



# Educational Material on Collective Management of Copyright and Related Rights

## Module 4: Management of rights in print and publishing

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## PURPOSE OF THE MATERIAL

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Management of copyright and related rights has become an increasingly important element in a well-functioning copyright infrastructure, alongside with legislation and enforcement. Relevant information is needed both among governmental representatives, working for instance in copyright offices, and people working in the private sector, for instance in collective management organizations.

WIPO has therefore commissioned experts to write educational material to be used as reference material in conjunction with various training activities. The experts have, in close collaboration with many non-governmental organizations, drafted a comprehensive set of materials that covers all areas where collective management is customarily applied. The contribution of NGOs has been invaluable and the experts wish to thank all representatives for their assistance and guidance.

The way rights are exercised and managed varies greatly in different creative sectors. This program focuses on collective management. It takes a modular structure and covers the following sectors:

1. Module 1: General aspects of collective management
2. Module 2: Management of copyright and related rights in the field of music
3. Module 3: Management of copyright and related rights in the audiovisual field
4. Module 4: Management of rights in print and publishing
5. Module 5: Management of rights for visual arts and photography
6. Module 6: Management of rights in dramatic works

Each module is written as independent reading, together with module 1. For instance a reader, who is interested in print and publishing, can study modules 1 and 4.

The experts are Mrs. Tarja Koskinen-Olsson (Finland/Sweden) and Mr. Nicholas Lowe (United Kingdom). Their short biographies are enclosed.

## How to use the material

In all modules, the material is written on different levels to serve the purpose of different readers:

- The text under each main heading offers a general overview and can be read separately for quick comprehension of the issues at stake.
- The next level is operational and offers a description of collective management of copyright and related rights in each sector.
- The third level offers detailed information, examples and experiences from various regions.

The needs and interest of the reader will determine the use of the program. Cross references are used throughout the text, as many issues touch upon more than one sector.

### **Terminology**

A list of terms and how they are used is enclosed. This list also offers some explanations and alternative terms that are used in various countries.



## LIST OF TERMINOLOGY USED IN THE TRAINING MATERIAL

(EXPLANATION OR ALTERNATIVE TERM IN PARENTHESIS)

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**Blanket license** (general license covering the repertoire of a CMO)

**Cable-originated programs** (initiated by cable operators; program content from many sources)

**Collective management** (also called collective administration)

**Collective management organization (CMO)** (also called collective rights management organization (CRM); earlier called collecting societies)

**Composer, lyricist and music publisher** (rights holders of musical works)

**Copyright** (in common law countries; in civil law countries also called authors' rights)

**Grand rights** (dramatic and dramatico-musical works)

**Individual exercise of rights and collective management of rights**

**Management based on legislative support** (generic term for extended collective license, legal presumption and obligatory collective management)

**Mechanical rights** (right of reproduction in relation to musical works)

**Non-voluntary collective management** (management of rights under a non-voluntary license)

**Non-voluntary license** (generic term for compulsory license and statutory license)

**Owner of rights** (author or subsequent owner of rights)

**Performing right** (right of public performance, broadcasting, communication to the public)

**Private copying remuneration** (also called levy on recording equipment and media)

**Reciprocal representation agreement** (specific form of representation agreement)

**Related rights** (rights of performers, phonogram producers and broadcasting organizations; also called neighboring rights)

**Remuneration right** (right to equitable remuneration, fair compensation)

**Reproduction rights organization (RRO)** (specialized CMO in the text and image based sector)

**Reprography** (also called reprographic reproduction)

**Retransmission of broadcast programs** (simultaneous and unchanged retransmission by wire or by rebroadcasting)

**Rights holder** (generic name for authors, performers, producers, publishers and broadcasters)

**Small rights** (non-dramatic musical works)

**Transactional license** (work-by-work license)

**Voluntary collective management** (management of exclusive rights)

## **PUBLICATIONS ON MANAGEMENT OF RIGHTS IN TEXT AND IMAGE BASED INDUSTRIES**

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- IFRRO Members Directory (2011), Annual Publication
- A Quick Guide to Collective Management of Reproduction Rights in Text and Image Based Works, IFRRO Publication, 2011
- A Quick Guide to Distribution of Copyright Revenue in the text and Image based Sectors, IFRRO Publication, 2011
- Digital Business Models, IFRRO Study Papers, 2010
- The Art of Copying: A Guide to the Incorporation of Visual Material in Reprographic Schemes and Licenses, IFRRO Working Group on Copying of Visual Material, 2006
- IFRRO Manual: Collective Management of Copyright – How Reproduction Rights Organisations (RROs) Function, IFRRO Task Force under the leadership of Tarja Koskinen-Olsson, 2006
- IFRRO Handbook: How to Mentor a Reproduction Rights Organization (RRO), IFRRO Task Force under the leadership of Tarja Koskinen-Olsson, 2007
- WIPO – IFRRO Publication: Collective Management of Reprography, Tarja Koskinen-Olsson, 2005
- WIPO, Creative industries series, Booklet No. 1: Managing Intellectual Property in the Book Publishing Industry, 2007
- Public Lending Right in the World, Copyright and cultural policies, SOFIA/Éditions Dalloz 2008
- REPROBEL: Public Lending Rights, 9<sup>th</sup> International PLR Conference, 2011



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## MANAGEMENT OF RIGHTS IN PRINT AND PUBLISHING (MODULE 4)

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### CHAPTER 1

#### EXERCISE AND MANAGEMENT OF RIGHTS IN PRINT AND PUBLISHING

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**Print and publishing are among the largest creative industries in a society, covering a whole range of products and services and making available text-based content in both analogue and digital formats.**

The printing press was a truly revolutionary new technology when it was invented in the 15<sup>th</sup> century. Before then, books were copied by hand, and consequently there was no mass market for publications. The first copyright law was enacted in the United Kingdom in 1710 as a direct response to the printing press.<sup>1</sup>

Today, print and publishing is the biggest single cultural industry in many countries. It covers a great variety of products and services both for consumers and for business and professional markets. Books, scientific journals, magazines, periodicals and newspapers are just a few examples. They are published in analogue and digital formats.

The economic contribution of press and literature to the gross domestic product (GDP) of a country is among the two largest in measurements concerning the economic importance of copyright-based industries, alongside with the software industry.

The impact of print and publishing on knowledge, research and education and the knowledge economy is important. The sector's cultural importance and contribution to cultural diversity is enormous, due to the grand variety of products and services.

Authors in this sector range from writers of fiction and non-fiction to translators, journalists and various professional writers. Visual creators – photographers, illustrators and other visual artists – contribute to the visual element of publications. Works are brought to the market by publishers of books, journals, magazines, periodicals and newspapers.

Authors and publishers are called rights holders. They own or exercise copyright based on legislation and/or contracts. While copyright in print and publishing is mainly exercised through direct contracts between authors and publishers, there are cases where rights can be most effectively managed collectively.

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<sup>1</sup> WIPO-CISAC-IFRRO Publication: From Artist to Audience, 2004



Multiple reproductions, such as reprographic reproduction and large scale digitization, are examples of uses where collective management often represents a feasible way of managing rights for rights holders, users and society at large.

## 1.1 Market and economic contribution

**Creative industries are among major contributors to the economic growth of a nation and to the creation of jobs. These industries represent on average 5.4% of the gross domestic product (GDP) of a country. Press and literature is in most countries the largest contributor.**

Print media is a major contributor to the GDP in many countries. A WIPO Publication on Economic Contribution of the Copyright Industries (2012)<sup>2</sup> summarizes data from 30 national studies and shows the average figure of 5.4% of the GDP. Press and literature is by far the biggest contributor in generating added value and represents 40.5% of the total contribution. The share is even higher when employment is measured, 43.9% of the total.

The size and variety of the print and publishing industry can be illustrated by the following market figures.

### Books<sup>3</sup>

In 17 countries, books with a consumer value of over 1 billion euros are sold per year. On the top of the list are the United States, Germany, China and Japan, followed by the United Kingdom, France, Italy and India. It is estimated that more than 2 million titles were published in 2009 worldwide. This is an order of magnitude, rather than a precise number.

Number of titles produced per million inhabitants is another way to look at the book market. At the top of this list is Iceland with 2,452 titles published per million inhabitant (aggregated from 780 titles for 320,000 inhabitants), followed by the United Kingdom and Republic of Korea.

### Scientific journals<sup>4</sup>

There are about 23,000 scholarly journals in the world, published by 2,000 publishers. Collectively they publish around 1.4 million peer-reviewed articles a year.

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<sup>2</sup> WIPO Studies on the Economic Contribution of the Copyright Industries, 2012

<sup>3</sup> International Publishers Association (IPA), The Value of Books in the Global Knowledge Industry, [www.internationalpublishers.org](http://www.internationalpublishers.org)

<sup>4</sup> International Association of Scientific, Technical and Medical Publishers, About the Industry – Industry Statistics, [www.stm-assoc.org](http://www.stm-assoc.org)

Scientific, technical and medical (STM) journal publishing includes the following disciplines: health sciences, life sciences, materials science and engineering, physics, chemistry and chemical engineering, social sciences, biological sciences, mathematics and computer sciences, environmental sciences and earth sciences.

Most customers today access journals electronically and STM publishers have been at the forefront of digital dissemination, starting long before most other sectors.

### **Magazines, periodicals and newspapers**

More than 110,000<sup>5</sup> magazine and periodical titles cover consumer, business and professional markets.

In 2010, there were close to 15, 000 paid-for daily newspapers<sup>6</sup> worldwide and some 1.4 billion readers/day.

#### **1.1.1 Regional example from Africa: South Africa**

Educational publishing is the motor of the publishing industry in many countries. The importance can be illustrated by the case study from South Africa, where the share of education and academic sectors was close to 70% from the total turnover in 2010. PASA (Publishers' Association of South Africa) publishes survey reports on the state of the industry and the latest report on 2010 figures was published in November 2011<sup>7</sup>.

In the education sector, the share of local market sales of locally published books was 88.3%, and in the academic sector the corresponding figure was 64.2%.

## **1.2 About players in the market**

**Authors of various kinds and publishers of print and digital material are among the players in the market. They create works and make content available to the public.**

Authors in this sector range from writers of fiction and non-fiction to translators, journalists, scientists and other professional writers. Visual creators – photographers, illustrators, graphic designers and other visual artists – contribute to the visual element of publications. Publishers of books, journals, magazines, periodicals and newspapers bring the works to the market. Composers, lyricists and music publishers are involved in the creation and making available of sheet music and song books.

<sup>5</sup> The International Federation of the Periodical Press Ltd (FIPP)/Zenith Optimedia World Magazine Trends 2005/2006 book, [www.fipp.com](http://www.fipp.com)

<sup>6</sup> Figures from World Association of Newspapers and News Publishers (WAN-IFRA), 2011, [www.wan-ifra.org](http://www.wan-ifra.org)

<sup>7</sup> Publishers' Association of South Africa (PASA): Annual Book Publishing Industry Survey Report, 2010



Authors and publishers own or exercise copyright based on legislation and/or contracts. Copyright in print and publishing is mainly exercised through direct contracts between authors and publishers, but there are cases where collective management is applied.

### 1.3 How is copyright exercised and managed in print and publishing?

**In print and publishing, primary rights are exercised individually, i.e. rights are acquired and exercised by direct contracts between authors and publishers, publishers then marketing products and services to users. Collective management is widespread in cases of multiple uses, such as reprography and certain digital uses.**

A writer usually concludes a publishing contract with a publisher and gives the publisher a right to bring the work to the market. In return, the writer gets a share of the sales price as a royalty, and thus benefits from the economic success of the work.

If journalists are employed by a newspaper publisher, their copyright is usually covered by an employment contract and/or by legislation. Freelance writers and photographers customarily conclude license agreements with publishers. A scientist may entrust a scientific journal publisher with the rights to publish his article.

In all cases, publishers then decide how to market the works further both in the analogue and digital environments. The above rights are called primary rights and they are managed individually. This is the case also with some subsidiary rights, such as extract rights, serial rights and merchandizing rights.<sup>8</sup>

There are cases where certain multiple uses of already published works are most effectively managed by collective management organizations (CMOs). Collective management is a proper answer to wide-scale reproduction in analogue or digital forms, providing legal access to material protected by copyright. CMOs in this field are commonly called reproduction rights organizations (RROs).

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<sup>8</sup> Managing Intellectual Property in the Book Publishing Industry, WIPO, Creative industries – Booklet No. 1

## 1.4 Collective management as a solution

**Reproduction rights organizations (RROs) license the reproduction of material protected by copyright whenever it is impracticable or impossible for rights holders to act individually or they prefer to manage their rights collectively. In some countries, general literary rights CMOs have been established to manage various uses of literary works.**

Photocopying machines became commonplace in the late 1960s and early 1970s, producing a need for appropriate solutions to increasing levels of unauthorized photocopying, to turn it into lawful activity by securing access to users and remuneration to rights holders.

Today, photocopying and digital copying takes place everywhere in society and represents a massive use of printed material. If such copying is left unremunerated and takes place without the consent of authors and publishers, it poses a threat to all involved in print and publishing.

By mandating RROs to manage their copyright in practice, authors can concentrate on their creative activity and be remunerated for the use of their works. The same applies to publishers; remuneration collected by RROs is part of their return on investment that enables them to bring new books and other publications to the market.

As early as 1955, a decision of the Federal Court of Justice in Germany ruled that the reproduction of an article from scientific journals by an industrial firm, to be used by its employees, was not a free use which could take place without the consent of rights holders.<sup>9</sup> In 1958, the organization VG WORT<sup>10</sup> was established in Germany as a general literary rights organization for authors and publishers.

The first RRO to specialize in the management of reprography, Bonus<sup>11</sup>, was established in Sweden in 1973. The explosive development of RROs worldwide during the 1980s and thereafter is an example of successful collective action in response to the challenges of technology. Today, together 84 RROs in membership of IFRRO operate in 76 countries.<sup>12</sup> They manage analogue and digital copying as well as making available and distribution of copies.

In some countries, general literary rights CMOs are in charge of reproduction, public performance and broadcasting rights in relation to literary works. Public lending right can also be managed collectively by CMOs.

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<sup>9</sup> Collective Management of Copyright and Related Rights by Dr. Mihály Ficsor, WIPO Publication No. 85 (E)

<sup>10</sup> Verwertungsgesellschaft WORT (VG WORT), Germany, [www.vgwort.de](http://www.vgwort.de)

<sup>11</sup> Since 1999, Bonus Presskopia, Sweden, [www.bonuspresskopia.se](http://www.bonuspresskopia.se)

<sup>12</sup> August 2012, The International Federation of Reproduction Rights Organisations (IFRRO), [www.ifrro.org](http://www.ifrro.org)



## CHAPTER 2

### RIGHTS HOLDERS AND RIGHTS IN REPROGRAPHY

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**National copyright legislation needs to be in harmony with commonly accepted international and regional norms. Without good legislation, there is little room for an RRO to operate.**

The exclusive right of reproduction is the starting point. The law grants the author of a work a right to decide whether to authorize or prohibit its use by reproduction. This right may be transferred or assigned. The rights holder may want to exercise the right himself in each and every circumstance or he can decide to authorize another, such as an RRO, to exercise this right in certain or all cases. The right of reprographic reproduction or reprography is a subcategory of the right of reproduction.

There is a clear link between legislation and management and different legislative alternatives lead to different scenarios for both rights holders and users. It is thus important to understand the consequences of various legislative options.

Where the law provides an exclusive right of reproduction in its purest form, the activities of RROs are based solely on voluntary mandates from participating rights holders. This is called voluntary collective licensing and an RRO negotiates licenses on behalf of the rights holders it represents. Consequently, users can only obtain a license covering works of those rights holders. This is the case for instance in the United States of America.

In some countries, legislation includes some form of support mechanism for collective management with the aim of dealing with the challenge of non-represented rights holders while maintaining an exclusive right as the point of departure. Three such legislative support mechanisms are extended collective license, legal presumption and obligatory collective management. The Nordic countries, Zimbabwe and France offer examples of such mechanisms.

If rights holders only have a mere right to remuneration, the consent to copy is given in the law, but rights holders receive remuneration for such copying. The services of RROs are needed to collect and distribute the remuneration. This is the case for instance in Australia in educational and government copying. In other cases special remuneration or compensation through a copyright payment on copying equipment can be provided by legislation. Again, the RROs are in charge of collection and distribution of the payments, also called “levies”. This is the case for instance in Belgium.

If the law contains free usages, either in the form of fair use/fair dealing or by an exception or limitation on the right of reproduction, no management is needed. Copying in such instances is permitted by law without the consent of rights holders

and without remuneration to them. Vast and vaguely defined free usages can be a real hurdle and make collective management impossible.

International and regional legislation form the guidelines for national laws in respect of the right of reproduction and the scope of possible exceptions/limitations.

## 2.1 Legislative framework

**The main treaty obligations of a country are prescribed in the Berne Convention, the TRIPS Agreement and the WIPO Copyright Treaty (WCT).**

### International treaties

According to Article 9 of the Berne Convention<sup>13</sup>, the author of a literary or artistic work has the exclusive right to authorize the reproduction of his work *“in any manner or form”*. Reproduction, or copying, takes place in many different forms, such as:

- Printing
- Photocopying (also called reprographic copying)
- Scanning
- Downloads from internet
- Posting to internal networks (intranets)
- Digital copying (for instance on CDs and DVDs)
- Electronic storage in databases.

The exclusive right to authorize the reproduction of a work may be subject to exceptions and/or limitations under the Berne Convention. Copying for private purposes and making of preservation copies in libraries serve as examples of such cases.

Article 9 (2) of the Berne Convention gives a general framework for permissible exceptions and/or limitations:

*“It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”*

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<sup>13</sup> In August 2012, 165 countries have adhered to the Berne Convention for the Protection of Literary and Artistic Works





The scope of exceptions and limitations is also restricted by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>14</sup>, administered by the World Trade Organization. Article 3 of the TRIPS Agreement states:

*“Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the interests of the right holder.”*

The same principle is expressed in Article 10 of the 1996 WIPO Copyright Treaty<sup>15</sup> (WCT).

In the light of these regulations, exceptions and limitations are only allowed if three conditions are fulfilled (so called three-step-test), namely:

- Limitations or exceptions may concern only “special cases”, and must not be generalized;
- They cannot conflict with the normal exploitation of the work;
- They cannot unreasonably prejudice the legitimate interests of the right holder.

The above criteria for restricting exclusive rights are cumulative; they must all be met in order for limitations or exceptions to be permissible.

Since the right of reproduction is an exclusive right, exceptions or limitations should not jeopardize this point of departure in national legislation. Wide-spread reproduction should not be left unremunerated in any case of large scale or multiple exploitations. For instance, massive copying takes place in universities and other educational institutions. If such copying by these institutions takes place without the consent of, and remuneration to, rights holders, it may prejudice their legitimate interests.

There should be a balance between the rights of rights holders and the interests of users. RROs play a major role in society, facilitating rapid and lawful access to information and knowledge in a relative inexpensive way.

### **Regional legislation: the European Union**

The Directive on the harmonization of certain aspects of copyright and related rights in the information society<sup>16</sup> deals with reproduction right and possible exceptions and limitations. A new concept of “fair compensation” was introduced in the directive.

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<sup>14</sup> In August 2012, 157 countries have adhered to the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) (1994)

<sup>15</sup> In August 2012, 89 countries have adhered to the WIPO Copyright Treaty (WCT) (1996)

<sup>16</sup> Directive 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001

Article 5 of the directive includes a list of possible exceptions or limitations that Member States may include in national legislation. Except for one<sup>17</sup>, they are all optional and it is left for the Member States to consider whether and in which form to include them in national legislation.

As to the right of reproduction, including reprography, the relevant paragraph reads as follows:

*“In respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or some other process having similar effects, with the exception of sheet music, provided that rights holders receive fair compensation”*

The Directive introduces a new concept, fair compensation, which is a prerequisite in the following three cases of exceptions and limitations:

- Reprography: Article 5.2 (a)
- Private copying: Article 5.2 (b)
- Reproductions of broadcasts made by social institutions: Article 5.2 (e)

Preamble 35 of the Directive offers guidelines for national legislators by stating that *“In certain cases of exceptions or limitations, rights holders should receive fair compensation to compensate them adequately for the use made of their works”*.

The Directive leaves the determination of the form, detailed arrangements and the level of such fair compensation to the Member States, but some form of compensation is a minimum requirement. Alternatively, national legislation may provide for an exclusive right of reproduction as is the case in the United Kingdom. Stipulations concerning management of rights may exist in national legislation, such as extended collective licenses in the Nordic countries.

But what is important in this context: legislation must as a minimum ensure fair compensation to rights holders for reprography and private copying.

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<sup>17</sup> Article 5 (1) on certain temporary acts on reproduction



## 2.2 Different models of collective management of text and image based works

**The establishment of an RRO will provide an important support mechanism for national copyright legislation, increasing the earnings of national rights holders and thereby encouraging and supporting their creative input and investment.**

The main operational systems to manage reprography and their subcategories are:

- Voluntary collective licensing
- Collective licensing with legislative support
  - Extended collective license
  - Legal presumption
  - Obligatory collective management
- Non-voluntary collective management
  - Non-voluntary licenses
  - Remuneration through a levy system

The main difference lies in the nature of the right. In case of an exclusive right, licensing is based on voluntary mandates, either in total or for the majority of rights holders. A possibility to prohibit the use of protected works exists. Licensing is an essential element of collective management.

In non-voluntary collective management systems, the law gives rights holders only a right to remuneration. Thus copying takes place without the consent of rights holders, but they have a right to equitable remuneration. Collective management is needed to collect the remuneration and to distribute it to rights holders.

Experience shows that all different operational systems can bear fruit. The question is thus to analyze which system suits best the infrastructure of the country, and is in line with its legal, political, economic and social realities, as well as its international obligations.

## 2.3 Voluntary collective licensing

**In voluntary collective licensing, an RRO issues licenses to use protected material on behalf of those rights holders who have given it a mandate to act on their behalf.**

RROs obtain licensing authority from mandates given by national rights holders, and the international repertoire through bilateral agreements with RROs in other countries. These representation agreements are commonly based on the principle of reciprocal representation.

Users would have to approach non-represented rights holders directly. Users are however normally interested in obtaining clearance for all works of a particular category. An RRO in such a system may consider offering an indemnity clause in the license contract. In this clause the RRO would agree to financially cover all claims made against the user by any rights holder – whether or not a member of the RRO – that would be covered by the license if the rights holder were a member. A contract cannot, however, transfer liability under criminal law.

Many RROs, especially in countries following the Common Law tradition, generally base their activities on voluntary contracts. Even in the case of voluntary licensing, copyright legislation may include stipulations that govern the activities of the RRO.

In the following, different voluntary licensing systems are described in more detail by giving examples on how the model functions in different countries.

### 2.3.1 Regional examples from Latin America and the Caribbean: Jamaica and Colombia

#### Jamaica

Legislation can clearly encourage rights holders to establish an RRO. This is the case in Jamaica, where the Jamaica Copyright Act of 1993 allows for reproduction in education under certain exceptions and limitations to the right of reproduction in cases where voluntary licensing is not readily available. After the establishment of the Jamaican Copyright Licensing Agency (JAMCOPY)<sup>18</sup> in 1998, such reproduction became subject to a license.

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<sup>18</sup> Jamaican Copyright Licensing Agency (JAMCOPY), Jamaica, [www.jamcopy.com](http://www.jamcopy.com)



## Colombia

In Colombia, CDR (Centro Colombiano de Derechos Reprográficos)<sup>19</sup> obtained governmental recognition as a collective management organization in 2000, and a necessary authorization for operation was granted in 2002 by the relevant government authority (Dirección Nacional de Derecho de Autor). CDR started licensing in 2003 and it was facilitated when the National Directorate issued an obligation to take up a license. Today CDR licenses universities, schools, companies, libraries and copy-shops based on the model of voluntary collective licensing.

### 2.3.2 Regional example from North America: The United States

Copyright Clearance Center, Inc. (CCC)<sup>20</sup> was founded in 1978 at the suggestion of the U.S. Congress that an efficient mechanism for the exchange of rights and royalties be created to facilitate compliance with the then newly revised copyright law.

Creators, publishers and users came together to form CCC. There is no direct legislative authority but, rather, CCC obtains authorizations to license various uses of copyrighted material through voluntary contracts with individual rights holders.

Thus, voluntary collective licensing through CCC is based solely on non-exclusive contracts. Authors and publishers determine which works are to be included in different licensing programs. In most programs they can set the prices individually for each work.

### 2.3.3 Regional example from Europe: The United Kingdom

The United Kingdom copyright act includes stipulations on licensing schemes and licensing bodies; sections 116-117 of the Copyright, Designs and Patents Act, 1988 deal with licensing schemes and licensing bodies.

The Copyright Licensing Agency (CLA)<sup>21</sup> was incorporated as a non-profit-making company limited by guarantee in 1983. Authors' Licensing and Collecting Society (ALCS)<sup>22</sup> representing various groups of authors, Publishers Licensing Society (PLS)<sup>23</sup> representing publishers and CLA reached a tripartite agreement in which the societies appointed CLA as their agent to administer their members' rights.

In 1984, the Publishers Association won a test case against Manchester City Council for the unauthorized copying of textbooks, and Local Education Authorities (LEAs) needed to take out licenses or risk prosecution; 116 LEAs agreed to pay CLA a token

<sup>19</sup> Colombian Center of Reprographic Rights (CDR), Colombia, [www.ceder.com.co](http://www.ceder.com.co)

<sup>20</sup> Copyright Clearance Center, Inc. (CCC), United States, [www.copyright.com](http://www.copyright.com)

<sup>21</sup> The Copyright Licensing Agency Ltd (CLA), United Kingdom, [www.cla.co.uk](http://www.cla.co.uk)

<sup>22</sup> Authors' Licensing and Collecting Society (ALCS), United Kingdom, [www.alcs.co.uk](http://www.alcs.co.uk)

<sup>23</sup> Publishers Licensing Society (PLS), United Kingdom, [www.pls.org.uk](http://www.pls.org.uk)

fee to run an 18-month pilot scheme to establish the volume of copying in schools and colleges upon which a permanent licensing scheme could be based. The initial blanket license for state schools and colleges formed the basis for licenses negotiated with independent schools, polytechnics and universities.

### 2.3.4 Regional example from Africa: Kenya

Reprography licensing is based on voluntary mandates in Kenya where the law also requires an approval from the government before operations.

KOPIKEN<sup>24</sup>, the Reproduction Rights Society of Kenya, was established in 1995. Its first collection started in 2000 and distribution the year thereafter. KOPIKEN was the first CMO in Kenya to be registered by the Kenya Copyright Board<sup>25</sup> (the copyright office in Kenya) under the Copyright Regulations of 2004.

### 2.3.5 Regional example from Asia-Pacific: The Philippines

The Book Publishing Development Act of 1995 and the National Book Policy of 1999 support the establishment of collective management organizations. In 1998, the Intellectual Property Code of the Philippines provided for voluntary licensing. Section 183 allows copyright owners or their heirs to designate a society of artists, writers or composers to enforce their economic rights and moral rights on their behalf.

The Filipinas Copyright Licensing Society, Inc. (FILCOLS)<sup>26</sup> was established in 2008 through government partnership with rights holders. The National Book Development Board and the Intellectual Property Office of the Philippines encouraged the Book Development Association of the Philippines and the Writers Union of the Philippines to organize and support FILCOLS.

## 2.4 Collective licensing with legislative support

**Voluntary collective licensing is in some countries supported by legislation. The underlying idea is to guarantee a fully covering license vis-à-vis users and eliminate the challenge of non-represented rights holders.**

Since no collective management organization can represent all rights holders in its own country, let alone all countries of the world, legislative support can cover the situation of non-represented rights holders. The underlying idea in these models is the same, but the legislative technique is different.

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<sup>24</sup> The Reproduction Rights Society of Kenya (KOPIKEN), Kenya, [www.kopiken.org](http://www.kopiken.org)

<sup>25</sup> Kenya Copyright Board, [www.copyright.go.ke](http://www.copyright.go.ke)

<sup>26</sup> The Filipinas Copyright Licensing Society, Inc. (FILCOLS), Philippines, [www.filcols.blogspot.com](http://www.filcols.blogspot.com)



RROs operate under different legislative support mechanisms:

- Extended collective license
- Legal presumption
- Obligatory collective management.

### **2.4.1 Extended collective license**

An extended collective license extends the effects of a copyright license to also cover non-represented rights holders. The RRO issuing the license must distribute the remuneration also to non-represented rights holders.

During the 1970s the Nordic countries introduced a legislative solution called the extended collective license (ECL) in the field of reprography. Under these laws, agreements between users and organizations representing a substantial number of rights holders in a given category of works can be extended by virtue of the law to cover all rights holders in that category (the extension effect). An essential element of an ECL is that rights holders have a possibility to opt out, i.e. to withdraw their works from the license. The system is best suited in countries where rights holders are well organized, as is the case in Nordic countries.

Starting originally in the Nordic countries, this legal technique is now in force, or under consideration, in a number of other countries. Starting with reprography, the extended collective license now covers digital copying in education and libraries.

### **Malawi**

COSOMA (Copyright Society of Malawi)<sup>27</sup> is a CMO operating in the field of music and print. It was established in 1992 by an Act of Parliament. Currently it administers members' broadcasting rights, mechanical reproduction, public performance and reprographic rights. In 2004, COSOMA collected its first remuneration for reprography. Licensing is supported by an extended collective license stipulation.

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<sup>27</sup> Copyright Society of Malawi (COSOMA), Malawi, [www.ifro.org/members/copyright-society-malawi](http://www.ifro.org/members/copyright-society-malawi)

## Denmark

Collective management organizations in Denmark must be approved by the Danish Ministry of Culture. To qualify as an organization under the extended collective license system, Copy-Dan<sup>28</sup> has to represent a substantial number of rights holders of a certain type of works which are used in Denmark. An agreement concluded between users and Copy-Dan gives the user the right to exploit the works of represented and non-represented rights holders.

Copy-Dan started originally licensing educational activities 1980. The extended collective license was in 1985 broadened to cover photocopying by businesses and enterprises, both in the public and private sectors. The 1998 revision broadened the license to digital copying within educational activities, and in 2002 to digital copying by research libraries.

### 2.4.2 Legal presumption

Management of the right of reproduction as an exclusive right is a voluntary act. The law presumes that a CMO represents all rights holders unless they advise otherwise and thus makes the licenses of the RRO fully covering. The effects of legal presumption are much the same as those of an extended collective license.

## Zimbabwe

A new Copyright and Neighboring Rights Act is operation in Zimbabwe. Regulations were passed at the end of 2006. Paragraph 125 of the law includes a presumption regarding registered collecting societies. The effect of the presumption is that CMOs who represent the majority of members of a particular class are presumed to represent all rights holders in the class.

### 2.4.3 Obligatory collective management

An exclusive right is a voluntary act, but in cases of obligatory collective management rights holders do not have the choice of granting permission on an individual basis. All claims must be made through a CMO.

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<sup>28</sup> COPY-DAN Writing, Denmark, [www.copydan.dk](http://www.copydan.dk)





## France

In 1995, the legislation in France introduced the concept of obligatory collective management in the area of reprographic reproduction rights. The law transfers the author's exclusive right to license reproduction rights to a collective management organization, which has to be approved by the Ministry of Culture. The terms and conditions of the licenses are not determined by the law but are agreed by rights holders and negotiated with users through the approved CMO.

The Ministry of Culture has approved two organizations: CFC (Centre Français d'exploitation du droit de Copie)<sup>29</sup> for books and periodicals and SEAM (Société des Editeurs et Auteurs de Musique, France)<sup>30</sup> for music sheets. CFC and SEAM represent all rights holders by virtue of law and are alone entitled to grant licenses to reproduce to users for all published works. This safeguards the position of users, as an individual rights holder cannot make claims against them.

## 2.5 Non-voluntary collective management

**In a non-voluntary system, the license to copy is given by law and consequently no consent from rights holders is required. They have, however, a right to remuneration, which is collected by an RRO.**

There are two ways to construct a non-voluntary scheme and both options are in use in RRO activities. They are:

- Non-voluntary license
- Remuneration through a levy system

### 2.5.1 Non-voluntary license

There are two variations of non-voluntary licenses. The remuneration can be a usage fee which right holders and users can negotiate (compulsory license) or the remuneration may be fixed by law (statutory license). Both statutory and compulsory licenses fall under the broader term of non-voluntary licenses.

In some countries, a non-voluntary license is only introduced for copying in education and/or for government copying. In others, a non-voluntary license covers all copying. In some countries, statutory provisions cover also certain digital uses.

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<sup>29</sup> Centre Français d'exploitation du droit de Copie (CFC), France, [www.cfcopies.com](http://www.cfcopies.com)

<sup>30</sup> Société des Editeurs et Auteurs de Musique (SEAM), France, <http://www.ifrro.org/members/soci%C3%A9t%C3%A9-des-editeurs-et-auteurs-de-musique>

## Australia

An educational statutory license and government copying provisions are part of the Australian Copyright Act of 1968. The Copyright Agency Limited (CAL)<sup>31</sup> has been approved by the government to administer the educational statutory license and the government copying provisions. The statutory license for educational institutions extends to the sale of books of readings (course packs) to students, provided there is no intent to make a profit. The provisions allow electronic reproductions and/or communications of works to users. The appropriate license fees are to be negotiated, and only if agreement cannot be reached are they determined by the Copyright Tribunal. For other sectors, such as businesses, voluntary licenses are offered.

## Singapore

The Singapore Copyright Act (Cap. 63) provides for an educational statutory license which allows copying or communication of works by educational institutions, subject to certain limits on the portions of a work that may be copied or communicated. CLASS (The Copyright Licensing and Administration Society of Singapore)<sup>32</sup> has the mandate from member book publishers and authors to administer the educational statutory licenses copying provisions on their behalf. The mandate covers both analogue and digital copying. The license fees are typically agreed between CLASS and the educational institutions. In default of agreement, the Copyright Act provides that an application may be made to the Copyright Tribunal for determination of the amount payable.

## Switzerland

In Switzerland, a non-voluntary license covers reproduction for internal information and documentation purposes of portions of works in schools, public administration, libraries, copy-shops, services, industry and trade. The provisions are technology-neutral and cover also electronic copying. Tariffs are not fixed by statute, but negotiated between the national RRO, ProLitteris<sup>33</sup>, and user's associations based on a set of rules contained in the copyright law. They are also subject to approval by the Federal Arbitration Commission.

### 2.5.2 Remuneration through a levy system

Remuneration through a levy system is another form of non-voluntary licensing, as the rights holders' consent for copying is not needed, but they have a right to equitable remuneration or fair compensation.

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<sup>31</sup> Copyright Agency Limited (CAL), Australia, [www.copyright.com.au](http://www.copyright.com.au)

<sup>32</sup> The Copyright Licensing and Administration Society of Singapore (CLASS), Singapore, [www.class-singapore.com](http://www.class-singapore.com)

<sup>33</sup> ProLitteris, Switzerland, [www.prolitteris.ch](http://www.prolitteris.ch)



The levy system is often composed of two elements:

- A payment on hardware (equipment levy), such as copy-machines, fax machines, reader printers, scanners, multifunctional devices and CD and DVD burners
- A user payment (operator levy) which is paid by schools, colleges, universities, libraries, as well as government and research institutions for large volume photocopying

In most countries having such remuneration systems, there is a combination of an equipment and operator levies. In a few countries only the equipment levy is payable. There are also some countries where the legislation provides for a levy on the underlying material, such as photocopy paper. The liability to pay the levy lies with the importer or local manufacturer, but the fee is customarily passed on to the consumer price. In some countries, the vendor has a secondary liability for payment of the fee.

Non-voluntary schemes with a levy system cover also a range of equipment that enable digital copying of text and image based works, such as scanners, multifunctional devices, printers, CD/DVD burners and PCs.

## Belgium

The equipment levy functions as follows: Producers, importers and (EU) intracommunity purchasers ("*contribution debtors*") have to pay a fixed amount for all photocopying devices – copying and fax machines, duplicators, office offset machines and scanners – that come into the Belgian market.

The operators' levy functions as follows: All natural and legal persons copying copyright works on a machine under their charge, supervision and control, have to pay remuneration proportional to the number of copies made of copyright works. The law considers them "*remuneration debtors*". They are mostly enterprises, copy shops, government institutions, schools, associations, independent workers, professionals and individuals.

Whereas the majority of the revenue collected by REPROBEL<sup>34</sup> comes from the equipment levy, some 40% comes from the operator fees.

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<sup>34</sup> REPROBEL, Belgium, [www.reprobel.be](http://www.reprobel.be)

## Burkina Faso

Law No. 032-99 on the protection of literary and artistic works includes a chapter V “Remuneration for private copying”. According to Article 81:

*“The authors and performers of works fixed on phonograms or videograms, as well as the producers of such phonograms or videograms, shall be entitled to remuneration for the reproduction of the said works intended strictly for personal and private use and not intended for collective use.*

*Remuneration for private copying shall be collected on behalf of the successors in title by the collective management organization which must, once the management fees have been deducted, allocate 50 per cent of the sums collected to a fund for the promotion of culture.”*

BBDA (Bureau Burkinabè du Droit d’Auteur)<sup>35</sup> is the multipurpose CMO in the country.

## 2.6 Combination of models

**In several cases more than one model is in use in one country. Voluntary licensing may complement non-voluntary schemes to meet the demand from users.**

In countries where copyright law includes statutory provisions for some usage areas, rights holders have established voluntary licensing schemes to address user needs in other sectors. In these sectors, licenses cover the repertoire of mandated rights holders.

To illustrate this mix of models that harmoniously work side by side, two examples are given:

### Australia

An educational statutory license and government copying provisions are part of the Australian Copyright Act of 1968. For other sectors, voluntary licenses are offered; examples range from corporations to government press clippers, associations, local government and worship use.

### France

Whereas reprography is covered by obligatory collective management, digital uses in education are licensed on the basis of a combination of non-voluntary licensing and voluntary mandates for digital rights. Digital reproduction for the internal information of corporations is covered by voluntary licensing.

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<sup>35</sup> Bureau Burkinabè du Droit d’Auteur (BBDA), Burkina Faso, [www.bbda.bf](http://www.bbda.bf)

## CHAPTER 3

### COLLECTIVE MANAGEMENT OF TEXT AND IMAGE BASED WORKS

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**In today's knowledge-based society, legal access to material protected by copyright is crucial. By providing a link between rights holders and users of copyrighted material, RROs serve their constituencies – authors and publishers – and ensure at the same time lawful access to users.**

The legal status and organizational form of an RRO vary from country to country, depending on general legislation. Most RROs are private, not-for-profit organizations. Many RROs are specialized organizations managing collectively certain secondary uses of text and image based works; others have additional tasks, such as public lending rights.

It is important that the organizations follow high standards of good governance. The International Federation of Reproduction Rights Organisations (IFRRO) as the most comprehensive network of non-governmental organizations in the text and image based sector has developed instruments to help its member RROs achieve and maintain high standards of governance.

The IFRRO Code of Conduct sets out the standards of services that authors and publishers as well as users can expect when dealing with RROs and describes performance standards that RROs are expected to follow. Dealings between RROs in various countries are covered by a separate instrument which is complimentary to the Code of Conduct. It also addresses the relationship to rights holders and users.

Rights acquisition from participating rights holders is a key task for an RRO at the outset. As trusted third parties, RROs must manage the rights with integrity and honesty securing transparency of activities vis-à-vis their constituencies and other stakeholders. National repertoire can be acquired through mandates directly from authors and publishers or through their organizations. Foreign repertoire is acquired through bilateral agreements with RROs in other countries.

It is important to ensure early on that the RRO represents different genres of works, be it visual material, musical works or newspapers and similar publications. The larger the repertoire of an RRO is, the better it can serve the users and grant licenses for all types of works that are being copied.

The needs of special user groups, such as print-disabled, can be served by RRO licensing schemes. Collective licensing is also a feasible tool to enable large scale digitization of older material among others in libraries. Such collections customarily

include works that are out-of-commerce (also called out-of-print works) or are classified as orphan works.

### 3.1 Organizational issues

**As collective management organizations, RROs take many different forms depending on the legislation in the country. Most RROs function as not-for-profit organizations, set up and run for rights holders.**

#### Organizational form

The scope and the organizational form of an RRO are major issues to tackle at the outset, followed by registration and approval of the competent authority, if that is required by the legislation.

Legal incorporation and registration are subject to the organizational form and legislation of the country. Provisions in general law apply in this respect.

RROs have been established as:

- Association, for example KOPIOSTO<sup>36</sup> in Finland
- Limited liability company: for example KOPIKEN in Kenya
- Foundation, for example STICHTING REPRORECHT<sup>37</sup> in the Netherlands

#### Objectives

The statutes of an RRO define the governance structure and the objectives of the organization.

A concrete example of the objectives of an RRO can be found in the statutes of Access Copyright<sup>38</sup> incorporated under the Canada Corporations Act:

The objectives of the Corporation are:

- To advocate, protect and advance the interests of authors and publishers, and other copyright owners who have legal rights in copyright works which are subjected to reproduction, including reprographic, digital and analogous copying, performance, exhibition and presentation, and transmission, including retransmission; and to facilitate their participation in the digital marketplace for copyright works;

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<sup>36</sup> KOPIOSTO, Copyright Society, Finland, [www.kopiosto.fi](http://www.kopiosto.fi)

<sup>37</sup> Stichting Reprorecht, Netherlands, [www.reprorecht.nl](http://www.reprorecht.nl)

<sup>38</sup> Business name CANCOPY, Canada, [www.accesscopyright.ca](http://www.accesscopyright.ca)



- To facilitate authorized public access to copyright works by licensing and other services and by collecting and distributing royalties and other compensation for use of copyright works to copyright owners individually and for collective social and cultural purposes;
- To research and study copyright questions relating particularly to collective administration and management of copyright in the context of economic, social, cultural and technological developments; and to provide information to creators and publishers, users and the public generally about copyright;
- To increase public awareness and understanding of copyright including the collective administration and management of copyright, to monitor unauthorized use or infringement of copyright material, and to promote compliance with licensing arrangements and copyright laws;
- In carrying out the above purposes, to co-operate with Canadian and foreign reproduction rights organizations, international organizations representing reproduction rights organizations or promoting copyright protection, Canadian, foreign and international societies which represent creators and publishers, and others interested in copyright, literacy, incentive for literary and artistic creation and the wider dissemination of copyright works; and
- For the further attainment of the above objects, to accept grants, donations and bequests, to receive and maintain funds, and to use, apply, give, devote or distribute from time to time some or all of the funds of the Corporation and the income therefrom.

### **Scope of the activity**

Collective rights management is the core activity of an RRO. It customarily involves licensing certain large scale uses on behalf of authors and publishers or collection of remuneration on their behalf and distributing the revenue to rights holders. It is often question of reprography and digital forms of exploitation, as users wish to exploit copyrighted material in both analogue and digital form. For a new RRO, it is therefore important to include digital rights in mandates from rights holders at the formation stage.

Additional areas of activity may be included. The most common area especially in Europe is the management of public lending right.

Collective management of text and image based works may also be included as a specific area in multi-purpose or multidisciplinary organizations that have customarily started out by managing rights in musical works. A relevant consideration, especially in smaller countries, is to determine how many different CMOs are feasible in the same national market.

There are also coalitions or “umbrella organizations” under which different groups of rights holders are grouped for joint management of various secondary uses.

### 3.1.1 Examples of organizational structures

#### General literary rights organizations

Many of the oldest organizations had their genesis in general literary rights organizations, which later began to deal with reprography as part of their activities.

- Germany: VG WORT was formed in 1958 and started to collect for reprography in 1965. It also manages public lending right, private copying levies, video rentals and various secondary broadcasting rights.
- South Africa: the Dramatic, Artistic and Literary Rights Organisation (DALRO)<sup>39</sup> was incorporated in 1967 and started collecting reprography fees in 1990. It is a multi-purpose CMO that also manages public performance rights, radio and television broadcasting rights, film rights and reproduction rights in works of visual art. DALRO is a wholly-owned subsidiary of Southern African Music Rights Organisation (SAMRO); DALRO is thus one of the best examples of the incubation of one CMO by another.

#### Organizations managing reprography and certain digital uses

RROs started primarily managing reprography, but by keeping pace with technological developments, most today also manage digital uses.

- France: CFC was founded in 1984
- Japan: JRRC<sup>40</sup> was incorporated in 1991
- Mexico: CEMPRO<sup>41</sup> was incorporated in 1998
- Republic of Korea: KRTRA<sup>42</sup> was incorporated in 2000
- Argentina: CADRA<sup>43</sup> was founded in 2000

<sup>39</sup> Dramatic, Artistic and Literary Rights Organisation (DALRO), South Africa, [www.dalro.co.za](http://www.dalro.co.za)

<sup>40</sup> Japan Reprographic Rights Center (JRRC), Japan, [www.jrrc.or.jp](http://www.jrrc.or.jp)

<sup>41</sup> Centro Mexicano de Protección y Fomento de los Derechos de Autor (CEMPRO), Mexico, [www.cempro.com.mx](http://www.cempro.com.mx)

<sup>42</sup> Korea Reprographic and Transmission Rights Association (KRTRA), Republic of Korea, [www.copycle.or.kr](http://www.copycle.or.kr)

<sup>43</sup> Centro de Administración de Derechos Reprográficos (CADRA), Argentina, [www.cadra.org.ar](http://www.cadra.org.ar)



- Slovenia: SAZOR GIZ<sup>44</sup> was incorporated in 2007
- Zambia: ZARRSO<sup>45</sup> was incorporated in 2010

### **Coalitions or “umbrella organizations”**

The RRO may also be a part of a group of entities under which different rights holders are grouped for joint management of various secondary rights. Such organizations normally have different units or departments for each licensing sector.

Denmark: Copy-Dan was founded 1980 as an umbrella organization for several independent organizations, including Copy-Dan Writing (the Danish RRO). Other organizations under the umbrella deal with cable retransmission (COPY-DAN Cable TV), the use of recorded radio and TV programs in teaching (COPY-DAN AV copies for education), blank tape levies (COPY-DAN Blank Tapes) and visual arts (COPY-DAN Pictorial Arts).

### **Multipurpose organizations**

There are some RROs which are true multi-purpose organizations covering several industry sectors. Because music was the first industry sector to develop collective management, music organizations are often the oldest CMOs, and in some countries it was the music CMO that decided to engage in licensing reprography:

- Malawi: COSOMA was founded in 1992 and started licensing musical works. After some 10 years it established a unit for licensing reprography. In 2004, the first licensing agreements were concluded with higher and further education institutions, among them the University of Malawi.
- Burkina Faso: BBDA is a multipurpose organization dealing with music, literature, visual art and photography, choreography and dramatic works. Its first year of collection was 2003 and in 2009 it started to collect reprography fees.

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<sup>44</sup> Slovenian Organization of Authors and Publishers for reproduction Rights (SAZOR GIZ), Slovenia, [www.sazor.si](http://www.sazor.si)

<sup>45</sup> Zambia Reprographic Rights Society (ZARRSO, Zambia, <http://www.ifrro.org/members/zambia-reprographic-rights-society>)

### Sub-regional initiatives

In small countries it may be feasible to consider some form of regional cooperation.

- The East-Caribbean Copyright Licensing Agency (ECCLA)<sup>46</sup> was established in 2011 in the OECS Member States: Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines. Its principal office is in St. Lucia. The establishment of ECCLA grew out of a series of consultation meetings sponsored by WIPO and IFRRO.

## 3.2 Governance issues, including IFRRO Code of Conduct

**An RRO functions as a trustee or an agent of rights holders. Internal control is in the hands of the constituencies: authors, publishers and their representatives. The International Federation of Reproduction Rights Organisations (IFRRO) groups together all these stakeholders and offers guidance on governance issues.**

The issue of good governance of CMOs is of particular importance, as CMOs deal with other people's money that they hold in trust. Measures that prevent misuse of this trust-based remuneration, corruption and other similar misuses need to be in place within the organization. To achieve transparency and openness, credibility and responsibility as well as efficiency, the RROs need to follow agreed standards.

IFRRO approved a voluntary Code of Conduct<sup>47</sup> in 2006, and it was revised in 2007. All RROs which are members of IFRRO are expected to conform to this code, which sets out the standards of service that authors and publishers as well as users can expect to receive when dealing with RROs. The objective is to develop confidence about and promote best practices in the operations of RROs and it encourages RROs to develop fair and effective procedures for handling complaints and resolving disputes.

The IFRRO Code of Conduct includes chapters on values and scope. According to the values, each RRO aspires to:

- Maintain fair, equitable, impartial, honest and non-discriminatory relationships with rights holders, users and other parties;
- Respect copyright, contracts and applicable national and international laws;
- Act with integrity in the collection and distribution of funds received;
- Minimize their costs while providing efficient services to rights holders and users of copyright.

<sup>46</sup> The Eastern Caribbean Copyright Licensing Association (ECCLA), St. Lucia, [www.ifrro.org/members/eastern-caribbean-copyright-licensing-association-inc](http://www.ifrro.org/members/eastern-caribbean-copyright-licensing-association-inc)

<sup>47</sup> The IFRRO Code of Conduct is available at [www.ifrro.org](http://www.ifrro.org) – Development & Operations – Governance

In order to give effect to these values, each RRO aspires to:

- Be responsible for the needs of its rights holders and licensees;
- Achieve efficiency in the process of allocating and distributing payments, and
- Be accountable, ensure transparency and strive for best practices in the conduct of its operations.

The scope describes RROs in general, representation of rights holders, relationships with rights holders and copyright users and distribution policy.

A separate instrument called “Relationship between the Reproduction Rights Organisation” was approved in 2010 (also available on the IFRRO website). It is complementary to the Code of Conduct. The instrument is not meant to imply a set of rules for RROs, but rather a set of guidelines and encouragement for them, and a set of criteria by which they can be judged by all stakeholders. While adherence to these instruments is voluntary, they embody the principles and values which IFRRO believes all RROs should strive for and uphold.

### 3.3 Rights acquisition: national and foreign repertoire

**Mandates from national rights holders are obtained either directly or through authors’ and publishers’ associations while foreign mandates are acquired through bilateral agreements with RROs in other countries.**

#### **National mandates**

There are various ways of acquiring mandates from rights holders. Rights holders determine the scope of such mandate and the decision on the mandate structure has a significant influence over the practical work of an RRO.

#### **Basic alternatives for acquiring mandates are:**

- Individual mandates from authors and publishers
- Mandates from rights holders’ associations
- Combinations of the two

In the case of associations, they need to have proper authorization from their members in order to be able to transfer their members’ rights to an RRO.

## Form and scope of the mandate

A rights holder generally gives to the RRO a proxy or authority to manage rights for a given period of time. Existing RROs work both on the basis of exclusive and non-exclusive mandates, the latter being most common especially with digital rights. The scope of the authority varies, ranging from reprography to certain digital rights or other types of rights.

### 3.3.1 Examples of national mandates

#### Individual mandates

In many countries mandates are given individually from authors and publishers to the RRO:

- The United States: CCC has no members; CCC has voluntary contracts covering permissions from millions of works from some 10,000 publishers and from hundreds of thousands of creators, either directly or through their publishers or other agents.
- Spain: CEDRO<sup>48</sup> has more than 20,000 members (18,441 authors and 1,735 publishers) as its members (October 2011).

#### Mandates through authors' and publishers' organizations

- Jamaica: JAMCOPY has five members associations; four representing authors and visual creators and one organization of publishers.

#### Combination – organizations and individuals

- Canada: Access Copyright has 36 publisher and creator organizations as members, and, as affiliated rights holders individual writers, photographers, artists, illustrators and publishers of newspapers, books, magazines and journals.
- The Philippines: FILCOLS has 162 authors and 21 publishers plus a book industry association and two writers' unions as members.

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<sup>48</sup> Centro Español de Derechos Reprográficos (CEDRO), Spain, [www.cedro.org](http://www.cedro.org)

### Existing licensing bodies

- In the United Kingdom<sup>49</sup>, ALCS (the Authors' Licensing and Copyright Society Ltd) and PLS (the Publishers' Licensing Society Ltd) appointed CLA in 1983 as their agent to administer their members' rights. In 1998, CLA signed an agreement with DACS (the Design and Artists Copyright Society)<sup>50</sup> to act as an agent for the licensing of the photocopying of artistic works such as photographs and illustrations in published works.

### Membership/representation

When the RRO functions on the basis of a non-voluntary license, it normally serves all rights holders in the given field, and they need not all be direct members. A high representation is, however, useful for the RRO also in such cases.

- Germany: VG WORT represents 421, 020 authors and 10,342 publishers (2010).

### Foreign representation

International mandates are acquired by way of bilateral agreements with RROs in other countries. Bilateral agreements are customarily based on the principles of reciprocal representation and national treatment.

A key element in bilateral agreement is the careful definition of the repertoire which forms the scope of the agreement. Since RROs have differences in their national representation, the repertoires of two contracting RROs need not necessarily be the same but will, rather, reflect the national circumstances of each.

IFRRO as the international body has been active in developing tools that can assist members in their bilateral negotiations. IFRRO has among others developed "Headings and Toolkit for RRO Agreement (HTAR)", as a general guidelines; available on the IFRRO website. IFRRO also has two types of sample agreements which can be used as the basis for bilateral negotiations. They are sample agreements, and the particular circumstances in each case need to be taken into account. They are neither mandatory nor binding on individual members of IFRRO.

Sample A agreement involves an exchange of repertoire between the RROs and transfer of collected fees. For instance, the agreement between CCC in the United States and CEDRO in Spain means that whatever CCC collects for copying of Spanish works in the United States will be transferred to CEDRO for distribution to Spanish rights holders, and *vice versa*.

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<sup>49</sup> See footnotes 21 – 23

<sup>50</sup> The Design Artists and Copyright Society (DACs), United Kingdom, [www.dacs.org.uk](http://www.dacs.org.uk)

Some RROs, especially in the initial stage, prefer to sign sample B Agreements. They may be time-limited and include elements of infrastructure development in a foreign country. As with the A-type Agreement, the B-type Agreement involves an exchange of repertoire, but there is no actual transfer of fees.

In the case of newer RROs in developing countries, IFRRO has recognized the need to support their activities and the General Assembly has suggested identifying candidates for pilot schemes that could examine whether and, if so, how RROs in countries eligible for special treatment by WTO for the implementation of the TRIPS Agreement could be granted preferential access to foreign repertoire when entering into agreements with other RROs.

### 3.4 Specific material types and user groups

**Good representation of different categories of rights holders is an asset in the RRO operation. Users normally want to copy all types of materials, and the more covering the RRO representation is the better it can serve the users. Serving special user groups, such as print-disabled people, can also be included in the RRO activities.**

In the following, three different categories of works and rights holders are described, as these repertoires have specific features when they are used in conjunction with text:

- Works of visual art and photography
- Musical works
- Newspapers and similar publications

#### **Works of visual art and photography**

A lot of visual material and photography is embedded in publications from where they can be copied. It is therefore essential to ensure participation from rights holders representing works of visual and graphic art, illustration and photography.

Works of visual art and photography are used in many different contexts. They are frequently reproduced separately as postcards and posters, or shown in exhibitions or museum collections. Specialized CMOs for visual art and photography function in many countries (see Module 5).

When visual material is reproduced in publications it can be copied in a similar manner to text. In order to be able to grant licenses for both text and visual material, an RRO needs to have mandates from visual artists and photographers. This can take place

through the participation of specialized visual arts CMOs or artists' associations or through individual mandates from visual artists and photographers.

Visual artists' organizations participate in different ways in reprography licensing and collection, for example:

- The UK: CLA acts as an agent for the Design and Artist Copyright Society Ltd (DACS) and collects the reprography remuneration on its behalf. Both are affiliated with IFRRO.
- Norway: Associations of visual artists and photographers are members of KOPINOR.<sup>51</sup>
- Germany: VG BILD-KUNST<sup>52</sup> and VG WORT are both RRO members of IFRRO. They share the reprography remuneration which is collected by VG WORT.

Irrespective of the way of incorporation, it is important to ensure that the share to visual material is measured effectively and corresponding remuneration is distributed cost-effectively. This can take place either directly from the RRO or through specialized visual artists' CMO.

### **Musical works**

In most countries, special conditions apply to the copying of sheet music. The high vulnerability of print music needs to be taken into account by carefully defining the limits of copying. By copying just one page, the whole work can be consumed and there is no need to purchase the original.

Specialized organizations exist in some countries for licensing access to musical works in the form of sheet music:

- France: Both CFC and SEAM (Société des Editeurs et Auteurs de Musique) have been authorized by the Ministry of Culture to function as CMOs under the obligatory collective management system.
- Australia and New Zealand: The Australasian Mechanical Copyright Owners' Society (AMCOS)<sup>53</sup> represents music publishers and composers and operates in the two countries. AMCOS has set up a voluntary music license in primary and secondary schools in Australia to allow schools to copy music beyond the limits of the statutory license for educational purposes. In New Zealand there is also a voluntary license.

<sup>51</sup> KOPINOR, Norway, [www.kopinor.no](http://www.kopinor.no)

<sup>52</sup> Verwertungsgesellschaft Bild-Kunst (VG BILD-KUNST), Germany, [www.bildkunst.de](http://www.bildkunst.de)

<sup>53</sup> The Australasian Mechanical Copyright Owners Society (AMCOS), Australia, [www.apra.com.au](http://www.apra.com.au)

### **Newspapers and similar publications**

Newspapers and similar publications are frequently copied by all user groups, especially in trade and industry, services and professions.

The legislative and/or contractual situation of journalists differs from country to country, and it may, further, be different for employed journalists and freelance journalists.

In many countries, journalists and newspaper publishers participate in the work of an RRO which is mandated to license copying of newspapers, magazines and periodicals, but there are still many countries where the participation of rights holders in these publications needs to be addressed.

In the UK and Ireland, there are two separate organizations:

- UK: CLA and the Newspaper Licensing Agency (NLA)<sup>54</sup>
- Ireland: ICLA<sup>55</sup> and the Newspaper Licensing Ireland (NLI)<sup>56</sup>

### **Out-of-commerce works and orphan works**

Large digitization projects by for instance libraries can greatly benefit from effective collective licensing schemes, in particular as regards out-of-commerce works (also called out-of-print works) and orphan works.<sup>57</sup>

### **Persons with print disabilities**

Since 2008 IFRRO has been engaged in the WIPO Stakeholder Platform<sup>58</sup> and EC stakeholder dialogue together with representatives of people with print disabilities, authors and publishers. The aim is to enhance access to copyright works for the blind and persons with reading impairment. RROs assist authors and publishers in licensing trusted intermediaries<sup>59</sup> authorized to make copies in formats accessible to persons with reading impairment and transfer them to other similar intermediaries across the borders.<sup>60</sup>

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<sup>54</sup> The Newspaper Licensing Agency Limited (NLA), United Kingdom, [www.nla.co.uk](http://www.nla.co.uk)

<sup>55</sup> Irish Copyright Licensing Agency (ICLA), Ireland, [www.icla.ie](http://www.icla.ie)

<sup>56</sup> Newspaper Licensing Ireland Limited (NLI), Ireland, [www.newspaperlicensing.ie](http://www.newspaperlicensing.ie)

<sup>57</sup> More information under section 6: Preservation of cultural heritage

<sup>58</sup> [www.visionip.org](http://www.visionip.org)

<sup>59</sup> Institutions which are trusted by people with reading impairment and authors and publishers, including representatives of both, such as RROs

<sup>60</sup> A Quick Guide to Collective Management of Reproduction Rights in Text and Image-based Works, IFRRO



Institutions serving print-disabled are licensed by RROs in a number of countries, among others in Australia. To help RROs in assisting authors and publishers in providing appropriate access to their works, IFRRO has developed a set of tools:

- Mandate for alternative format licensing (from rights holders to RROs)
- Annex to agreements between RROs (between RROs in different countries)
- A VIP (visually impaired persons) license (between RROs and special institutions)
- Template seeking a license (a special library seeking a license to make a copy of a work in alternative formats)

All these tools aim at facilitating access to works in alternate formats to print-disabled persons.

## CHAPTER 4

### RRO OPERATIONS IN PRACTICE

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**RROs operate as a facilitator between rights holders on the one hand and users on the other. Operations can be grouped into two categories: services to members and services to users.**

The first task for an RRO is to acquire mandates from rights holders for all rights that are customarily needed in the operations. These include rights of reproduction, making available and/or distribution.

A general summary of tasks includes:

- Monitoring where, when and by whom works are being used;
- Establishing tariffs and other usage conditions and negotiating with users and their representatives;
- Granting licenses against appropriate remuneration and under sound conditions;
- Collecting remuneration;
- Distributing remuneration to rights holders.

According to its definition, reprography or reprographic reproduction means copying on any graphic surface, such as paper. Digitization of works in analogue form may also be considered as reprography, whereas digital copies and their transmission over the network fall under digital uses.

Licensing agreements between the RRO and the user establish the licensee's main obligations: payment and reporting. A responsibility for monitoring the use of works affords the user an opportunity to evaluate copying volumes and usage patterns. Surveys and statistical methods are used to facilitate reporting and monitoring.

National copyright legislation normally defines in which areas licensing and/or collection of remuneration is possible. Potential areas are:

- Education at all levels;
- Public administration – government, regional and local;
- Trade and industry, services and professions;
- Copy shops and other places where photocopying machines are available to the public.



An RRO license typically grants authorization to copy a portion of a publication, in a limited number of copies, for internal use of institutional users. The purpose can be education, research, administration or information. There are two main methods of licensing:

- Blanket licensing and repertoire licensing (also called comprehensive licensing) which gives a user a preauthorization to copy from any publication in the RRO's repertoire, normally according to a standardized set of conditions;
- Transactional licensing which gives a user permission to copy certain pre-defined works, normally according to work-specific conditions.

The license agreement sets out the terms and conditions for permitted copying. In general, copying of whole books and other publications is not allowed. The amount of permitted copying ranges from 5 to 25% of the publication.

The most common tariff structure is a price per page or a price per student/employee, or a combination of the two.

Distribution of remuneration to the rights holders is a key function for any RRO. A basic principle of collective management of individual rights is that remuneration should be distributed to rights holders according to the actual use of their works. However, full accuracy is not always possible for practical and administrative reasons. RROs often base distribution of remuneration on some form of statistically obtained data about copying.

#### 4.1 Definitions: reprography and digital uses

**Terminology is not fully standardized and different terms are used in various contexts and countries.**

In international treaties, the term reproduction means "reproduction in any manner or form". Reprographic reproduction and reprography are used as synonyms, meaning reproduction on any graphic surface, such as paper. Examples are photocopies, faxes, print outs from databases and internet. Increasingly also digitization of works in analogue form is covered by the term. In everyday language the term photocopying is frequently used.

Digital uses encompass uses of works in digital form, either by reproduction or communication to the public. For instance, works in electronic databases and their transmission over the network to personal computers are examples of digital uses.

If, however, a print out is taken from the file, it falls under reprography, as the end result is in paper form. Also if the digitization process is only a temporary phase, like

in modern photocopying machines, and no digital copy is stored, it is still question of photocopying.

## 4.2 Monitoring the use of works

**An RRO needs to identify which works are used, as well as when, where and by whom such use takes place. This information is necessary for collection and distribution of remuneration.**

RROs obtain relevant usage data in a variety of ways. In general, the following options are used:

- Full reporting: the user provides the RRO with details of actual copying in each instance;
- Partial reporting based on sampling: a subset of users report their copying over a given period of time;
- Statistical surveys: the copying habits of users are measured at given intervals.

Surveys and statistics are in principle used for one or both of the following purposes:

- Determining remuneration/tariffs, i.e. collection of money (money in)
- Determining distribution (money out)

It is an important principle to entrust professional companies to carry out such surveys so that impartiality of the results can be ensured. The representatives of users and RROs may jointly lay down the scope of the survey and also together choose the company to carry out the survey.

There exists a variety of different methods to carry out statistical surveys, such as:

- Physical, by providing an extra copy;
- Diary;
- Questionnaire;
- Interview;
- Research.

Behavioral studies may be important to understand the market and to learn more about customers. Such studies may be helpful in product development and give valuable information for authors and publishers. Copying behavior and attitudes of users may be studied by interviewing relevant persons: teachers, students or company employees.



A study made by the Argentinean RRO, CADRA, in 2005 revealed that 10% of university students had not read one single book during the last year. Of those students who had read books, 37% read from photocopies and 63% directly from books. Some 2.500 million pages are photocopied in universities. Changed into an equivalent number of books of 350 pages each, this means 7 million books. It is clear that this has an enormous impact on the market.

Studies from different countries show following results from university copying:

- Norway: 1.272 copies per university student per year in universities;
- Spain: 465 pages per university student per year;
- Australia: 400 pages per university student per year.

### 4.3 Licensing and tariffs

**Enormous numbers of copies in both analogue and digital forms are made every year in educational institutions, by governments and other public bodies, within industries and associations as well as private individuals.**

When deciding which category of users to target first, the scope of existing copyright legislation and case law interpreting it, as well as local infrastructure, play important roles. In most countries RROs began their operations by licensing educational institutions. In countries where high-volume photocopying takes place in copy shops, it is important to establish that copyright legislation supports licensing in this sector.

#### License agreements

The license agreement specifies the scope of the license: i.e. repertoire of the licensor, who is allowed to copy, for what purposes, under which terms and conditions, and how the licensee reports usage.

#### What repertoire can the RRO offer?

The repertoire of an RRO comes from its mandates, both national and foreign. In some countries, an RRO may be mandated by another national CMO, for instance the representative of works of visual art. As a result of this, the user obtains an authorization to copy both repertoires in a single license.

### What type of a license is in question?

- Blanket and repertoire licensing gives a user a permission to copy from any publication in the RRO's repertoire within the limits of the agreement. This method is commonly used in reprography licenses that cover large sectors.
- Transactional licensing (also called work-by-work licensing or use/title/fee-specific licensing) gives a user a permission to copy certain pre-defined works. This method is often used in licensing course-packs and similar targeted compilations. Transactional licensing is frequently used in the digital environment.

### What is the purpose of copying?

- Photocopying in the education field is normally defined as a supplement to the normal supply of educational material, not as a replacement or substitute for acquisition of textbooks and other educational material.
- In administration and businesses, the purpose of photocopying is internal information and research. Copies are used also in internal training activities. Copying may take place by employees of the company.
- Copying for external use and commercial purposes is in most cases excluded.

### What is the scope of the license?

- The rights granted in the license define the scope of the agreement.
- In licenses which encompass reprography an adequate definition of reprography is a necessity.
- Those RROs who have digital mandates from rights holders may include digital copying and dissemination of material.

### What terms and conditions exist?

The license agreement sets out the terms and conditions for permitted copying. In general, copying of whole books and other publications is prohibited. In case of out-of-print books, special arrangements may be agreed upon with the consent of rights holders.

The limits of copying differ in various countries. It is important to have rights holders' confidence in the appropriateness of the licensing system. Copying is limited to a specified portion or a chapter of the work ranging normally from 5 – 25% of the publication. The number of copies from a single work may also be specified.



## Tariffs

The license agreement also specifies on what basis the remuneration is to be paid. Common parameters are a price per page, a price per student or employee, a price per machine and a lump sum. Knowing how many pages are copied for each student or employee, it is possible to negotiate an appropriate fee structure and level of payment. Tariffs may differ in different user categories, such as education, administration and businesses.

In practice, the calculation of a yearly fee in universities can take place as follows:

- Users report and/or statistical surveys indicate how many pages of copyright protected material are being copied in a year.
- The volume of copying is divided by the number of students, leading to the copying volume per student.
- The number of pages per student is multiplied with the page price.
- The result is the per-student fee to be paid.

As an example, if 350 pages are copied for each student per year and the page rate is 0.05 €, the per-student fee to be paid would be 17.50 € per student per year. This figure is then multiplied by the number of students at a particular institution so that each institution pays a license fee relevant to the average use of copyright material.

Copies are normally used as complementary teaching material. A comparison with book prices may give a concrete idea about the size of photocopying fees. In Australia, for example, the number of photocopies per university student per year is equal to two books, as some 400 photocopies are made for each student each year.

### 4.3.1 Examples of licensing in various categories

#### Malawi: Educational institutions

The multipurpose copyright organization COSOMA concluded its first licensing agreements with several Higher and Further Education Institutions, among them the University of Malawi and the Malawi College of Accountancy in 2004. Licensing is supported by extended collective license provisions in the law.

#### Australia: Educational institutions

In Australia, there is a statutory license for educational institutions. The statutory license is available to schools, institutes of technical and further education, universities and institutions assisting people with print and intellectual disabilities.

The Copyright Act sets out the rights and obligations for institutions relying on the license. These include the opportunity for agreement with CAL on certain operational issues, such as the amount of the license fee. In the event of disagreement, the Copyright Tribunal can determine the license fee and also the monitoring arrangements for identifying the copyright owners.

The educational statutory license covers the sale of books of readings to students, provided there is no intention to make a profit. It also allows electronic reproduction and/or communication of works to users without prior consent of, but against remuneration to rights holders.

CAL's first licenses were issued to educational institutions able to copy under the statutory license. The first license agreement with an educational institution was signed in 1988. Since then license agreements have been entered into with over 10.000 education institutions in Australia.

### **Canada: Public administration**

In Canada, Access Copyright licenses governments at all levels: federal, provincial, municipal and their agencies. Volume surveys were carried out in 2003 in the federal government and in one province as part of the process in renewing the licenses. The survey indicated significant levels of copyright works and provided an objective basis for tariff negotiations. In conjunction with COPIBEC<sup>61</sup>, a joint license agreement with the federal government was negotiated.

### **Jamaica: Public administration**

In Jamaica, JAMCOPY concluded its first license in 2002 with the Government of Jamaica for photocopying in the public sector, covering a three-year period from 2003 onwards. The Government wanted to show a lead and confirm its determination to follow the law of the country.

### **Japan: Trade and industry, services and professions**

In Japan, licensing begun in 1992 with trade and industry, and the major part of reprography revenue collected by JRRC (the Japan Reprographic Rights Center) still comes from commercial and industrial corporations.

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<sup>61</sup> Société québécoise de gestion collective des droits de reproduction, Canada, [www.copibec.qc.ca](http://www.copibec.qc.ca)





### Argentina: Copy shops

In Argentina, CADRA began collecting from copy shops in 2002. Contrary to the beginning, CADRA does not any longer issue licenses to copy shops within universities, but only to those located outside. In 2011, CADRA had licensed 375 copy centers and 57 universities.

## 4.4 Administering non-voluntary licenses with a levy system

**In a non-voluntary system, the license to use a work is given in the law. The services of RROs are needed to administer the system: collection and distribution of remuneration. There are many RROs administering such levy systems with particular features.**

Generally the law<sup>62</sup> stipulates that the levy system has to be administered by a CMO. RROs represent rights holders in the text and image based sector. The scope of the relevant stipulation determines in each case what uses are covered by the levy system.

The tariffs<sup>63</sup> are determined in each country by:

- National law or regulation;
- Negotiation between interested parties;
- Arbitration tribunals or courts;
- A combination of all three, depending on the type of equipment or media.

Tariff setting may take into consideration the type of machine, its capacity to make copies and its location. For reprographic equipment, the following countries have percentage based remuneration: Greece, Poland, Romania, Slovakia, Hungary and Bulgaria. Elsewhere, the tariff is set as a flat fee or lump sum, for example in Austria, Belgium, the Czech Republic and Germany.

National legislation identifies which manufacturers, importers, retailers and operators of equipment are obliged to pay remuneration, what kind of information needs to be submitted to the RRO. Details of collection are customarily agreed between the RRO and the representative association of importers and local manufacturers.

Since the late 1970's RROs have been distributing remuneration using a range of methodologies, primarily "objective availability<sup>64</sup>" as the criteria for distribution.

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<sup>62</sup> See section 2.5.2 for legislation concerning the levy system

<sup>63</sup> IFRRO Publication: Copyright levies and Reprography

<sup>64</sup> Objective availability and other distribution methods are explained in chapter 4.5

#### 4.4.1 Example of the administration of levy systems

##### Hungary

The exception under Article 35 (1-3) of the Hungarian Copyright Act allows an individual to make a copy of a copyright work for private purposes, as long as there is no direct or indirect way of earning income. Authors and publishers obtain remuneration for copying of print material. Manufacturers, importers and first distributors to the domestic market are jointly liable to pay an equipment levy.

Educational, cultural and other institutions, retail and copy shops which charge for copying must pay an operators' levy. Types of machines are determined by a Government Decree. The Hungarian Alliance of Reprographic Rights (HARR)<sup>65</sup> has been approved to collect the levy. Each year HARR must obtain approval for its proposed tariffs from the Ministry of Education and Culture. HARR makes distributions to its member organizations which make onward payments to individual authors and publishers.

#### 4.5 Distribution of remuneration

**It is up to rights holders to decide the principles that govern distribution of remuneration, and this is customarily by the highest decision-making body of the organization. In a few cases, legislation lays down principles for distribution, in particular with levy systems.**

Irrespective of the method of distribution, the goal is the same: to distribute license fees to those whose works are copied. The aim is to maximize the distribution to rights holders and minimize the costs, while maintaining sufficient accuracy.

In principle, two main options exist in distributing reprography remuneration: title-specific distribution and non-title specific distribution. According IFRRO's General paper "Distribution of Revenue", the prevailing method of distribution is title-specific distribution.

##### **Title- specific distribution**

Distribution can be based on different underlying data, with the following main methods to achieve title-specific distribution:

- Full reporting
- Partial reporting based on sampling.
- Objective availability, also called possibility to be copied or distribution on probability.

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<sup>65</sup> [www.reprografia.hu](http://www.reprografia.hu)



Full reporting means that a user records details of every copyright work that is copied. Full reporting forms an ideal basis for distribution. Whereas the advantage is obvious, this method may be perceived as burdensome by the user and entail a lot of costs for the RRO resulting in less money to rights holders. The development of digital technology means that RROs may be able to move more extensively to full reporting in the future.

In partial reporting users report their copying during a certain period of time or their copying is observed during a certain period of time. This method can also be called a sampling method, i.e. distribution is based on a sample of actual copying instances. In homogenous usage areas, such as educational institutions, it is normally sufficient that only a subset of users record their copying. This subset is then generalized, with the help of statistical methods, to represent all copying instances.

Objective availability or possibility to be copied – method is based on the assumption that all material that exists on the market can be copied, and at some stage probably will be copied. This method is also called distribution on possibility. This distribution method is often used by RROs that manage non-voluntary licenses, especially levy systems. As it is virtually impossible to collect user data from private persons, this distribution method is a cost effective way of distribution revenue. Remuneration is allocated to material on the market, and under this method rights holders themselves report their works and publications to the RRO.

### **Non-title-specific distribution**

In some countries rights holders have opted for non-title-specific distribution of remuneration. Statistical surveys are used to collect generic, non- title-specific information regarding the volume of copying in the type of material and category of publication, rather than identifying the specific publication, author and publisher. Data is collected from a limited number of users covered by the agreement, for a limited period of time. Surveys are conducted at intervals, normally every 4 – 5 years.

In this method, the RRO distributes remuneration to its member organizations representing authors and publishers. It is generally left to the rights holders' associations to decide on the criteria of further distribution. Authors often have grant schemes. Publishers may combine the data on market shares and pay the remuneration individually to publishers.

This method of distribution applies only to national rights holders. The share due to foreign rights holders is distributed through the RRO in the country concerned.

### Share between authors and publishers

Different methods in defining the share between authors and publishers are used in RROs.

- Split is based on stipulations in national legislation for instance in Belgium (REPROBEL).
- Split is based on agreement between the parties in most countries, including Germany (VG WORT) and Norway (KOPINOR).
- Split is based on agreements between individual authors and publishers on a work by work basis in Australia (CAL).

According to IFRRO's paper on distribution of revenues<sup>66</sup>, the most general split between authors and publishers is 50% to each of the categories; in total 65% of the RROs apply this split. The share can vary with the type of works and materials. Authors often get a higher share for fiction books, general non-fiction books, trade and consumer periodicals, whereas publishers tend to get a higher share for newspapers and similar publications.

According to the same source, the use of funds for collective purposes takes place in some RROs, customarily 10% or less. This can for instance take the form of copyright enforcement activities and workshops, promotion of reading culture, prizes to authors and translators, school library campaigns and alike.

## 4.6 Technical standards and tools

**It is vital that there exists unambiguous identification of the works and parties involved, such as authors, visual artists, publishers and RROs. The aim is to offer access to relevant rights management data and to enable automated exchange of information between parties.**

Development of technical standards and tools is one of the key areas where IFRRO and its members are involved. For new RROs it is important to know that there exist industry standards that they can implement in their work right from the beginning.

Identification of IPR content is not a new phenomenon. The International Standard Book Number (ISBN)<sup>67</sup> has been a key enabler in the book trade. In the field of magazines and periodicals, the equivalent is the International Standard Serial Number (ISSN).<sup>68</sup> These identifiers are allocated to publications, either in analogue or digital form.

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<sup>66</sup> IFRRO General Papers: Distribution of Revenue, 2011

<sup>67</sup> [www.isbn.org](http://www.isbn.org)

<sup>68</sup> [www.issn.org](http://www.issn.org)



In the digital environment, there is a need to identify works and their rights holders as well as content carrying these works. Typically, an identifier standard includes:

- A definition of the structure and syntax to enable the unique identification of the object of the standard (referent);
- The methodology for establishing a Management Agency and registration agencies for issuing the standard identifiers.

The International Standard Text Code (ISTC)<sup>69</sup> is a global identification system for textual works. It can identify works separately from the products, e.g. books, journals and e-books. The ISTC identifies the underlying literary work itself (the text), and not its manifestation, such as a book. It contains certain information of creators of the work. It is seen as a prerequisite for an efficient RRO role in the digital environment.

The International Standard Name Identifier (ISNI)<sup>70</sup> is a newly published standard to create a name identification system for parties, persons and corporate bodies. This means names (identifiers) used publicly by parties involved throughout the media content industries in the creation, production, management and content distribution chains. ISNI is a “bridging identifier” in that it links other party/name identifiers in various creative industries. An ISNI is a “dump” number, as no meaning will be embedded in it. It merely points to a location where more information can be obtained.

Digital Object Identifier (DOI)<sup>71</sup> is a content identifier, designed for persistent identification of content on digital networks. It can be used to identify physical, digital or abstract entities.

### **Message standards**

The underlying idea for message standards is to simplify and streamline the transfer of repertoire and distribution data between RROs and to rights holders. There are two ONIX message standards<sup>72</sup> of particular importance to the IFRRO community: ONIX for repertoire (ONIX-RP) and ONIX for distribution (ONIX-DS). The former is designed to share repertoire information between RROs, meaning mandates that each RRO holds from rights holders. The latter is designed to share distribution information between RROs. In addition, there are other ONIX standards, such as ONIX for books, ONIX for serials, ONIX for licensing, etc.

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<sup>69</sup> International Standard Text Code (ISTC), [www.istc-international.org](http://www.istc-international.org)

<sup>70</sup> International Standard Name Identifier (ISNI), [www.isni.org](http://www.isni.org)

<sup>71</sup> The DOI (Digital Object Identifier) System, [www.doi.org](http://www.doi.org)

<sup>72</sup> ONIX for Books, [www.editeur.org](http://www.editeur.org)

## **Tools for identification and distribution**

Most RROs face the same challenges in identifying rights holders and publications. Partnerships may lead to cost effective solutions, especially where markets and linguistic conditions are fairly similar. Joint solutions in so-called back office activities may be a feasible solution between RROs that operate in neighboring countries with similar user and rights holder profiles.

### **4.6.1 Caribbean database**

In the Caribbean region there are five RROs: B-COPY (Barbados Copyright Agency Inc.), BECLA (Belize Copyright Licensing Agency), ECCLA (Eastern Caribbean Copyright Licensing Association), JAMCOPY (Jamaican Copyright Licensing Agency) and TTRRO (Trinidad and Tobago Reprographic Rights Organisation).

The repertoire that users copy in particular in universities is to a large extent the same. The University of West-Indies reaches to several islands through its distance learning programs. Economies of scale speak for joint back-office functions, including a joint database of works that are used in the region.



## CHAPTER 5

### DIGITAL COPYING AND DISSEMINATION

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**With technological development, copying is turning more and more into digital and digital copying is replacing analogue copying in some areas. Digital rights and licensing are managed by most RROs today, as an answer to user demand. The challenge of global licensing is also answered and alternative solutions exist.**

Receiving mandates from participating rights holders is the first prerequisite in licensing digital copying and dissemination. The scope of mandates varies from country to country, but in principle they can be grouped into the following three cases:

- Digitization from a hardcopy, for instance by scanning;
- Copying from an original in digital format;
- Licensing downloads from internet and similar sources.

Digital copying and dissemination take place in all user categories, such as schools, universities and higher education, public administration, corporations and libraries. Both blanket/repertoire licenses and transactional licenses are used, depending on the country and case.

Apart from national mandates, RROs also need foreign repertoire for digital licensing. IFRRO has agreed on a set of guidelines to be used in negotiations by RROs, as their digital repertoires may differ to a great extent. The principles in IFRRO's Digital Repertoire Exchange Mandate (REM) are thus an important tool for international permissions.

In some countries, legislative solutions cover certain forms of digital uses. In these cases, legislation has been amended over the last years to include some form of digital copying under statutory provisions or under provisions which support collective licensing.

Users ask for licenses that cover several territories in particular where the activities of a corporation or a university cover more than one country. Multinational corporations may have operations all over the world and they want to share information among their employees. Universities have distance learning programs with students in many countries and their virtual learning environments need appropriate licenses.

## 5.1 Mandates for digital rights

**Acquisition of national mandates for digital rights is a central issue in digital licensing and it takes place in close consultation with rights holders.**

Most existing RROs started by licensing paper copying, and their mandates were at the beginning limited to reprography. The acquisition of digital rights requires consultations with authors and publishers and in many cases extension of existing mandates to cover new user demands. RROs and rights holders have been able to learn from each other, inspired by numerous approaches that are being tried in various countries.

In many cases, progress has been made through pilot projects whereby all parties involved obtain valuable information to develop digital licensing services. After careful consideration and evaluation of the situation, digital rights have been added to the repertory of most RROs.

## 5.2 Current licensing practices

**Increasingly there is recognition among users that they need a license in the digital environment. Copying and dissemination in an online environment, both from analogue and digital originals, form the scope of digital licenses.**

While digital uses occur in all user groups, the types and areas of use are somewhat different depending on the sector and business model. The following is a snapshot of the rich experiences that RROs have in the digital environment<sup>73</sup>.

### Schools

Blanket/repertoire licensing is the most common form of licensing in schools. Types and areas of uses cover many instances, such as scanning from a hardcopy, internet downloads and use of printouts.

### Universities and higher education

Licenses are offered predominantly through voluntary licensing. Electronic course content services are common, material being posted on password protected internal networks. Universities offer a range of distance learning programs and virtual learning environments (VLE).

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<sup>73</sup> More information in IFRRO Study Papers: Digital Business Models, 2010





### **Public administration**

Internet downloading and printouts and making a hard copy of a digital original for internal use are examples of frequent exploitation. Licensing of public administration takes predominantly place under voluntary licensing schemes.

### **Corporations**

Transactional licensing is the most typical method of licensing in this user group. Many corporations post material in limited access, password protected corporate networks.

### **Libraries**

Many libraries are running or planning large scale digitization projects and this is an area where the services of RROs can be very effective, as regards so called retro-digitization of older materials. Digitization of library collections often include works that are out of commerce (also called out of print works) as well as so called orphan works. These issues are discussed in more detail in chapter 6 "Preservation of cultural heritage".

#### **5.2.1 International document delivery and distance education**

Library privileges exist in many countries' legislation, but they have in principle territorial application. IFRRO has prepared principles for international document delivery. According to these principles, international document delivery should be conducted at prices approved by the rights holders in the works concerned, rather than at national tariffs.

IFRRO's Principles for International Document Delivery, approved in 2004, state among others that any international document delivery should be conducted:

- With the permission of rights holders or their authorized representatives in the country of supply and in the country of reception; and
- With the price of the permission agreed by the rights holders or their authorized representatives in the country of supply and the country of reception.

If exceptions or limitations are included in the copyright law for document delivery, they shall fully respect the "three-step-test" in international copyright treaties.

Distance learning materials are increasingly put into disposal of users all over the world. Publishers of these materials define the usage conditions in licensing contracts, and usage is often limited to registered users, irrespective of their country.

Some universities offer their learning materials freely available to all users. RROs are customarily involved in further usages of such materials, in cases where print-outs are produced of distance learning materials. These print-outs are photocopies licensed by RROs.

Copyright and distance education has been subject to legislative consideration among others in the United States, where the Congress enacted the “TEACH Act” on October 2, 2002, revising Section 110(2) of the US Copyright Act governing the lawful use of existing copyrighted materials in distance education.

### **5.2.2 Examples of current licensing practices**

#### **Schools licensing – voluntary license in France**

In 2006, CFC signed a three-year agreement that covered the whole education sector: primary, secondary and higher education with the Ministry of Education. It was an agreement on the principle of remuneration for digital uses with an agreed lump sum payment, allowing time to run studies. To understand and measure user needs, CFC carried out a number of studies and discussed the limits of a license with rights holders. The copyright law was amended with the implementation of the EC information society directive<sup>74</sup> and introduction of an exception for digital uses.

#### **Schools licensing – extended collective license in Norway**

In 2008, the Norwegian RRO, KOPINOR, signed an agreement with the Norwegian Association of Local and Regional Authorities. The agreement covers primary and secondary schools. The license allows scanning, downloading, use in learning management systems/virtual learning environment (LMS/VLE), interactive whiteboards, etc.

#### **Higher education licensing – voluntary licenses in Hong Kong SAR**

Under the HKRRRLS<sup>75</sup> scanning and photocopying license, a work can be scanned for an identified course of a study and placed on a network which can be downloaded only to students who have been identified for the courses. Students may keep a personal copy but no authorization is given for further copying. The copying limit is one article from any issue of a journal, and 10% or chapter of a book, whichever is the smaller.

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<sup>74</sup> 2001/29/EC Directive on the harmonization of certain aspects of copyright and related rights in the information society (2001/29/EC)

<sup>75</sup> Hong Kong Reprographic Rights Licensing Society Limited (HKRRRLS), Hong Kong, [www.hkrrls.org](http://www.hkrrls.org)



### **Public administration licensing – voluntary licenses in the United Kingdom**

The public administration license of CLA in the UK is a voluntary scheme with a copying limit of 5% or one chapter or two articles. It allows copying from paid-for-digital originals as well as photocopying and scanning.

## **5.3 Legislative solution in certain countries**

**In some countries, statutory provisions in copyright legislation cover some forms of digital use. In most cases, voluntary licensing offered by the RRO complements statutory provisions.**

Statutory provisions take currently such forms as:

### **Australia**

Educational statutory license and government copying provisions in the Australian Copyright Act allow electronic reproduction and/or communication of works without consent, but with a right to remuneration.

### **Switzerland**

The non-voluntary license in Switzerland covers the reproduction of extracts of copyright-protected works for internal information and documentation purposes within schools, universities, public administration, business and professions in a technology-neutral manner.

### **Denmark**

The legislative support mechanism, called extended collective license, was introduced in Denmark for digital copying in education in 1999 and research libraries in 2002.

### **Levy schemes**

Non-voluntary licenses combined with a levy system cover a range of equipment for digital copying, such as scanners, multifunction devices, printers, CD/DVD burners and PCs.

#### **5.3.1 Cross-border aspects of management, including applicable law and territoriality**

Copyright and its management are based on the notion of territoriality. In network usages, cross-border aspects of management need to be addressed.

Collective management is based on the notions of national treatment and territoriality and these principles are customarily incorporated into bilateral agreements between RROs. Applicable law is normally agreed upon between parties in bilateral agreements.

As a general rule for agreements between parties in different countries, applicable law provisions should be included in the agreement. If this is not the case, private international law is applicable.

In most legal systems, the applicable law to international IP right infringement is that of the country where protection is claimed (the law of the protecting country). For copyright infringements this rule is established in the Berne Convention (Art.5. (2). Digital technology, and in particular the internet, is reducing the cost of disseminating works, but has also made unauthorized copying and distribution of works virtually costless. Despite the level of harmonization of copyright laws worldwide, achieved through the Berne Convention, the TRIPS Agreement and the WIPO Copyright Treaty, such copyright infringements on the internet give rise to a number of conflicts of law issues.

## 5.4 Bilateral agreements

**Depending on different phases of development, the mandates of RROs do not necessarily match each other. It has therefore been important for IFRRO and its membership to develop tools to exchange digital mandates in this scenario.**

The IFRRO Principles for the Operation of Digital Repertoire Exchange Mandates (REM)<sup>76</sup> were adopted in April 2007. IFRRO recommends to its members that they follow the guidelines when an RRO that has a collective license covering digital rights wishes to add repertoire from other countries.

The starting point is that IFRRO supports individual and, when appropriate, voluntary collective licensing for some digital uses. Where rights holders in a particular country choose collective licensing for some areas, that possibility should exist also for rights holders from a foreign country.

The principles cover the situation where an RRO that has created a collective license involving digital rights (called Licensing RRO) is seeking to add repertoire from another country and RRO (called Repertoire Holding RRO).

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<sup>76</sup> The Repertoire Exchange Mandates are available at [www.ifrro.org](http://www.ifrro.org) – Publications – Agreements between RROs



The following summarizes the principles:

- Compliance with the IFRRO Code of Conduct;
- Users' compliance with the terms and conditions as agreed;
- Copyright and compliance awareness are in place;
- The scope of the licensing agreement is well defined and does not conflict with the normal exploitation of works;
- Support from those rights holders, either national or foreign, whose repertoire is primarily used;
- Relevant information is available to rights holders to evaluate the licensing scheme;
- There is an easy opt-out procedure;
- The terms and conditions are clear to the Repertoire Holding RRO;
- Transparency of operations;
- Efficiency in payments, cost deductions and changes in mandates and prices;
- Licensing and mandates for each sector separately;
- Moral rights respected;
- Pricing by rights holders or in their absence by default pricing.

A list of possible uses where collective licensing may be appropriate includes the following:

- Scanning: converting a paper document into a digital document
- Digital reproduction: copying from digital to digital
- Internal distribution of digital copies: transmission of a legally made digital copy to employees
- Distribution of digital copies
- Making digital copies available on an internal closed password protected network
- View on screen
- Print from a digital version
- Storage on central intranet for the period of the license
- Inclusion in presentations
- Upload to internet.

The aim of the Repertoire Exchange Mandates and the tools to implement them is to offer a mechanism to administer bilateral agreements between RROs in a constantly evolving scenario. Rights holders' confidence in RRO licensing is a prerequisite for digital mandates. The adherence to the IFRRO Code of Conduct is a major pillar in maintaining and enhancing confidence.

## 5.5 Global licensing

**Users frequently ask for licenses covering several territories when their operations cover many countries. This is the case, for instance, with multinational corporations wishing to deliver material to all their employees irrespective of the country.**

There are in principle three different ways to offer global licenses and they have all been recognized as possible alternatives in the IFRRO community. These alternatives are:

- Direct licensing;
- Portal licensing or other multi-territorial licensing, based on multilateral arrangements;
- Multi-territorial licensing based on bilateral agreements between RROs.

In direct licensing, an RRO which is duly mandated by its rights holders for worldwide coverage may offer a license to a corporation for all its employees throughout the world. The RRO can also partner with another RRO and offer its direct licenses together with the local RRO, on its own terms and conditions.

Portal licensing includes services where several organizations offer their licenses through a joint portal, often on standardized terms and conditions. This method of licensing is in use among others with CMOs managing visual material in Europe. The activities of OnLineArt (OLA)<sup>77</sup> are described more in detail in Module 5.

Multi-territorial licensing based on bilateral agreements has been discussed primarily among RROs in the European Economic Area.

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<sup>77</sup> [www.onlineart.info](http://www.onlineart.info)



## CHAPTER 6 PRESERVATION OF CULTURAL HERITAGE

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**Large-scale digitization projects are underway in many countries to preserve the cultural heritage of the country. Digitization and online availability of copyright protected material are among the legal issues that need to be addressed.**

Libraries and other cultural institutions are engaged in large scale digitization programs and they would like to make their collections available outside their premises. The network environment offers in principle boundless possibilities.

There are a number of key copyright issues that these institutions need to take into account in their digitization projects. Whereas national copyright laws may include limited exceptions/limitations concerning preservation copies, digitization and on-line exploitation of works protected by copyright are in most cases licensed. Such permissions can be given by rights holders themselves or by their representatives, such as RROs.

Whether rights clearance takes place by way of individual or collective management is a subordinate issue. The primary challenge is to clear the necessary rights in a feasible way. There are two cases where rights clearance can be particularly challenging: orphan works and works that are no longer commercially available (out-of-commerce works).

These two issues are of major importance in relation large scale book digitisation programs which are the focus of this chapter. Many audiovisual archives would also like to preserve their cultural heritage, so the following information is of relevance to other modules of this educational program, too. The information is not all inclusive, but offers a list of issues and some possible solutions.

### 6.1 Orphan works

**Works are called “orphan” when rights holders cannot be identified or, if they are identified, they cannot be located in order to ask the necessary permissions.**

Among older materials there may be many such works, and their digitisation and use would be inhibited without a feasible licensing and/or legislative solution.

In some countries there exists already a solution to make the use of orphan works possible, or such a solution is under discussion. In most solutions there is a need to define a criterion on what constitutes a “diligent search” that needs to be performed prior to the use of a work.

Diligent search criteria would include such elements as:

- The search is done prior to the use of the work;
- The relevant resources would usually be those of the country of the work's origin or first publication.

Guidelines are needed to describe the procedure that the diligent search should follow, including resources that are available for research, both common resources and specific resources for various categories of works.

### **6.1.1 Solutions for orphan works in various countries<sup>78</sup>**

Some countries have already legislated specific stipulations concerning orphan works, some others more general licensing regimes that also tackle orphan works. Orphan-work-specific solutions fall into two basic categories: license-based solutions and exception based/ limited liability solutions.

#### **Canada**

The Canadian regime talks about non-locatable copyright owner. Pursuant to section 77 of the Canadian Copyright Act, the Copyright Board of Canada<sup>79</sup> may grant licenses authorising the use of published works, fixed performances, published sound recordings and fixed communication signals, if the copyright owner cannot be located. The Board may issue a conditional, non-exclusive license for five years. The applicant must make payments for use of orphan works by providing money to a CMO covering the type of work.

#### **Hungary**

Section 75/A of the Hungarian Copyright Act gives to the Hungarian Intellectual Property Office the right to grant licenses to the use of orphan works to applicants who carry out a documented diligent search and pay compensation for such use. The license indicates whether the use is commercial in nature or for not-for-profit purposes.

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<sup>78</sup> Based on "Legal Issues in Mass Digitization: A preliminary Analysis and Discussion Document", Office of the Register of Copyrights, United States, October 2011

<sup>79</sup> <http://cb-cda.gc.ca/unlocatable/brochure-e.html>





## **Japan**

Article 67 of Japan's copyright law permits potential orphan-work users to apply for a compulsory license issued by the Commissioner of the Agency for Cultural Affairs. To obtain a license, they must deposit compensation equal to the ordinary rate of royalty for the use of the work, as set by the Commissioner, and must prove that they conducted an unsuccessful due diligence search for the copyright owner.

## **Republic of Korea**

Article 50 of the Korean Copyright Act grants the Ministry of Culture and Tourism the authority to issue licenses for the use of orphan works after (a) the user has conducted a "considerable effort" to search for the author, (b) the user indicates the intent of the use, and (c) the use is licensed with the approval and meet the criteria specified by a Presidential Decree.

## **Extended collective licenses in the Nordic countries**

The Nordic countries apply a legislative support mechanism to collective licensing, called extended collective license (ECL) in certain mass use situations. Whereas an ECL is not tailored for orphan works, to a large extent it can eliminate the issue of unknown or non-locatable rights holders in the designated area. The license for represented rights holders is by law extended to cover all rights holders of a given category. For instance articles 50 – 52 of the Danish Copyright Law include such provisions.

## **European Union**

The European Commission issued a Recommendation on the Digitization and Online Accessibility of Cultural Material and Digital preservation in 2006. It recommends that Member States create a mechanism to facilitate the issue of orphan works and promote the availability of lists of such works.

In May 2011, the European Commission issued a proposal for a Directive on certain permitted uses of orphan works. The solution is meant to create a legal framework to ensure the lawful, cross-border online access to orphan works contained in online digital libraries and archives and for public interest missions of such institutions. A diligent search is required in the country where the work was first published. The draft includes instances where the user can use an orphan work without authorization (called permitted use). The proposal is at the final stage of approval (August 2012).

## 6.2 Out-of-commerce works

**Perhaps the most important issue concerns works that are out of commercial distribution (also called out-of-print works). These works are still protected by copyright, but it may be difficult to ask for the relevant permissions.**

An out-of-commerce work is a work which the author or publisher has decided is no longer commercially available. This is regardless of the existence of tangible copies of the work in libraries and among the public. Efficient copyright licensing schemes for works in this category is becoming increasingly important.

The right to authorize the use of an out-of-commerce work is vested in the copyright holder. Rights may belong to the author or publisher depending on legislation and/or contract. Licenses can be granted by individual authors or publishers or by an RRO. Under certain circumstances, an RRO can issue a simplified license for out-of-print works on blanket/repertoire licensing basis. The European Commission has organized so called stakeholder dialogues to explore practical solutions.

In 2011, a number of European representatives of rights holders and cultural institutions signed a Memorandum of Understanding (MoU) on Key Principles on the Digitization and Making Available of Out-of-Commerce Works.<sup>80</sup> This paves the way for simplified procedures for works with an out-of-commerce status.

### 6.2.1 French legislation concerning out-of-commerce works

In February 2012, the French Parliament passed the law on compulsory collective licensing in relation to out-of-commerce works for their reproduction and making available. The collective management organization will be appointed by the Ministry of Culture.

The key elements<sup>81</sup> of the new legislation are as follows:

- Before the compulsory collective management scheme comes into force, the publisher and the author will have six months to opt out by committing to exploit the work within two years;
- After the work falls into compulsory collective management, the publisher of the paper edition will have two months to use its priority right to obtain an exclusive license for ten years. If not, the rights of reproduction and making available will be transferred to the designated CMO that may grant non-exclusive licenses for a five-year period;

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<sup>80</sup> Available on [www.ec.europa.eu/internal\\_market/copyright](http://www.ec.europa.eu/internal_market/copyright) – Copyright in the Information Society

<sup>81</sup> IFRRO News, Volume 15 – Number 2 – March 2012



- At any time, the publisher and the author can decide to exploit the work again in paper or electronic format, and after giving notice exploit the work in parallel with the CMO licenses as long as they are valid.

The legislation includes many details and the above is just a summary of the main features.

### 6.3 Databases and tools for licensing

**Databases including information on orphan works and out-of-commerce works are essential elements in a good solution to address challenges posed by large scale digitization.**

IFRRO has cooperated with libraries, authors and publishers and their organizations, technology and business developers in developing an electronic system to facilitate identification of the status of rights and rights holders to a work. Information on and access to orphan works and out-of-commerce works is facilitated through a European Commission funded project called ARROW (Accessible Registries of Rights and Orphan Works).<sup>82</sup>

ARROW is a tool to facilitate rights information management in any digitization project involving text and image based works.<sup>83</sup> ARROW infrastructure allows streamlining of the process of identification of authors, publishers and other rights holders of a work, including whether it is orphan, in or out of copyright or if it is still commercially available.

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<sup>82</sup> Accessible Registries of Rights Information and Orphan Works towards Europeana (ARROW), [www.arrow-net.eu](http://www.arrow-net.eu)

<sup>83</sup> A guided tour in form of a power-point presentation, <http://www.arrow-net.eu/resources/arrow-information-material.html>

## CHAPTER 7

### COLLECTIVE MANAGEMENT OF LITERARY RIGHTS IN GENERAL

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**Whereas collective management of certain secondary uses, for example reprography, is the most common in the field of print and publishing, there are other areas of collective management. Reward for writers and other rights holders through a public lending right is important in countries where legislation provides for such remuneration.**

Dissemination of knowledge through books has an immense impact on our civilization. Libraries play a tremendous role in this chain. A well-functioning library system is crucial for creators and publishers in making their books available to the public.

A normal royalty share from the sale of books generally does not correspond to the wide dissemination achieved through library loans. For this reason, many countries provide for additional reward to writers through a public lending right. Publishers participate in this remuneration in a number of countries. In other countries legislation outside the sphere of copyright secures such payments.

As the number of yearly loans – and publications lent – are huge, it is nearly impossible for authors to manage their public lending right individually. Thus CMOs manage these rights in many countries. In others, there is a public body in charge of the PLR scheme.

Literary works are also performed on radio and television, and in some countries CMOs manage broadcasting rights and other relevant rights in relation to literary works. These CMOs are called general literary rights organizations. Some of them manage also works of visual art and photography, based on the local infrastructure and market needs.



## 7.1 Management of public lending right

**Public lending right (PLR) is the right that authors have to receive payment for the free use of their works in libraries.<sup>84</sup> It exists in a variety of forms in different countries and regions. This right has always been linked to cultural policies for the promotion of reading.**

Public lending rights are sometimes linked to copyright, sometimes to a legislative framework outside the copyright regime. National systems fall broadly into the following three categories:

- Copyright-based system;
- Separate remuneration right recognized in law;
- PLR as part of state support for culture.

Some countries combine some or all of the options.

The first country to introduce public lending right was Denmark in 1946, followed by Norway in 1947, Sweden in 1954, Finland and Iceland in 1963. The Netherlands (1971), Germany (1972), New Zealand (1973) and the United Kingdom (1979) were next to come.

Most of the countries are European. Moreover, Australia, New Zealand and Israel use public lending rights to promote national creativity. In 1986, Canada introduced a system to support Canadian authors. In these countries, the state's cultural activities to support books are delegated to official organizations dealing with the PLR.

Around 54 countries have recognized the PLR principle in their legislation. Of these 29 have established PLR systems to enable payments to be made. Legislation exists also in Burkina Faso, Mauritius, Ethiopia and Kazakhstan, but no working system exists yet.

In the European Union, the Directive on rental and lending rights and on certain rights related to copyright<sup>85</sup> positioned public lending rights in copyright legislation, with some national flexibilities to take into account their cultural promotion objectives.

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<sup>84</sup> Presentation by Jim Paker, PLR UK, available on [www.ifrro.org](http://www.ifrro.org) – Business Development – Fora – IFRRO Public Lending Right Forum

<sup>85</sup> Council Directive 92/100/EEC of 19 November 1992

According to the Directive (Article 1 (3))

*“Lending means 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 which are accessible to the public; Member States may derogate from an exclusive lending right provided that at least authors obtain remuneration for such lending.*

The remuneration system can be based on two different operational models:

- Loans-based systems where payments to authors are related to how often works are lent out by libraries;
- Stock-based systems which relate to the number of copies of an author’s works held by libraries.

In the following some existing schemes are highlighted to offer a panorama of the variety of ways of implementing PLR schemes.<sup>86</sup>

## Germany

A copyright-based system exists in Germany. Public lending right was introduced in 1972. PLR is funded up to 10% by the federal government and up to 90% by the state governments. The remuneration is paid to a central body covering all relevant German CMOs and operating under the general guidance of VG WORT, the country’s literary rights CMO. Claims can only be asserted through a CMO.

By agreement between the CMOs, the money for book-lending is apportioned as follows:

- VG WORT (representing authors and publishers of literary works): 91.15%
- VG BILD-KUNST (representing authors and publishers of visual works): 6.35%
- GEMA (representing authors and publishers of musical works): 2.50%

The remuneration is used partly for cultural and social purposes and partly distributed individually to rights holders. From the individual share 70% is distributed to authors and 30% to publishers.

In 1996 it was decided that a separate lump sum should be paid to related rights owners for non-book lending. Since 2010 the share for books is 84.81% and for non-books 15.19%.<sup>87</sup>

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<sup>86</sup> Public Lending Right in the World: Copyright and Cultural Policies, SOFIA/Éditions Dalloz, 2008

<sup>87</sup> Public Lending Rights, 9<sup>th</sup> International PLR Conference, REPROBEL, 2011



## Australia

Since 1974 the Australian Government has made payments to Australian creators, including authors, compilers, translators, editors and illustrators, and publishers through the Public Lending Rights scheme, which provides some recompense for the free availability of their books in public libraries.

This scheme was given legislative support with the introduction of the Public Lending Rights Act in 1985, and a PLR Committee was formally established when legislation came into force two years later. Payments were extended in 1999 with the introduction of the Educational Lending Rights (ERL) scheme, which provides recompense to creators and publishers for works lent by educational libraries.

The first stated objective of the Public Lending Rights Act 1985 is primarily economic: *“to make payments to Australian creators of books and publishers of books in Australia, in recognition of their loss of income from their books being available for loan from, or for use in, public lending libraries in Australia.”*

The second objective puts the legislation in a broader cultural context: *“to support the enrichment of Australian culture by encouraging Australian persons to create books and by encouraging publishers to publish books in Australia”.*

## The Netherlands

The copyright-based lending right legislation sets out the basis on which equitable remuneration for lending of works is calculated. A separate organization (Stichting Leenrecht<sup>88</sup>) has been established with representative of rights holders on one side and representatives of users (libraries) on the other.

In order to promote the negotiation process, an independent chairman is appointed by the Ministry of Justice. If rights holders and libraries cannot reach an agreement, the chair will make a decision, which is binding for all parties.

For a total of 131 million loans of eligible material in the year 2010 – books, magazines, audio, video, multimedia, work of art, music scores – a total of 17.4 million € was collected in 2011. The collecting body (Stichting Leenrecht) does not distribute payments to individual rights holders. They have their specialized CMOs through which individual payments are made.

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<sup>88</sup> [www.leenrecht.nl](http://www.leenrecht.nl)

## The United Kingdom

PLR was established by the Public Lending Rights Act 1979 which gave British authors a legal right, separate from copyright, to receive payment for the free lending of their books in public libraries. Funding is provided by central government via the Department for Culture, Media and Sport and payments are made to authors in accordance with how often their books are lent out by public libraries. The system has been run by the PLR office, a government agency under the Registrar of PLR, but the government wants to reduce the number of small public bodies so that another body will take over PLR responsibilities.

PLR is now open to any author living within the European Economic Area (EEA). Eligibility is therefore not based on nationality, and PLR is technically open to citizens of any nationality as long as they are resident in an EEA country. Registered authors are paid once a year for the loans of their books during the previous year. Information on actual loans is gathered by sampling. Around 50.000 authors are registered.

## 7.2 General literary rights CMOs

**In some countries, general literary rights CMOs were established before the advent of reprography. Later these organizations included management of reprography and digital uses in their work.**

Literary works are used in broadcasting and they are publicly performed in the same way as musical works, albeit not so frequently. The justification and need for collective management has therefore existed for a long time.

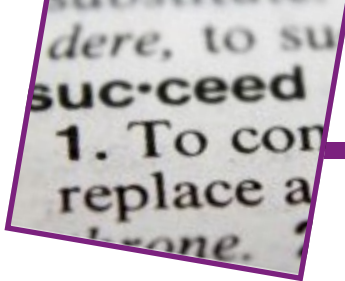
For instance in Slovakia, LITA<sup>89</sup> – Society of Authors, has its genesis already in 1949 when dramatic rights were managed by its predecessor, a regional agency of DILIA.<sup>90</sup> In Germany, VG WORT was established in 1958 and in South Africa, DALRO (the Dramatic, Artistic and Literary Rights Organisation) in 1967.

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<sup>89</sup> LITA, Society of Authors, Slovakia, [www.lita.sk](http://www.lita.sk)

<sup>90</sup> DILIA, Theatrical, Literary and Audiovisual Agency, the Czech Republic, [www.dilia.cz](http://www.dilia.cz)





General literary rights CMOs manage a great variety of different rights subject to national legislation. The following offers a list of examples:

- Radio and television broadcasting rights;
- Public performance rights;
- Public lending rights;
- Private copying levies;
- Video rentals;
- Film rights;
- Various secondary broadcasting rights, such as cable retransmission and educational recording of television programs.

Operational principles follow the same models and the tasks as for any CMO managing a repertoire on behalf of its constituencies.

## CHAPTER 8

### INTERNATIONAL ORGANIZATIONS AND THEIR TASKS

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**The role of non-governmental organizations (NGOs) is crucial in all areas of collective management. In text and image based industries, IFRRO (the International Federation of Reproduction Rights Organisations) plays a vital role as it links together collective management organizations in 76 countries.**

IFRRO is an international, independent, not-for-profit organization representing the interests of collective management organizations and authors and publishers in the field of text and image based works. Collective management organizations in this field are known as reproduction rights organizations (RROs) and they manage reproduction, making available, distribution and other relevant rights, including certain digital rights on behalf of both publishers and authors including visual artists.

The role of IFRRO with its educational programs, standards and a great variety of publications has been crucial in developing, enhancing and shaping collective management in print.

In the field of public lending right, there are networks and forums where public lending right (PLR) issues are discussed and experiences shared on a multinational level. Public Lending Right International is such a network. The IFRRO PLR Forum is complementary to the PLR International and focuses on the practical management of these rights, primarily among those members that manage PLR.

#### 8.1 IFRRO

**The International Federation of Reproduction Rights Organisations (IFRRO) is an international non-governmental organization. Its seat and general secretariat are located in Brussels, Belgium. It is a private, independent, member-based organization under Belgian law.**

IFRRO was founded in 1984 as an informal forum, a platform for the exchange of information and to facilitate contacts between its members. Since 1988, IFRRO has been an independent federation eligible to represent its members before national and international bodies. Over the years, IFRRO has turned into an active, independent organization serving its members with a multitude of activities, publications and events.

## Membership

IFRRO's members come from all continents. RROs who represent both authors and publishers are members with full RRO status and organizations which collect remuneration for either authors or publishers are "associate RRO members".

To become a full RRO member, a national organization has to fulfill certain criteria, such as:

- It must have a mandate to manage reproduction, making available or distribution rights.
- It must represent authors and publishers alike.

IFRRO has four membership categories:

- RRO members (mandates by both authors and publishers);
- Associate RRO members (mandated by either authors or publishers);
- Provisional RRO members (RROs that still need to prove sustainability);
- Creator and Publisher Association Members (national and international associations of authors, creators or publishers)

IFRRO has altogether 137 members<sup>91</sup> in 76 countries; 84 of them are RROs.

## IFRRO's Mission Statement

"IFRRO works to increase on an international basis the lawful use of text and image based copyright works and to eliminate unauthorized copying by promoting efficient collective management of rights through RROs to complement creators' and publishers' own activities".

To accomplish its mission, IFRRO fosters the development of studies and information-exchange systems; relationships between, among and on behalf of members; and effective methods for conveyance of rights and fees among rights holders and users, consistent with the principle of national treatment.

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<sup>91</sup> May 2012

## Values

IFRRO's work is based on the following core values:

- IFRRO respects the rights of individual creators and publishers to determine how their works are managed.
- IFRRO encourages management of rights and provides systematic and proactive support to RROs and supports joint efforts by authors, creators and publishers of literary and scientific printed works worldwide to establish RROs.
- IFRRO works to strengthen its role as the leading international body in fostering and providing information on reproduction rights and the collective administration of such rights.
- IFRRO encourages and provides opportunities for authors, creators, publishers and their representatives to meet, exchange information, collaborate and partner in respect of reproduction of copyright works, document delivery and certain digital uses of their works.
- IFRRO and its members deploy the highest ethical standards when dealing with the rights which they are involved in administering (with the collection and distribution of remunerations) and the funds they hold in trust.

## Main tasks

To enhance services to its rights holders and to the user community, IFRRO pursues the following main objectives:

- Regional development
- Business approaches
- Communication and information

IFRRO and its members are involved in the development of technical standards and tools to facilitate management. This work is described under section 4.5.

Development work is high on the agenda among IFRRO's main tasks. IFRRO has five regional committees that each covers a geographical region:

- Asia/Pacific
- Latin America and the Caribbean
- Africa
- Middle East
- Europe

While there can be no one-size-fits-all solutions, because every country has its own culture and traditions, there are some international principles that must be respected. IFRRO can help stakeholders to analyze the facts and circumstances in their countries, identifying needs and the ways of meeting them.

In 2008 IFRRO issued a Position Paper called “Creative Sector Development Initiative: Friends of Empowerment of the Creative Sector in Developing Countries and Territories”. These countries include Least-Developed Countries (LDCs). It is a recommendation with the aim to examine how and under which conditions IFRRO members and rights holders could grant preferential access to their repertoire when entering into bilateral agreements with RROs in certain countries. There is a list of eligible countries and territories attached to the recommendation.

The IFRRO-recommended Code of Conduct addresses the main issues of RRO activities including rights holder representation and relationships, the relationship with users, and distribution policies. It provides guidance on governing issues in relation to the establishment of RROs.

IFRRO uses a number of tools to achieve these aims. It provides practical assistance, it shares information and it arranges training. IFRRO has produced publications, such as a “Manual on How Reproduction Rights Organisations (RROs) Function”.

It provides practical training by sending experts or organizing training visits. Its mentor programs twin RROs on a medium- to long-term basis so that an established organization is in frequent contact with a younger organization, sharing expertise. IFRRO’s Mentoring Handbook is a tool used in development work on all continents.

IFRRO has a development fund, based on voluntary contributions of its members. IFRRO can award grants for certain activities or loans to provide an RRO with start-up capital in addition to local funding.

### **Co-operation agreement with WIPO**

In 2003, IFRRO concluded a Cooperation Agreement with WIPO. Both organizations promote the protection of intellectual property rights throughout the world. It covers the following main areas:

- Awareness promotion activities
- Technical assistance and capacity building
- Training programs
- Information technology

Today's emergent RROs may suffer from major disadvantages compared with those already well-established. They are being set up in countries where there are fewer resources and many political, economic and social challenges. On the other hand today's emergent RROs have the advantage that they can draw on the experience and support of established RROs, though IFRRO.

### Cooperation with other organizations

On a regional level, IFRRO has signed a cooperation agreement with ARIPO (African Regional Intellectual property Office)<sup>92</sup>, OAPI (Organisation Africaine de la Propriété Intellectuelle)<sup>93</sup> and CERLALC (Centro Regional para el Fomento del Libro en América Latina y en el Caribe).<sup>94</sup> IFRRO also cooperates on a case-by-case basis with the Intellectual Property Expert Group of the Asia- Pacific Economic Co-operation (APEC/ IPEG).

Among non-governmental organizations, IFRRO's cooperation with CISAC<sup>95</sup> is a good example. WIPO, IFRRO and CISAC have jointly launched a publication on collective management of rights called "From Artists to Audience".<sup>96</sup> IFRRO also cooperates with IFLA (International Federation of Library Associations)<sup>97</sup> among others by organizing conferences for the enhancement of a culture for books and reading.

## 8.2 Forum on public lending rights

**The Public Lending Right International Network brings together those countries with established PLR systems. The International Federation of Reproduction Rights Organisations (IFRRO) has as its members many organizations that manage copyright based PLR systems.**

### International PLR Network

International PLR network was set up in 1995. Its aim is to promote international awareness of PLR and inform the PLR community of events, developments and news around the world. It hosts a website "PLR International".<sup>98</sup> A summary document "PLR around the World at A Glance" is available on the site and it lists existing schemes and their legislative basis and operational parameters.

<sup>92</sup> [www.aripo.org](http://www.aripo.org)

<sup>93</sup> [www.oapi.int](http://www.oapi.int)

<sup>94</sup> [www.cerlalc.org](http://www.cerlalc.org)

<sup>95</sup> [www.cisac.org](http://www.cisac.org)

<sup>96</sup> Available on [www.wipo.int/freepublications/en/copyright](http://www.wipo.int/freepublications/en/copyright) and on IFRRO website [www.ifrro.org](http://www.ifrro.org)

<sup>97</sup> [www.ifla.org](http://www.ifla.org)

<sup>98</sup> [www.plrinternational.com](http://www.plrinternational.com)



The network holds conferences every second year and organizes periodic training seminars.

## **IFRRO**

Some RROs also manage PLR remuneration, the Spanish RRO, CEDRO (Centro Español de Derechos Reprográficos) being an example. SOFIA (Société Française des Intérêts des Auteurs de l'Écrit)<sup>99</sup> which manages PLR right in France is also affiliated to IFRRO.

As the majority of the organizations managing PLR schemes which are based on copyright regime are IFRRO members, IFRRO runs an IFRRO Public Lending Rights Forum (IPF). The purpose of this forum is to provide practical information and assistance to members who manage PLR. The forum is open to all IFRRO members.

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<sup>99</sup> [www.la-sofia.org](http://www.la-sofia.org)

## ANNEX

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### About the authors

#### **Tarja Koskinen-Olsson (Mrs)**

International Adviser, Olsson & Koskinen Consulting, Finland/Sweden

#### **Current position**

International Adviser at Olsson & Koskinen Consulting, 2003 –

#### **Board positions**

- NORCODE (Norwegian Copyright Development Association, Vice-Chair, 2010 –
- Copyright Clearance Center, Board of Directors, 2009 –

#### **Previous positions**

- Chief Executive Officer at KOPIOSTO (Joint Copyright Organization in Finland), 1987 – 2003
- Assistant Director at TEOSTO (Finnish Composers' Copyright Bureau), up to 1986

#### **Elected positions**

- Chair of IFRRO (International Federation of Reproduction Rights Organisations), 1993 – 1999
- Honorary President of IFRRO, 2001 – 2009

#### **Expert positions**

- Member of the High Level Expert Group on the Digital Libraries Initiative of the European Commission, 2006 – 2009
- Member of WIPO Stakeholders' Platform facilitating access to copyright works for visually impaired persons, 2008 - 2010





## **Nicholas Lowe**

Copyright and Collective Administration Consultant

### **Previously**

Director of Legal and International Affairs and Director of Broadcasting Licensing at the Performing Right Society (PRS) in London.

Solicitor (admitted in 1977 in England and Wales and in 1993 in Ireland) in private practice specialising in intellectual property law.

### **Experience**

Over 35 years' experience of copyright, contracts and litigation, the last 28 years having been in the field of music, related rights and collective management.

Advising collective management organisations, NGOs and music publishers in Europe, North America and the Caribbean on contractual matters, copyright and neighbouring rights.

For more information contact WIPO at [www.wipo.int](http://www.wipo.int)

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