specified).

<sup>18</sup> Includes books, audiovisual materials and microforms

<sup>19</sup> Includes books and other type of materials (not specified)

<sup>20</sup> Data for 1999 not available

<sup>21</sup> Data for 1999 not available

For the year **2001**, the data collected by the LIBECON<sup>23</sup> project also highlights these differences.

	Total of Books	Total of A-V materials	Total of CD-ROMs	Registered users	Loans
<b>SPAIN</b>	<b>42,817,561</b>	<b>1,583,579</b>	<b>125,123</b>	<b>7,524,176</b>	<b>27,491,212</b>
DENMARK	27,081,405	2,988,653	121,535	1,880,587	71,657,119
SWEDEN	44,330,201	2,619,965	----	----	81,381,984
FINLAND	37,073,549	4,353,661	24,086	2,384,067	102,216,649
HOLLAND	42,386,215	----	----	----	197,036,000
GERMANY	104,358,906	10,598,899	----	8,302,968	307,159,562
UNITED KINGOM	115,962,000	7,348,000	113,867	33,837,000	417,004,000

It can now be of interest to look at another relevant indicator to learn about Spanish library collections: the so-called **rotation indicator** which shows the average number of times a document has been lent over the duration of one year.

Such an indicator is obtained by dividing the total number of loans carried out by the total of available holdings. Therefore, according to the data indicated above, the rotation indicator for the year **2001** for the countries studied would be the following:

	<b>Rotation 2001 (loans / collection)</b>
<b>SPAIN</b>	<b>0.6</b>
DENMARK	2.3
SWEDEN	1.7
FINLAND	2.5
HOLLAND	4.6
GERMANY	2.6
UNITED KINGDOM	3.4

It is also relevant to mention here the results from the PAB-Networks Project: Library Analysis Program. 2002 Report, carried out by the Bertelsmann Foundation<sup>24</sup>. According to this report, **52.7%** of documents provided by the libraries under study were never taken out on loan during **2002**. Therefore, the main conclusion drawn by the different working groups in the PAB-Networks project was that the factors explaining this low lending rate in Spain were the obsolete holdings available in libraries coupled with the problems associated from an insufficient updating of their collections.

<sup>22</sup> Includes books, microforms and audiovisual materials

<sup>23</sup> Project funded under the auspices of the European Commission whose aim is develop and maintain a database holding the main indicators on the activities carried out by libraries (further information at <http://www.libecon.org/>)

<sup>24</sup> Found at [http://www.fundacionbertelsmann.es/pab/docs/PAB-REDES\(Memoria\\_2002\).pdf](http://www.fundacionbertelsmann.es/pab/docs/PAB-REDES(Memoria_2002).pdf)

Let's now look at the number of loans per inhabitant. Going back to the FGSR study, in **2000** only **19.2%** of the Spanish population was registered in a public library (a total of 7,840,260 people.)

The number of loans per inhabitant (remembering that the FGSR study recorded as 31,550,380 the number of loans made in 2000 by the 4008 public libraries), was **0.77**, whilst the loans per library user was **4.02**.

We find the comparative data in the same report - corresponding to the year **1998** - with other EU countries (countries studied so far are highlighted in colour.)

***Loans per inhabitant by public libraries (data from 1998)***

	<b>Loans</b>	<b>Population</b>	<b>Loans/Pop.</b>
EUROPEAN UNION	1,488,057,659	301,870,651	<b>4.93</b>
<b>SPAIN</b>	<b>28,356,129</b>	<b>39,852,651</b>	<b>0.71</b>
GERMANY	324,555,454	82,057,000	3.96
AUSTRIA	16,065,599	8,075,000	1.99
BELGIUM	68,475,000	10,192,000	6.72
DENMARK	75,517,011	5,295,000	14.26
FINLAND	100,332,465	5,147,000	19.49
FRANCE	280,197,285	58,728,000	4.77
GREECE	1,828,799	10,511,000	0.17
IRELAND	12,485,000	3,694,000	3.38
LUXEMBURG	199,385	424,000	0.47
PORTUGAL	1,680,532	9,957,000	0.17
UNITED KINGDOM	497,889,000	59,090,000	8.43
SWEDEN	80,479,000	8,848,000	9.10

***Loans made by public libraries by registered users (data from 1998)***

	<b>Loans</b>	<b>Registered users</b>	<b>Loans/Registered users</b>
EUROPEAN UNION	1,330,036,464	74,036,828	<b>17.96</b>
<b>SPAIN</b>	<b>28,356,129</b>	<b>7,026,416</b>	<b>4.04</b>
GERMANY	324,555,454	11,100,286	29.24
AUSTRIA	16,065,599	908,034	17.69
BELGIUM	68,475,000	2,310,000	29.64
FINLAND	100,332,465	2,465,543	40.69
FRANCE	280,197,285	11,769,645	23.81
IRELAND	12,485,000	867,000	14.40
PORTUGAL	1,680,532	3,233,904	0.52
UNITED KINGDOM	497,889,000	34,356,000	14.49

Without a doubt, from the data shown here, it is relevant to highlight that **Spain is behind other E.U. countries in terms of the works lent by its public libraries.**

Only Greece and Portugal (both with a lending per inhabitant figure of **0.17** items,) show a situation worse than the **0.71** of loans per Spanish inhabitant in **1998** - a very far removed figure from that of the European average and doubtlessly light years away from figures in other countries where remuneration for public lending has worked for years.

We can update these data for the year **2001** with extracts from the LIBECOM project to confirm that the situation in our country is still a far cry from being comparable to that of other European countries.

***Loans made by public libraries per inhabitant (data from 2001)***

	Loans	Population	Loans/Pop.
<b>SPAIN</b>	<b>27,491,212</b>	<b>39,542,000</b>	<b>1.4</b>
GERMANY	307,159,562	82,214,000	3.7
DENMARK	71,657,119	5,367,00	13.3
FINLAND	102,216,649	5,158,000	19.8
HOLLAND	197,036,000	16,251,000	12.1
UNITED KINGDOM	417,004,000	60,297,000	7
SWEDEN	81,381,984	8,909,000	9.13

***Loans made by public libraries by registered users (data from 2001)***

	Loans	Registered Population	Loans/Registered users
<b>SPAIN</b>	<b>27,491,212</b>	<b>7,524,176</b>	<b>3.6</b>
GERMANY	307,159,562	8,302,968	36.9
DENMARK	71,657,119	1,880,587	38.1
FINLAND	102,216,649	2,384,067	42.8
HOLLAND	197,036,000	<sup>25</sup>	
UNITED KINGDOM	417,004,000	33,837,000	12.3
SWEDEN	81,381,984	<sup>26</sup>	

These data reflect a situation which coincides with that expressed in other studies such as Reading and Book Purchasing Habits in Spain. Year 2003, carried out by The Publishers of Spain Guilds Federation.

According to this study, **47.4%** of the people surveyed had not read a book (or had only read one) during the previous year. **36.9%** of the population admitted not to find reading a very appealing activity - either because they did not like it or because they preferred to spend their free time on a different type of leisure activity.

<sup>25</sup> LIBECON does not provide information on total of registered users

<sup>26</sup> LIBECON does not provide information on total of registered users

As far as the use they made of libraries, **74.2%** had not been to a library during the previous three months, whilst **37.3%** of them that had visited one had been to a university library or the one in their place of study.(not a public one).

### **Reasons to justify the present lending limit**

We are of the opinion that the data shown here on the Spanish public library system situation are essential if we want to analyse and understand the reasons why our present legislation dealing with intellectual property material established a limit in favour of a series of institutions which carry out public lending of works, and even more so in light of the comments found in the Commission Report itself.

According to this Report, the Directive's inclusion of certain exemptions and limitations to the exclusive lending right via Article 5 was the result of a compromise between "***internal market needs and respect for Member States' different traditions***"<sup>27</sup>.

It also points out that Article 5 allows Member States, in certain circumstances, to replace the exclusive right "***for a right to remuneration or even not to provide any remuneration***", and that in fact, "***the article (referring to Article 5 of the Directive,) concedes a wide discretionary capacity to Member States in implementing the public lending right***"<sup>28</sup>.

On the other hand, according to the Commission, "***the exclusive lending right should become the norm***" so that if a Member State does not contemplate an exclusive lending right "***it should grant, at least to the authors, a right to remuneration.***"<sup>29</sup>

But it also insists on the following: amongst the "***certain categories of establishments***" a State can exempt from public lending remuneration university libraries and those of educational establishments which have a marginal importance vis-à-vis the large number of existing public libraries "***at least in Member States where public libraries are well established***".

All this leads us back to our first thought: if one of the Directives' concerns when establishing the exclusive lending right (or in the negative case, of the right to remuneration for the authors for the lending of their works), was to soften the effect that the volume of loans via public libraries had on commercial markets, Spain is still a long way off reaching the level of those countries where such remuneration has been implemented.

**The Spanish public library network is still not a well established one and although that does not justify on its own to take away the exclusive right from authors, it does on the other hand justify the introduction of a limit in favour of public libraries taking into account their present situation and the service they provide for the world of culture in general.**

In countries where a public lending remuneration is currently implemented, the real trigger that made authors vindicate their rights was the increase in the number of loans and its effect on the sales of their works. In France, for example, the last country to

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<sup>27</sup> Page 5 of the Commission Report

<sup>28</sup> Page 6 of the Commission Report

<sup>29</sup> Page 6 of the Commission Report

implement remuneration for public lending, authors considered that in 1998 the amount of lending was only 50% of the sales of their works (in **2001**, according to the LIBECON report figures, loans made by the 3,989 French public libraries came to a total of **310,175,619.**)

This figure clearly contrasts with that offered by the Bertelsmann Foundation in its study The Public Library as seen by Citizens: Statistics Report - Municipalities of Spain 2000. According to this report, and in relation to the origin of books read by the people surveyed, out of each 10 books read only **1.3** were on loan from a public library (whilst **6.3** of every 10 had been purchased by the reader and **2.1** books had been lent by someone they knew.

Therefore, **if the object of remuneration for public lending is to compensate authors for the interference this service has on the normal exploitation of their works, we are of the opinion that the present statistics for lending in Spain do not justify such compensation.**

On the other hand, we also think it is interesting to quote here the following observation from the Economic and Social Committee in its Statement on the rental, lending and other related rights Directive<sup>30</sup>.

When considering exemptions to the exclusive right to lending, the following comments can be read:

*“2.2.2.3 The Committee stresses that the implementation of the lending right should not cause any damage to the running of public libraries by imposing excessive costs on them”*

*“2.4 The setting up of the lending right will inevitably produce consequences in public spending for the Member States. Those who do not have the lending right or that limit it to their citizens or writers in their own language will find themselves obliged to increase their expenditure. If the words “equitable remuneration” with the exception of Article 4<sup>31</sup> means the equivalent of a payment for a freely negotiated lending license, then even in Member States which have a relatively non-discriminatory public rental rights system there will be increases in public expenditure and additional management costs for libraries. The Committee does not see that this economic consideration should necessarily be an obstacle for approving the Directive, but it should be taken into account by Member States in their budget processes.”*

So, if we applied to the Spanish data some of the payment for lending models that some European countries are applying recently, such as France, this would be the resulting budget allocation that our libraries should allow for this payment.

The French model.

France is going to set up payment for lending based on two basic criteria:

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<sup>30</sup> Statement on the proposal of the Council Directive on rental, lending and other rights related to copyright (91/C 269/17). DOCE, C269, 14-10-1991

<sup>31</sup> Article 5 of the Directive's final draft

- Payment by the State of a quantity for each user registered in the library lending scheme; this amount is pending being decided via decree, but is calculated as €1,5 per user.
- An increase in the price of books purchased by libraries of 6% (excluding VAT)

Based on the statistics from the year 2000 collected by the Germán Sánchez Ruipérez Foundation study<sup>32</sup>, public libraries spent that year a total of €27,400,000 on the acquisition of works for their stocks.

That same year, the number of registered users rose to 7,904,273. Therefore, applying such a model to Spanish public libraries would mean an increase of €13,5 million in expenditure by this type of institutions, or what comes to the same, the payment of remuneration for public lending would mean **49.27%** of the budget dedicated in the year 2000 to the acquisition of works.

But as we said at the beginning of this report, this debate is not just about the costs that the implementation of remuneration would create for libraries. It should also be taken very much into account the benefits that authors and publishers currently receive from the work carried out by public libraries. Moreover, the professionals of our sector have great conviction in the positive and direct impact that our work has on the development of the publishing sector and the world of culture in general.

The part we play in the promotion of reading encourages the development of new readers who also become potential purchasers of books. Libraries act as showcases for the works of authors and publishers, who in this way benefit from the publicity and the dissemination of their ideas which is beyond specific commercial interests, their distribution capacity and the whims of the market.

But all these benefits - and they are not the only ones for this sector of the world of culture - are difficult to quantify in economic terms.. For this reason, perhaps we should again go back to numerical data showing the benefits which both authors and publishers already receive from our work.

So it would be of interest to examine the Public Administration expenditure allocated to the book sector in our country.

For example, according to the FGSR study<sup>33</sup> in the year 2000 Spanish public libraries allocated **€27,400,000** to the acquisition of works and, in the same year and according to the Ministry for Education, Culture and Sport report<sup>34</sup>, **€9,426,000** were allocated to “the promotion of books and cultural publications” (budget item that according to the Ministry itself is allocated to “*grants for the publishing industry, the promotion of reading and books via the award of national prizes, help with literary creation and translation and holding conferences and literary meetings.*”)

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<sup>32</sup> Las Bibliotecas Públicas en España: Una Realidad Abierta. Madrid: Fundación Germán Sánchez Ruipérez, 2001. Found at <http://www.bibliotecaspublicas.info/>

<sup>33</sup> Las Bibliotecas Públicas en España: Una Realidad Abierta. Madrid: Fundación Germán Sánchez Ruipérez, 2001. Also found at <http://www.bibliotecaspublicas.info/>

<sup>34</sup> Las cifras de la cultura en España: Estadísticas e indicadores (edición 2002); Table 2.2

For the year 2004, the same Ministry has set up grants through the Books, Archives and Libraries General Directorate with these objectives in mind<sup>35</sup>:

*“the award of **grants for publishing projects**, in any of the official Spanish languages of works from our culture, of national and international relevance, that contribute towards the enrichment of our common bibliographic heritage with the twofold aim of **enlarging stocks held by Spain’s public libraries** and also of promoting and encouraging communication and cultural cohesion between Autonomous Communities, creating a common bibliographic stock in all public libraries, where all the languages and cultures of Spain will be represented.”*

*“the **award of grants for publishers** with the aim to promote communication amongst the different Spanish cultures, by means of **translation and publication in any official Spanish language** of Spanish writers’ works originally written and published in any of the official Spanish languages with the **aim to enlarge public libraries’ stocks** in the whole of Spain as well as to promote and encourage cultural cohesion between Autonomous Communities.”*

These grants will allocate a maximum of €1,359,550 and €46,060 respectively.

On an autonomous level, we also find similar grants for the publishing sector. For example, in 2002 the Culture Department of the Catalonia Generalitat<sup>36</sup> allocated €1,940,631,38 for the acquisition of works within its “generic support” program for the publication of books in Catalan - afterwards these books are distributed among libraries within the Catalonia Public Reading System libraries.

As well as this grant, the same Department allocated €236,198 for the publication of books of special cultural relevance and also awarded the Guild of Publishers in Spain Federation with a grant of €36,060,73 for the organisation of LIBER, without doubt one of the most important showcases for the publishing sector in our country.

All these grants, together with policies such as that of considering the book as “a cultural asset” and not as “a consumer good” (which qualifies books for a lower VAT or advocates for fixed pricing for books), as well as the government money that libraries allocate to the acquisition of books, are definitively a clear indication of the interest the Public Administration has in the publishing sector and of the economic efforts dedicated to its development (something which directly benefits its members.)

Something which the publishing sector itself recognised in the conclusions of its Fifth Publishers’ Conference held on May 13th-15th, 2004, in Santiago de Compostela:

*“17. The publishers express their support in the Reading Promotion Schemes put together by the different Public Administrations and they request that not only should these plans be maintained but that they also be increased and developed through the input of greater resources and the adequate coordination between the different Administrations.*

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<sup>35</sup> Decree of 12 December 2003 by the *Dirección General del Libro, Archivos y Bibliotecas*, calling for the application of specific grants for 2004. (BOE 30 December 2003, issue 312)

<sup>36</sup> Information collected from the annual report of the Culture Department for 2002, found at <http://cultura.gencat.net/publicacions/docs/Memoria2002.pdf>

*To this end, they invite all mass media to pursue and increase their actions in support of the dissemination of books and the creation of new readers.”*

*“20. The Conference wishes to express in a very special way its gratefulness and recognition of the work carried out by so many librarians in favour of reading and cultural promotion, work done very often without sufficient support and with great generosity and personal sacrifice. For this it urges the Administrations concerned to support and promote these initiatives and provide them with the necessary economic resources.”*

However, we cannot forget an important fact: these grants are also the clear demonstration of the sacrifice our country’s authorities make in favour of a sector which, unlike public libraries, **is private and of a clearly commercial purpose**. If such a sacrifice is justifiable because of the benefits that this sector gives to society in general, we believe that society should also benefit somehow by the activities carried out by this sector.

The doubt that comes to our mind when faced the present situation (with badly equipped public libraries, with levels of lending and of use far from the averages of other countries in the European Union, with libraries which are compared to those in other countries in relation to specific aspects, like the requirement to pay a remuneration for lending, without taking into account the real situation or existing differences), not only as professionals of our sector but also as citizens and users of such libraries, is whether the rest of the sectors involved value fairly the benefits they receive from our efforts.

To request the introduction of a lending remuneration is, without doubt, not an example of that understanding, especially if that request is not accompanied by a re-thinking of present economic quantities that are allocated to the book sector and culture in general (no government institution has offered, for example, to allocate libraries with a special budgets for loans made out of the budget presently assigned to the publishing sector).

### **Conclusions**

From all the above, we consider that the following points have been proved:

- The 92/100/EEC Directive introduced a right to public lending in favour of authors thinking of the negative impact that two specific activities could have: the lending of audiovisual materials and that of general material in countries with a good public library system.
- In relation to Spanish public libraries, these find themselves way below the European average just as much when it comes to budgets as with equipment and amount of use on behalf of their citizens.
- As far as the loan of audiovisual material is concerned, neither the amount of such material currently in public library collections nor data provided by the sector itself show this activity to be having any negative repercussions on the commercial sector or on the rightholders’ interests.
- As far as public lending, Spanish public libraries continue to report very inferior figures compared with those of other European countries where remuneration for lending has been introduced. Its poor infrastructure and antiquated stocks

are two elements which leads to this low usage, which in turn, allows us to confirm that lending carried out by the Spanish library system neither clashes nor erodes normal exploitation of these materials.

- Spain continues to be a country with a small reading population, with a high percentage of people who recognise that they do not read. Among those considered the reading population, there are very few who use public libraries.

- Finally, it should be very seriously taken into account the benefits that rightholders already receive on account of the work of public libraries and the grants that the Administration provides for the development of reading and publishing. It is necessary that such benefits should have a clear compensation for those institutions facilitating access to culture.

**It is for that reason that we make the request to those with the highest responsibility in this important decision that they take all these factors into account when it comes to analysing and defending our present lending limit.**

**As long as Spanish public libraries remain so much behind other European countries (as statistics on infrastructure and use reveal) a change in the limit will not be justified. The Directive itself clearly specified the reason behind this type of measures, a reason that, unfortunately, is still in the gestation period in our country.**

May 2004.

## Manifiesto in favour of public lending

### Whereas:

State owned libraries, museums, archives, newspaper libraries, record libraries and film libraries, as well as those belonging to institutions of general interest and of cultural, scientific, educational, or non-profit-making character or even teaching institutions integrated into the Spanish educational system:

1. **GUARANTEE** people free and unlimited access to knowledge, thought, culture and information.

(Reading Promotion Scheme 2001-2004. Ministry for Education, Culture and Sport.)

2. **PLAY** an important role in the development and maintenance of a democratic society by facilitating access to a wide and varied range of knowledge, ideas and opinions.

(IFLA/UNESCO Guidelines for the Development of Public Libraries' Services, 2001.)

3. **PROMOTE** acquisition and improvement in reading habits, especially amongst the child and youth population.

(Promotion of Reading Scheme 2001-2004. Ministry for Education, Culture and Sport.)

4. **CARRY OUT** a fundamental job in the development of educational systems by providing the necessary tools for acquisition of knowledge in all and every stage of learning.

5. **CARRY OUT.** An indispensable job in supporting research done by all types of institutions, by making necessary works and creations available to users for the development of their work.

6. **ACT** as showcases for the existing cultural products by holding and making available to the public works created by intellectuals, scientists and artists. The latter benefit in this way from the free use of the publicity and the dissemination of their ideas.

7. **GUARANTEE** the dissemination, preservation and accessibility to works of all types, beyond specific commercial interests, their distribution capacity and the whims of the market.

8. **OFFER** services within a framework of respect towards authors' rights, serving moreover as channels to spread among their users a knowledge of particular subjects and training them in the respectful use of protected works and subject-matter.

9. **DO NOT HAVE** profit making, economic or commercial aims, direct or indirect, seeking as their sole benefit the cultural, educational and human development of those they serve and, by extension, the improvement in the educational and competitive level of society as a whole.

10. **BELONG** to each and every citizen since they already pay for them with money derived from their taxes.

(Reading Promotion Scheme 2001-2004. Ministry for Education, Culture and Sport)

**We express our conviction in the need to:**

1. **SAFEGUARD** a fair balance between the interests of authors, publishers and society as a whole by means of the legal framework concerning copyright.

2. **GUARANTEE** society's cultural interests since it advances and develops through the promotion of research and the easy access to intellectual works. This is one of the foundations of the legal framework regulating intellectual property.

3. **MAINTAIN** the present lending limit contemplated in the current Intellectual Property Law in article 37.2 as an efficient instrument of a cultural promotion policy which, moreover, is in agreement with the legal framework created by the 92/100/EEC Directive on rental and lending.

The aforementioned Directive not only contemplates in Article 5 the possibility that each Member State freely determines remuneration for lending of works in accordance to their cultural promotion policies but also provides them with the power to exempt particular establishments from the remuneration of such payment.

4. **INSISTS** on the value of the lending services those institutions mentioned above provide since they benefit the rightholder both as a citizen and as a creator. Lending services are an indispensable tool for the creation of new readers and, therefore, of consumers of works.

5. **UNDERLINE** the importance of lending services those institutions mentioned above provide as indispensable tools to support education and research.

6. **HIGHLIGHT** the relevance of the investment that public institutions make on stock acquisition as a direct benefit for creators and the publishing sector in general. This investment constitutes society's expressed recognition of the importance of the role of both authors and publishers in cultural development.

7. **RECOGNISE** that for certain types of works their acquisition by the above-mentioned institutions is indispensable to guarantee their publication.

8. **AVOID** any type of penalisation against public lending services since it would go against the aims they seek which is none other than the benefit to the society they serve.

**Due to all this, we express our REJECTION of the possibility that public lending carried out by libraries and similar institutions, which at the moment benefit from the exemption contemplated in the Intellectual Property Law, should be subjected to the payment of financial compensation and we request that public authorities defend the preservation of the present lending limit in favour of these this type of institutions IN ITS EXACT SAME TERMS.**