



EBLIDA Statement on the infringement procedures over Public Lending Right

The European Commission has recently started infringement procedures against six Member States regarding their national implementation of the public lending right as harmonised by the Directive 92/100. As stated in its press release dated 16 January 2004 (IP/04/60), the intention of the European Commission is to put an end to the damage suffered by rights holders due to the remuneration exemptions provided by Spain, Italy, Ireland and Portugal in their laws.

Under the terms of Directive 92/100 (Articles 1 – 5), authors and other rights holders enjoy an exclusive lending right and may authorise or prohibit the public lending of their works or other protected subject matter. However, the Member States may derogate from these provisions and transform the exclusive lending right into a straightforward right to remuneration, which they are then obliged to pay, at least to authors. In addition, Directive 92/100 also provides Member States with the option to exempt certain categories of establishments from payment of such remuneration.

Directive 92/100 does not provide for an exhaustive list of the categories of establishments that may be exempted by the Member States. It only refers in Article 1 to 'establishments which are accessible to the public'.

Taking into account the discussions at the time in the European Parliament and the Council, both institutions recognised the need of the Member States of a degree of flexibility on which category of establishment to exempt for cultural and educational reasons.

EBLIDA is concerned with what seems to be an attempt to restrict this flexibility provided to the Member States by Directive 92/100.

Any interpretation of Directive 92/100 is subject to Directives adopted after 1992, especially Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, where the Council has listed the categories of establishments that qualify as 'establishments which are accessible to the public'. These are: publicly accessible libraries, educational establishments, museums and archives.

EBLIDA therefore urges the European Commission to recognise that in certain situations it may be necessary to apply the flexibility provided to the Member States to exempt, for cultural and educational reasons, the above mentioned establishments from paying remuneration for the lending of certain works.

The Hague, March 2004

