



# Collective Management in Reprography



International  
Federation of  
Reproduction  
Rights  
Organisations



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## **Introduction**

The World Intellectual Property Organization (WIPO) and the International Federation of Reproduction Rights Organisations (IFRRO) are pleased to issue this publication jointly. It gives a general description of the concept of collective management and its role in the field of reprography, and affords insight into the legislative framework and the different national reprographic reproduction rights organizations and their activities.

This publication has been elaborated within the framework of a Cooperation Agreement concluded between WIPO and IFRRO in 2003. The Agreement offers both organizations opportunities to work together on awareness promotion activities.

The challenging task of compiling this information was undertaken by Mrs. Tarja Koskinen-Olsson, Honorary President of IFRRO. She is an acknowledged international expert in this field, having worked for three decades in the service of collective management.

The publication will unquestionably serve as a valuable source of information for copyright and related rights specialists and for all those closely involved with the collective management of reprography throughout the world.

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## **Purpose of the Publication**

The purpose of this publication is to describe, in a general manner, the concept and role of collective management in the field of reprography, and to provide an overview of the activities of Reproduction Rights Organizations (RROs), as collective management organizations in this field are called.

Print and publishing markets are among the biggest cultural sectors in a society. Their share of copyright-based industries – industries that base their activities on material protected by copyright – is considerable. Print and publishing include a variety of products, such as books, journals, periodicals, magazines and newspapers.

A healthy publishing market is a pre-requisite for literary authors to write and for publishers to invest in the wide and culturally rich production and dissemination of products and services. It is therefore of paramount importance that the market functions well, without piracy and unauthorized photocopying.

Whereas piracy must be countered through vigorous and efficient enforcement mechanisms, photocopying of material for internal purposes, for instance within educational institutions and businesses, can be licensed. Authors, publishers and associations representing them have established RROs to grant licenses on their behalf to cover the wide-scale photocopying that takes place in all sectors of society.

This publication describes the legislative framework within which RROs function, and highlights the main legislative and operational solutions used in different countries. This is done by way of concrete examples. The aim is to encourage sound and effective legislation and the establishment of new RROs in countries where they do not already exist.

It is our hope that this publication will serve as a useful information tool for legislators seeking to craft appropriate legislative solutions to large-scale photocopying, and as an overview of the results of various approaches taken and their functioning in different countries throughout the world.

This publication is also designed for other interested parties as a general study of reprography and collective management, and a guide to the appropriate licensing of photocopying, based on the services provided by RROs.

Tarja Koskinen-Olsson, Honorary President, IFRRO<sup>1</sup>

## Three Pillars of a Well-functioning Copyright System

LEGISLATION

ENFORCEMENT

MANAGEMENT

### Reproduction Rights Organizations (RROs)

Reproduction Rights Organizations – as representatives of authors and publishers worldwide – serve rights holders, users and society at large by:

- **Creating a compliance culture:** It is easy for users to obtain the necessary copyright permissions from one source – the RRO – for large-scale photocopying and many digital uses.
- **Securing a healthy print and publishing market:** Licensing and enforcement support each other, both striving for the same goal through different means. The copying of entire publications for commercial purposes is a clear infringement of copyright, requiring rapid enforcement measures. Anti-piracy measures are a necessary complement to licensing.
- **Encouraging and protecting creativity:** Ensuring remuneration for authors encourages creativity and provides incentives for publishers to invest in new products and services. Any country that cherishes its national traditions and advances in the field of culture, science and education will recognize the merits and usefulness of intellectual property.
- **Promoting national culture and cultural diversity:** Unauthorized photocopying and pirated publications always hit hardest at national level. In many smaller language areas, the local market provides the only livelihood for national creators and the only return on investment for publishers. Securing a healthy market is a prerequisite for a flourishing national culture and the sustainability of cultural diversity.



# 1 PRINT AND PUBLISHING

## 1.1 About the Players in the Market

Print and publishing are among the largest cultural sectors 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.

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, in analogue and digital formats. The following figures may give an idea of the size and variety of the industry:

- Close to 500,000 book titles were published in EU Member States<sup>2</sup> in 2002; in the United Kingdom alone 120,000 titles were published.
- Thousands of scientific articles are published in journals, books and databases.
- More than 110,000 magazine and periodical titles cover consumer, business and professional markets<sup>3</sup>.
- In 2003, there were more than 6600 daily newspapers worldwide with total aggregate circulation of 392 million titles<sup>4</sup>.

**Authors** within print and publishing range from writers of fiction and non-fiction to translators, journalists, scientists and other professional writers. Photographers, illustrators, graphic designers and other visual artists contribute to the look and feel of publications. Their works are brought to the market by **publishers**: books, journals, magazines, periodicals and newspapers. Composers, lyricists and music publishers are involved in the creation and making available of sheet music and song books.

Authors and publishers are called **rights holders** in the field of print and publishing. They own or exercise copyright based on legislation and/or contracts.

## 1.2 How is Copyright Managed in Print and Publishing?

Individual management of copyright is typical in print and publishing, i.e. rights are acquired and exercised by direct contracts between authors and publishers. Collective management of rights has become widespread in the field of reprography.

A writer usually concludes a publishing contract with a publisher and gives the publisher the 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 a journalist is employed by a newspaper publisher, his or her copyright is usually covered by an employment contract or by legislation. Freelance writers and photographers normally conclude license agreements with publishers. A scientist may entrust a scientific journal publisher with the rights to publish his or her works.

While copyright in print and publishing is mainly covered by direct contracts, there are cases where rights can be most effectively managed by collective management organizations. This study concentrates on collective management of reprography – a proper answer to wide-scale photocopying which provides legal access to material protected by copyright.

## 1.3 Collective Management of Copyright is an Effective 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.



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

If you as a user need to photocopy an article or a chapter from a number of publications, it would be impractical, if not impossible, to ask for permission directly from authors and publishers all over the world. Examples are course-packs in universities, and articles from newspapers, journals and other periodicals necessary for information and research purposes in companies.

In response to the need to license large-scale photocopying as a means for access to the world's scientific and cultural printed works, authors and publishers have established Reproduction Rights Organizations (RROs) to act as intermediaries and facilitate the necessary copyright clearance.

RROs derive their authority from agreements with rights holders and/or national legislation. Each year, national RROs grant licenses to hundreds of thousands of users to copy from millions of titles published throughout the world.

## 2 COLLECTIVE MANAGEMENT AND REPROGRAPHY

### 2.1 Collective Management of Copyright is an Old Phenomenon

Collective management of copyright began at almost the same time as enactment of the first national copyright laws, and has expanded over the centuries commensurate with technological advances.

Copyright has been managed collectively since the late 1700s. It started in France in 1777, in the field of theatre, with dramatic and literary works. Collective management is most common in the field of music, for which the first collective management organization was established in 1850, also in France. Similar organizations now function in more than 100 countries.

**Copyright and technology** have really evolved hand in hand: first printing and then sound recording, cinematography, broadcasting, photocopying, satellite and cable transmission, video recording and most recently the Internet.

**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 a lawful activity by securing access to users and remuneration to authors and publishers.

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>5</sup>. In 1957, the collecting society VG WORT 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>6</sup>, was established in 1973 in Sweden. By September 2004, RROs were functioning in 50 countries, and every year new RROs are established.



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**. The expansion of RROs is one of the most important developments for authors and publishers in recent decades.

## 2.2 What is the Rationale for Collective Management?

In cases where individual management of copyright is either impracticable or impossible, rights holders have established professional organizations to look after their rights.

The main task of an RRO is to license reproduction rights – ordinary photocopying – on behalf of rights holders. With technological development, licensing of digital copying and other digital uses has become an additional challenge for rights holders and RROs.

The following is a general **summary of tasks** of any collective management organization, including RROs:

- Monitoring where, when and by whom works are being used;
- Negotiating with users or their representatives;
- Granting licenses against appropriate remuneration and under sound conditions;
- Collecting remuneration; and
- Distributing it to rights holders.

By mandating professional organizations to manage copyrights in practise, authors can concentrate on their creative activity and be remunerated for the use of their works, not only in their own country but throughout the world. The same applies to publishers, and photocopying remuneration is part of the return on investment that enables them to bring new books and other publications to the market.

The next sections highlight different legislative solutions and operational models for licensing and collecting remuneration for reprography.

## 3 THE LEGISLATIVE FRAMEWORK

### 3.1 International Legislation

The foundation of modern copyright law is the Convention for the Protection of Literary and Artistic Works (the Berne Convention)<sup>7</sup>. The right of reproduction is often said to be the cornerstone of copyright.

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

- printing
- photocopying
- scanning
- digital copying (for instance on CDs and DVDs)
- electronic storage in databases.

The exclusive right to authorize or prohibit the reproduction of a work may be subject to **limitations or exceptions** under the Berne Convention. According to Article 9 (2) of the Berne Convention *“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.”*

The scope of exceptions and limitations is also restricted by the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**<sup>8</sup>, administered by the World Trade Organization (WTO). Article 13 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 (WCT)**.



In the light of these regulations, limitations or exceptions are only allowed if three conditions are fulfilled (the 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.

The effects of photocopying may be different from those of digital copying. Consequently, an appropriate legislative solution may be different for each case.

## 3.2 European Union Legislation

The Directive on the harmonization of certain aspects of copyright and related rights in the information society<sup>9</sup> deals with the reproduction right and possible exceptions and limitations.

The relevant Articles are:

- The reproduction right (Article 2);
- Exceptions and limitations (Article 5).

According to Article 2: *“Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part for authors, of their works...”*

Article 5 states that Member States may provide for exceptions or limitations to the reproduction right, among others, concerning **reprography**: *“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 rightholders receive fair compensation<sup>10</sup>”.*

The Directive links the concept of **fair compensation** to certain exceptions and limitations, including reprography. This is a minimum requirement, and Member States may provide for an exclusive right, and arrangements concerning management of rights<sup>11</sup>.

Preamble 35 of the Directive offers guidelines for national legislators on this new concept of fair compensation. It states: *“In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their works”* (emphasis added). The Directive leaves the determination of the form, detailed arrangements and the level of such fair compensation to the Member States.

### 3.3 National Legislation

National copyright legislation needs to be in harmony with commonly accepted international and regional norms.

Since the right of reproduction is an **exclusive right**, limitations or exceptions should not jeopardize this point of departure in national legislation. Consequently, wide-spread photocopying should not be left unremunerated in cases of mass exploitation.

National legislation may include **free use** – i.e. no consent and no remuneration – only in carefully designed special cases. General **“fair use”** or **“fair dealing”** provisions may lead to a situation where licensing and/or remuneration become impossible. For instance, massive photocopying takes place in universities and other educational institutions. If photocopying in 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 legitimate interest of rights holders and that of users. RROs play a major role in society, facilitating rapid and lawful access to information in a relatively inexpensive way. They are also guardians of a propitious environment for creativity, i.e. providing fair remuneration to rights holders and incentives for future creation.

## 4 DIFFERENT MODELS OF RRO OPERATION

### 4.1 Different Options

Without sound legislation, there is little room for an RRO to effectively license photocopying and collect remuneration for authors and publishers.

It is therefore of paramount importance that legislation provides a solid and unambiguous basis for RRO operations, to benefit rights holders and users alike. All different options should be founded on the following main principles:

- They should guarantee at least equitable remuneration to authors and publishers.
- They should be easy for users to comply with.

In the following section, the main legislative options will be highlighted with some concrete examples of the results of their application in different parts of the world.

### 4.2 Voluntary Collective Licensing

Under voluntary collective licensing, the RRO issues licenses to copy protected material on behalf of those rights holders who have mandated it to act on their behalf.

Since the right of reproduction is an exclusive right, it is natural to establish the collective management of reprographic reproduction rights on a voluntary basis.

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



Many RROs, especially in countries following the Anglo-American (common law) tradition, generally base their activities on voluntary contracts.

In the **United States of America**, the Copyright Clearance Center (CCC) carries out collective licensing based solely on non-exclusive contracts. Authors and publishers determine which works are to be included in different licensing programs. In some programs the rights holders can set the prices individually for each work.

Even in the case of voluntary licensing, copyright legislation may include stipulations that govern the activities of the RRO. The Copyright Licensing Agency Limited (CLA) in the **United Kingdom** operates under the following provisions of the Copyright Act :

- Licensing bodies, such as CLA, are subject to the jurisdiction of the Copyright Tribunal which adjudicates disputes between users and licensing bodies.
- A Government Minister has the power to establish a license scheme for educational institutions if no scheme exists, and to extend an existing scheme to works that are unreasonably excluded from it.

In **Japan**, the Copyright Law provides for the author's right of reproduction with certain limitations on this right. The Special Law on Management Business of Copyright and Neighbouring Rights has been in effect as from October 2001 under which the Japan Reprographic Rights Center (JRRC) was registered and designated as a management business operator in 2002.

In **Colombia**, the Centro Colombiano de Derechos Reprográficos (CEDER) obtained governmental recognition as a collective management organization in 2000, and the necessary authorization for operation was granted in 2002 by the relevant government authority (Dirección Nacional de Derecho de Autor), thus CEDER was allowed to act as a reproduction rights organization in Colombia.

There are countries where legislation clearly encourages rights holders to establish reproduction rights organizations. For instance, the **Jamaica** Copyright Act of 1993 allows for certain limitations and exceptions to the right of

reproduction, in cases where voluntary licensing is not readily available. After the establishment of the Jamaican Copyright Licensing Agency (JAMCOPY), such photocopying became subject to a license.

**Table 1. Voluntary collective licensing: country, organization, year of incorporation**

<i>Argentina</i> : Centro de Administración de Derechos Reprográficos (CADRA), 2002
<i>Brasil</i> : Associação Brasileira de Direitos Reprográficos (ABDR), 1992
<i>Canada</i> : The Canadian Copyright Licensing Agency (Access Copyright), 1988 Société québécoise de gestion collective des droits de reproduction (COPIBEC), 1997 <sup>12</sup>
<i>Chile</i> : Sociedad de Derechos Literarios (SADEL), 2003
<i>Colombia</i> : Centro Colombiano de Derechos Reprográficos (CEDER), 2002
<i>Hong Kong SAR</i> : The Hong Kong Reprographic Rights Licensing Society Limited (HKRRLS), 1995
<i>Ireland</i> : The Irish Copyright Licensing Agency (ICLA), 1992
<i>Italy</i> : Associazione Italiana per i Diritti di Riproduzione delle Opere dell'ingegno (AIDRO), 1989
<i>Jamaica</i> : Jamaican Copyright Licensing Agency (JAMCOPY), 1998
<i>Japan</i> : Japan Reprographic Rights Center (JRRC), 1991
<i>Kenya</i> : The Reproduction Rights Organisation of Kenya (KOPIKEN), 1995
<i>Malta</i> : KOPJAMALT, 1992
<i>Mexico</i> : Centro Mexicano de Protección y Fomenta a los Derechos de Autor (CEMPRO), 1998
<i>New Zealand</i> : Copyright Licensing Ltd (CLL), 1988
<i>South Africa</i> : Dramatic, Artistic and Literary Rights Organisation (Pty) (DALRO), 1967 - reprography in 1990
<i>South Korea</i> : The Korea Reprographic and Transmission Rights Centre, 2000
<i>The United Kingdom</i> : The Copyright Licensing Agency Ltd (CLA), 1983
<i>The United States of America</i> : Copyright Clearance Center (CCC), 1978
<i>Trinidad and Tobago</i> : The Trinidad and Tobago Reproduction Rights Organisation (TTRRO), 2004
<i>Uruguay</i> : Asociación Uruguaya para la Tutela Organizada de los Derechos Reprográficos (AUTOR), 2002



## 4.3 Voluntary Licensing with Legislative Support

Voluntary licensing is, in some countries, supported by legislation. The underlying idea is to guarantee a **fully covering license** vis-à-vis users. Since no collective management organization can represent all rights holders in its own country, let alone all countries of the world, legislative support covers the situation of non-represented rights holders. RROs operate under two legislative support mechanisms: extended collective license and compulsory collective management.

### 4.3.1 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 also distribute the remuneration to non-represented rights holders.

It is important that licensing negotiations take place on a voluntary basis, and there is a possibility of either authorizing or prohibiting the use of works. This is the very nature of exclusive rights. However, users may have a legitimate interest in securing their situation vis-à-vis rights holders who are not represented by the organization.

During the 1970s the **Nordic countries** adopted a legislative solution called the extended collective license. Under these laws, agreements between users and organizations representing a substantial number of rights holders in a given category of works will be extended by virtue of the law to cover all rights holders in that category (the extension effect). The system is best suited for countries where rights holders are well organized.

The **characteristics** of an extended collective license are:

- The RRO and the user conclude an agreement on the basis of free negotiations.
- The RRO must be nationally representative.
- The agreement is by law made binding on non-represented rights holders.

- The user may legally use all materials, without the possibility of receiving individual claims from outsiders or having to face criminal sanctions.
- Non-represented rights holders have a right to individual remuneration on the basis of the law.
- In most cases, non-represented rights holders have the possibility of prohibiting the use of their works.

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

Starting originally in the Nordic countries, this legal technique has also been adopted in Malawi, Russian Federation and Ukraine, and is under consideration, *inter alia*, in Canada.

In Zimbabwe, a legal presumption is used as a corresponding legal technique to similar effect. ZIMCOPY commenced operations in 1995.

**Table 2. Extended collective license: country, organization, year of incorporation**

<i>Denmark</i> : Copy-Dan Writing, 1980
<i>Finland</i> : KOPIOSTO, 1978
<i>Iceland</i> : FJÖLIS, 1984
<i>Malawi</i> : The Copyright Society of Malawi (COSOMA), 1994 <sup>13</sup>
<i>Norway</i> : KOPINOR, 1980
<i>Russia</i> : Russian Rightholders' Society for Collective Management of Reprographic Reproduction Rights (COPYRUS), 2002
<i>Sweden</i> : BONUS PRESSKOPIA, 1973



### 4.3.2 Compulsory Collective Management

Management of the right of reproduction as an exclusive right is a voluntary act, but in cases of compulsory collective management rights holders cannot make claims on an individual basis.

In 1995, the legislation in **France** introduced, for the first time, the concept of compulsory collective management in the area of reprographic reproduction rights. Even though the management of rights is voluntary, rights holders are legally obliged to make claims only through a collective management organization. This safeguards the position of users, as an individual rights holder cannot make claims against them. The agreements with users can only be made by an organization approved by the Ministry of Culture.

Compulsory or obligatory collective management is used in other licensing areas besides reprography. For example, this legal technique forms the basis for the management of cable retransmission rights in a number of European countries.

**Table 3. Compulsory collective management: country, organization, year of incorporation**

*France* : Centre Français du Droit de Copie (CFC), 1984 and Société des Editeurs et Auteurs de Musique (SEAM), 1988

## 4.4 Legal License

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.

If the royalty rate is determined by statute, the system can be called “a **statutory license**”. If rights holders can negotiate the royalty rate with users – although they are not able to refuse authorisation – the term “**compulsory**

**license**“ can be used. Both statutory and compulsory licenses fall under the broader term of legal licenses, and the management of rights is non-voluntary.

Reproduction for **private use** is a special case. Traditional licensing systems would not be workable. In many countries’ legislation, copying for private use is free. However, reproduction for private use can be compensated indirectly, and should be compensated in cases of high copying volumes. Equitable remuneration or fair compensation through **levies on equipment** is a feasible solution. There can, in addition, be a levy on the underlying material, i.e. photocopying paper.

Such indirect remuneration through levies on carriers and equipment is widely used in the field of private audio and audiovisual copying. For reprography, it has been applied since 1985 when it was introduced in Germany. The levy system can be complemented by an operator levy, reflecting the high copying volumes by some user groups.

#### **4.4.1 Non-voluntary System with a Legal License**

The permission to copy is given by law. Rights holders have a right to receive equitable remuneration or fair compensation. The remuneration is collected by an RRO and distributed to rights holders.

In some countries, a legal license is only introduced for education and for government copying. In others, a legal license covers all copying.

In **Australia**, an educational statutory license and government copying provisions are part of the Australian Copyright Act of 1968. The Copyright Agency Limited (CAL) is the declared collecting society for the administration of the educational statutory license and the government copying provisions. For other sectors, such as businesses, voluntary licenses are offered.

A similar legislative approach was introduced in the **Netherlands**. Educational institutions, libraries, government agencies and other institutions working in the public interest have been able to issue photocopies for internal use to students,



mutual lending between libraries and to civil servants, provided that fair compensation is paid to the national RRO, Stichting REPRORECHT. The reproduction right fee is set by statute. An amendment of the Dutch Copyright Act of 1912, adopted in March 2002, extended the effect of the legal license. After a legislative process lasting some years, the legal license now covers the public sector and the business sector.

In **Switzerland**, a legal license covers schools, public administration, libraries, copy-shops, services, industry and trade. Tariffs are not fixed by statute, but negotiated between the national RRO, ProLitteris, and users' associations based on a set of rules contained in the copyright law. The tariffs are also subject to ratification by the Federal Arbitration Commission.

**Table 4. Legal license: country, organization, year of incorporation**

*Australia:* Copyright Agency Limited (CAL), 1974

*The Netherlands:* Stichting REPRORECHT, 1974

*Singapore:* Copyright Licensing and Administration Society of Singapore Limited (CLASS), 1999

*Switzerland:* ProLitteris, 1974

#### 4.4.2 Private Copying Remuneration Linked to a Levy System

A small copyright fee is added to the price of copying equipment such as a photocopier machine. Producers and importers of equipment are liable for paying the fees (levies) to the RRO, which then distributes the collected revenue to rights holders.

Much photocopying takes place by private individuals. Private copying remuneration through a levy system guarantees payment to rights holders. The levy system is often composed of **two elements**:

- **Equipment levy** on hardware, such as copy-machines, fax machines, reader printers, scanners, multifunctional devices and CD and DVD burners;
- **Operator levy** (a “user fee”), payable by schools, colleges, universities, libraries, and government and research institutions making a large volume of photocopies.

In most countries having levy systems, there is a **combination** of an equipment and operator levy. In a few countries only an equipment levy is payable (Czech Republic, Greece and Romania). There are also some countries where legislation provides for a levy on the underlying material, i.e. photocopy paper (Greece, Nigeria and Poland, in principle but not operational).

In **Belgium**, to take an example of a country with both equipment and operator levies, the system functions as follows: Producers, importers and (EU) intracommunity purchasers (“*contribution debtors*”) have to pay a fixed amount for all photocopying devices that come onto the Belgian market. Photocopying devices are: copying and fax machines, duplicators, office offset machines and scanners. The operators’ levy functions as follows: All natural and legal persons copying copyright works on a machine under their charge, supervision or 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.

In **Spain** the law provides only for an equipment levy. Article 31 of the Spanish Copyright Act states: “*The reproduction of the work may be carried out with no specific and prior permission of the right holder when it is made for the private use of the copier and these copies are made neither for profit nor for collective use.*” Article 25 provides for compulsory remuneration to rights holders as compensation for private use of these copies (emphasis added). The fee is established by law and covers photocopiers, multifunctional devices and scanners (September 2004). Since no operators’ levy is included in the Spanish legislation, the Centro Español de Derechos Reprográficos (CEDRO) operates a voluntary licensing system outside private copying. CEDRO thus operates a mixed system



that runs in parallel: an equipment levy compensates rights holders for private copies that fall within the scope of the private copying exception in Article 31 of the Copyright Act, while voluntary licenses are made available for copying that falls outside of the scope of the Article 31 exception, and is thus subject to authorization.

**Table 5. Levy systems: country, organization, year of incorporation**

<i>Austria</i> : Literar-Mechana, 1959 - reprography in 1996
<i>Belgium</i> : REPROBEL, 1994
<i>Czech Republic</i> : Divadelní a Literární Agentura (DILIA) <sup>14</sup> , 1949 - reprography in 1996
<i>Germany</i> : Verwertungsgesellschaft WORT (VG WORT), 1958 and Verwertungsgesellschaft Bild-Kunst (VG Bild-Kunst), 1969
<i>Greece</i> : Greek Collecting Society for Literary Works (OSDEL), 1997
<i>Hungary</i> : Hungarian Alliance of Reprographic Rights (HARR), 2000
<i>Lithuania</i> : Agency of Lithuanian Copyright Protection Association (LATGA-A) <sup>15</sup> , 1990
<i>Nigeria</i> : The Reproduction Rights Society of Nigeria (REPRONIG), 2000
<i>Poland</i> : Association of Copyright Collective Administration for Authors of Scientific and Technical Works (KOPIPOL) <sup>16</sup> , 1995
<i>Portugal</i> : GESTAUTOR <sup>17</sup> , 1999
<i>Romania</i> : CopyRo, 1997
<i>Slovak Republic</i> : LITA, Society of Authors <sup>18</sup> , 1942 - reprography in 1998
<i>Spain</i> : Centro Español de Derechos Reprográficos (CEDRO), 1988

Levy systems have also been introduced in a number of other countries, such as Bulgaria, Ecuador<sup>19</sup>, Italy<sup>20</sup>, Peru<sup>21</sup> and Slovenia<sup>22</sup>.

## 4.5 Summary

Collective management by RROs has proven to be functional under all the different legal systems, and substantial earnings have been collected for the benefit of authors and publishers around the world.

During the year 2003<sup>23</sup> the **total domestic collections** for reprography and certain digital uses by RROs around the world was **380 million euros**. The breakdown according to operating system<sup>24</sup> is as follows:

- Voluntary collective licensing: 156 million euros
- Voluntary licensing with legislative support: 83 million euros
- Legal licenses: 141 million euros

Whichever option is chosen, 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.



## 5 ORGANIZATIONAL ISSUES

### 5.1 Legal Status and Form

As collective management organizations, RROs take many different legal forms depending on the legislation in the country. Most RROs function as not-for-profit organizations.

Some RROs deal exclusively or primarily with reprography, while others are engaged in multiple activities in addition to reprography.

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. Examples of such organizations are:

- The Dramatic, Artistic and Literary Rights Organisation (DALRO) in South Africa was incorporated in 1967 and started collecting reprography fees in 1990. It is a multi-purpose collecting society that also manages public performance and broadcasting rights, and reproduction rights in works of the visual arts.
- Literar-Mechana in Austria was incorporated in 1959 and has collected reprography fees since 1996. Other collection areas include public reception of broadcasts, cable retransmission, blank tape levies and the public lending right.
- ProLitteris in Switzerland started with broadcasting rights in literary works and reproduction rights when it was incorporated in 1974. Now it also manages reprographic rights.
- VG WORT in Germany was incorporated in 1958 and became involved with reprography in 1965. It also manages the public lending right, private copying levies, video rentals and various secondary broadcasting rights.

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

- Copy-Dan in Denmark is an umbrella organization for several independent organizations, including Copy-Dan Writing. Other organizations under the umbrella deal with cable retransmission, blank tape levies, educational recordings and the visual arts.
- KOPIOSTO in Finland initiated its activities with reprography, and now also manages cable retransmission rights in audiovisual works and blank tape levies.

Reprography can also be included as a specific area in **multi-purpose organizations** that usually started out by managing rights in musical works. A relevant consideration, especially in smaller countries, is to determine how many collective management organizations are feasible in the same national market.

- The Copyright Society of Malawi (COSOMA) in Malawi established a project for reprography licensing after some years of licensing musical works. In 2004, the first licensing agreement was concluded.
- The Copyright Society of Ghana (COSGA) is another example where the management of reprography by CopyGhana<sup>25</sup> was initiated under the auspices of a multi-purpose organization.

In some smaller countries, **regional initiatives** for collective management of reprography are under development:

- In Caribbean countries such as Barbados, Jamaica and Trinidad and Tobago, the feasibility of a regional RRO network is under consideration.
- Similarly, in collaboration with WIPO and the Pacific Island Forum, consideration is being given to a regional system in South Pacific in South Pacific nations including Nauru, Samoa, the Solomon Islands and Tonga.

The most suitable organizational structure must be determined after taking into account differing national circumstances and infrastructure.



## 5.2 Mandates

As a collective management organization, an RRO can only license the rights of its members who have given the RRO a **mandate** to act on their behalf. Involving rights holders is one of the first and most fundamental tasks of any RRO.

Sometimes there is a need to ensure that rights holders are aware of their rights before an RRO can effectively commence operations. Awareness campaigns may be required to educate rights holders on the scope of their rights provided by national copyright legislation.

Mandates can be given **individually** by authors and publishers<sup>26</sup> to the RRO. This is the case in many countries.

- The Copyright Clearance Center (CCC) in the United States of America holds mandates from over 10,000 publishers and from hundreds of thousands of creators, either directly or through their publishers or other agents.
- The Centro Español de Derechos Reprográficos (CEDRO) in Spain has 5967 author-members and 992 publisher-members.
- ProLitteris in Switzerland has 6161 creator-members and 624 publisher-members.

Many RROs derive their mandates **through authors' and publishers' organizations**, which in turn hold mandates from their members. In these cases, the participating authors' and publishers' organizations are members of the RRO.

- The membership of Bonus Presskopia in Sweden includes 15 authors' and publishers' organizations.
- The Jamaican Copyright Licensing Agency (JAMCOPY) has ten member associations.
- The Japan Reprographic Rights Center (JRRC) has four members, which in turn have members as follows:
  - The Council of Authors' Societies (4156 literary and 2060 artistic authors, and 4917 photographers).

- The Copyright Council of Academic Societies (777 STM societies).
- The Copyright Council of Publishers (275 book publishers).
- The Copyright Council of Newspaper Publishers (63 newspaper publishers).
- The Reproduction Rights Society of Nigeria (REPRONIG) has seven member associations representing authors, publishers, artists, translators and newspaper proprietors.

A **combination of representational** forms exists in a number of countries. In such cases authors' and publishers' organizations are members of the RRO, but individual rights holders are affiliated to the organization and/or have given an individual mandate.

- The Canadian Copyright Licensing Agency (Access Copyright) has 35 member – publisher and creator organizations, and its affiliated rights holders include 5900 creators (writers, photographers, artists, illustrators) and 544 publishers (newspaper, books, magazines and journals).
- The Irish Copyright Licensing Agency (ICLA) has received authority from authors through their organizations (the Irish Writers' Union and the Irish Screenwriters & Playwrights Guild) and individually from publishers (over 135 publishers of book and periodicals).
- KOPIOSTO in Finland has 45 member – organizations and through them 46,000 individual mandates from rights holders (authors, photographers, performing artists and publishers in all fields of creative work).
- DALRO in South Africa holds direct mandates from both authors and publishers but is also mandated by the Publishers Association of South Africa (PASA).

In certain cases, **existing licensing bodies** have jointly set up, and work in close collaboration with the local RRO.

- The Copyright Licensing Agency (CLA) in the United Kingdom was founded by the Authors' Licensing & Collecting Society Ltd (ALCS) and the Publishers Licensing Society Ltd (PLS). CLA further acts as an agent for the Design and Artists Copyright Society (DACs).



- The Hungarian Alliance of Reprographic Rights (HARR) has three licensing bodies as members: ARTISJUS, MASZRE and HUNGART representing individual members in different fields.

When the RRO functions on the basis of a **legal license**, it normally serves all rights holders in a relevant field, although not all of them may be direct members of the RRO:

- The Copyright Agency Limited (CAL) in Australia has 22,757<sup>27</sup> members, of whom 7841 are direct members.
- VG WORT in Germany represents about 398,000 authors and 7500 publishers.

Irrespective of how it obtains mandates from rights holders, effective and comprehensive representation is one of the fundamental tasks of an RRO.

Mandates from international rights holders are derived through bilateral agreements with RROs in other countries, based on principles of reciprocal representation and national treatment.

### 5.3 Internal and External Control

An RRO functions as a trustee or an agent for the rights holders. Internal control is in the hands of the constituencies: authors, publishers and their representatives. Different external control mechanisms exist in various countries.

**Internal control** and the highest decision-making power are normally vested in rights holders. They participate and make decisions in the **General Assembly**, where they elect the Board of Directors and the Chair of the RRO. In many RROs, the dual representation of authors and publishers is reflected by an equal number of representatives on the Board of Directors for each constituency. In some RROs, the Chair represents either authors or publishers on a rotating basis.

The **Board of Directors** is in charge of making policy decisions for the organization. The Board normally appoints the **Chief Executive Officer**, who has overall responsibility for operations.

In some countries, the Board of the RRO includes representatives of government and of users, either as full members or in an advisory capacity, for instance:

- The Copyright Clearance Center (CCC) in the United States of America has publishers, creators and users on its Board of Directors.
- The Board of the Jamaican Copyright Licensing Agency (JAMCOPY) includes seven creator representatives, seven publisher representatives and one government representative.

**External control** of an RRO may take many different forms, depending on national legislation. Stipulations concerning external control may be included in copyright legislation or in separate legislation governing the activities of collective management organizations.

The most common requirement is that the RRO must be **authorized or approved** by the relevant authority.

- The Ministry of Culture in Denmark has approved Copy-Dan Writing to function as the national RRO;
- The Ministry of Culture in France has approved the Centre français d'exploitation du droit de copie (CFC) to function as the national RRO;
- The National Copyright Directorate (Dirección Nacional de Derecho de Autor), a special body of the Justice and Interior Ministry in Colombia, has approved CEDER to function as the national RRO.

In the Netherlands, the appointment of Stichting REPROECHT as an independent rights organization entails ongoing government supervision. The Minister of Justice has instituted a *Supervisory Tribunal* that, since its creation in 1985, consults several times a year with the representatives of rights holders through their joint bodies.



**Special legislation on collective management** of copyright in general, including reprography, exists in some countries.

- The German Patent Office has responsibility for overseeing the operations of collective management organizations. It also provides an Arbitration Board in cases of disagreement concerning tariffs. The decisions of this Arbitration Board may, however, be appealed in normal courts of law if the parties are not satisfied with the decision.
- In Japan, the “Law on Management Business of Copyright and Neighbouring Rights” has been in effect as from October 1, 2001. The law introduced a registration system for those who engage in the business of copyright management, with the aim of securing a fair operation of such business and in order to facilitate the exploitation of works.

**Copyright Tribunals** exist in some countries. Under the UK law, licensees may refer a license to the Copyright Tribunal if they are dissatisfied. However collective management organizations may not themselves initiate such referrals. The Tribunal’s decisions are binding on both parties, but may be appealed to higher courts on questions of law.

Within the **European Union**, in April 2004, the Commission issued a Communication on Management of Copyright and Related Rights in the Internal Market. The Communication concluded that, while competition legislation continues to apply to the activities of collective management organizations, further legislative action is needed to achieve a genuine Internal Market both in the off-line and on-line exploitation of intellectual property. A legislative instrument on certain aspects of collective management and good governance of collecting societies is thus on the horizon.

## 6 RRO OPERATIONS IN PRACTICE

### 6.1 Groups of Rights Holders

In principle, all authors and publishers whose works can be copied benefit from collective management. Ideally, all should participate.

It is in the users' interest to obtain permission to copy different types of material. It is equally in the rights holders' interest to authorize the copying of their works within reasonable limits and on reasonable terms.

Besides literary works, works of visual art and photography as well as sheet music can be copied. **All authors and publishers** whose works can be copied benefit from collective management of reprography by RROs.

**Table 6. Groups of rights holders in reprography**

<i>Authors</i>
<ul style="list-style-type: none"> <li>- Non-fiction authors, including authors of teaching material</li> <li>- Fiction and drama writers</li> <li>- Journalists</li> <li>- Translators</li> <li>- Visual artists: painters, sculptors, graphic designers and illustrators</li> <li>- Photographers</li> <li>- Composers and lyricists</li> </ul>
<i>Publishers of</i>
<ul style="list-style-type: none"> <li>- books, journals, periodicals, magazines, newspapers and sheet music</li> </ul>

It is important to incorporate as many groups of rights holders as possible into the work of an RRO. In many cases, authors and publishers of literary works started the operation, with other groups of rights holders joining later on. Broad representation of different groups of rights holders is a key objective of RROs.



## 6.2 Management of Different Types of Materials

### 6.2.1 Works of Visual Art and Photography

A lot of visual material is copied, and it is essential to have the participation of rights holders of works of visual and graphic art, illustration and photography.

There are several ways to incorporate visual material into the repertoire of an RRO. In many countries special collective management organizations exist for visual arts and photographs. These organizations may be members of, or otherwise affiliated to, the local RRO.

It is important to ensure that the share of photocopying remuneration for visual artists and photographers is distributed efficiently and in a cost-effective manner, either directly or through their specialized organizations.

### 6.2.2 Musical Works

Special conditions apply to the copying of musical works, because it is particularly vulnerable to copying – by copying one page the whole work may be consumed.

The limits according to which copying music may be permitted are normally narrow, taking the vulnerability of sheet music into account. In certain licensing cases, copying of sheet music is not permitted at all.

A recent European Union Directive<sup>28</sup> takes into account the special situation of sheet music, and does not permit exceptions or limitations for photocopying of sheet music.

In some countries, special collective management organizations license reprographic reproduction of musical works. Their status and the legal regime under which they operate may be different from those of the RRO in the same country.

### 6.2.3 Newspapers and Similar Publications

Newspapers and similar publications are photocopied regularly by certain user groups, particularly in trade and industry, but also in other sectors.

It is thus of vital importance that rights holders in this field are adequately represented in the national RRO. The legislative and contractual situation of journalists differs widely across jurisdictions and countries.

In most countries where newspaper material is included in the RRO's repertoire, rights holders participate in the work of the national RRO. In the United Kingdom, there are two separate organizations: the Copyright Licensing Agency (CLA), which covers magazines and periodicals and the Newspaper Licensing Agency Limited (NLA), which covers newspapers.

### 6.2.4 International Document Delivery

Delivering documents from one country's library or document delivery service to another country – so-called cross-border document delivery – is a special copyright clearance issue.

Library privileges exist in many countries' legislation, but the scope of any single privilege is limited to the national territory where that privilege is contained in the law. Applying the three-step-test included in the major copyright treaties, participating rights holders must be provided the necessary conditions to exploit their rights effectively. To this end, IFRRO has prepared a set of **principles for international document delivery**<sup>29</sup>. Under these principles, international document delivery should be carried out at prices specifically approved by the rights holders of the works concerned, rather than on the basis of national tariffs that might otherwise apply.



### 6.3 Foreign Rights Holders

The ability of an RRO to license access to foreign repertoire is secured through bilateral agreements between RROs, based on the principles of reciprocal representation and national treatment.

On the basis of bilateral agreements, each RRO, in its own territory, represents foreign repertoire under the same conditions as it represents the repertoire of national rights holders. Remuneration allocated to foreign rights holders is distributed on the basis of such bilateral agreements.

IFRRO has developed two types of **Model Agreements** for reciprocal representation, which can be used as a basis for bilateral negotiations between RROs in different national territories. Both types are framework agreements, which must be tailored to reflect the particular circumstances of each case. A key requirement is to define precisely the repertoire which is to be covered by the agreement. Since the scope of RROs' national representation differs, the repertoires of two contracting RROs will not necessarily be the same.

The **Type A** Model Agreement involves an exchange of repertoire between the RROs and the actual transfer of collected fees. For instance, under the agreement between CCC in the United States of America and CEDRO in Spain, whatever CCC collects for photocopying of Spanish works in the United States of America is transferred to CEDRO for distribution to Spanish rights holders, and *vice versa*.

Some RROs, especially in the initial stage, prefer to sign a **Type B** Model Agreement. The Type B Agreement involves an exchange of repertoire, but unlike the Type A Agreement there is no actual transfer of fees. Rather, the two RROs agree that remuneration shall remain in the country where it has been collected. For example, under the agreement between KOPIOSTO in Finland and FJÖLIS in Iceland, whatever is collected for photocopying of Icelandic works in Finland remains in Finland, as a fair equivalent for what is collected for photocopying of Finnish works in Iceland, and *vice versa*.

Variations of these agreements are also used. In case of a newly established RRO, a mandate, power of attorney or letter-of-intent may be delivered, with the aim of supporting its activities and securing proper representation.

In general, it is of paramount importance that every RRO first secures broad representation in its own national territory, by representation of its own national rights holders via mandates, and second, secures representation of foreign rights holders through bilateral agreements.

## 6.4 Practical Operations of an RRO

### 6.4.1 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.

Licensing agreements between the RRO and the user establish the **licensee's main obligations: payment and reporting**. Users' involvement is important in order for them to understand what they are paying for. It is in the rights holders' interest to verify that the extent of copying does not go beyond what is necessary to meet the user's needs. Likewise, a responsibility for monitoring copying levels affords the user an opportunity to evaluate photocopying volumes and usage patterns.

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: 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.



Information about the use of works is also relevant in respect of the various options available for distribution of remuneration.

### 6.4.2 Licensing and Tariffs

Enormous numbers of photocopies are made every year in educational institutions, by governments and other public bodies, within industries and associations as well as by private individuals. Mass uses of material protected by copyright should be subject to licensing and/or remuneration.

National copyright legislation normally defines the licensing possibilities. Broad and/or ambiguous free use may hamper the activities of an RRO, whether they are in the form of “fair use”, “fair dealing” or within the scope of specifically defined limitations or exceptions.

**Table 7. Potential licensing areas**

Education at all levels
Public administration - government, regional and local
Trade and industry
Public and research libraries
Cultural institutions and other similar bodies
Religious bodies
Copy shops and other places where photocopying machines are available to the public

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. RROs in most European countries began their operations by licensing educational institutions. In countries where high-volume photocopying takes place in copyshops, it is also important to establish that copyright legislation supports licensing in this sector.

- In Singapore, the first RRO licensing agreement was concluded between CLASS and INSEAD for its Asia Campus in 2002, followed in 2003 by an agreement between CLASS and the Ministry of Education for all secondary schools, junior colleges and government aided schools.
- In South Africa, DALRO began by licensing higher education institutions.
- In Malawi, the first licensing agreement was concluded in 2004 between COSOMA and the Malawi College of Accountancy.
- In Jamaica, the first license (2002) was with the Government of Jamaica for photocopying in the public sector, covering a three-year period.
- In Japan, licensing began in 1992 within trade and industry, and the major part of photocopying revenue collected by JRRC (the Japan Reprographic Rights Center) still comes from that source.
- In Argentina, CADRA began collecting from copyshops in 2002.

An **RRO license** typically grants authorization to copy a portion of a publication, in a limited number of copies, for the internal use of institutional users. 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 teaching materials. In administration and businesses, the purpose of photocopying is for internal information and research.

There are two main **methods of licensing**:

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

The license agreement sets out the **terms and conditions** for permitted copying. In general, photocopying of whole books and other publications is prohibited. In



the 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, for example:

- In Bonus Presskopia (Sweden), the general rule is that copying more than 15% of the publication is not permissible, and never more than 15 pages from a single book, booklet, magazine or other publication (the so-called 15/15 rule). Material intended for single use, e.g. exercise books in schools, may not be copied at all. Special rules apply for sheet music.

Typical **tariff structures** are **price per page** and **price per student/employee**. Tariffs normally differ depending on the category of user, such as education, public administration and businesses.

In practice, calculation of licensing fees in the educational field can take place as follows:

- Users report, and/or statistical surveys show, how many pages of copyright protected material are being copied.
- The volume of copying is divided by the number of students, arriving at a figure that represents the copying volume per student.
- The number of pages per student is multiplied by the price-per-page (page rate).
- The result is the per-student fee to be paid.

Some examples of current **page rates**<sup>30</sup> are:

KOPINOR, Norway:

- The basic rate for books, journals and sheet music is 7.5 euro cent (0.633 NOK) per page.
- As central agreements and model agreements with users may reduce costs, discounts from this basic rate may be applicable. Thus, the rate is 4.0 euro cent (0,338 NOK) in schools and 4.7 euro cent (0,40 NOK) in universities.

ProLitteris, Switzerland:

- The tariff for photocopies applied by ProLitteris is 2.4 euro cent (0.035 CHF) per copyright-protected page.

In Switzerland, the following **fees per student** are applicable:

- Universities: 10.50 euros (16 CHF) per student per year (based on survey results that 35% of material copied in universities is protected by copyright).
- Upper secondary schools: 3.05 euros (4.60 CHF) per student per year (based on survey results that 30% of material copied in upper secondary schools is copyright-protected).

Photocopies 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 student per year is equal to two books; some 400 photocopies are made for each student each year.

### 6.4.3 Distribution of Remuneration

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

Distribution of collected remuneration to the owners of rights is a key function of RROs. A basic principle of collective management of individual copyrights, including in the area of reprographic reproduction, is that remuneration should be distributed to rights holders according to the **actual use** of their works. Thus, ideally, each rights holder would receive individual remuneration according to the actual photocopying of his or her work.

However, this is often impossible, for practical and administrative reasons, and other solutions have been found. RROs often base the collection and distribution of photocopying remuneration on some form of **statistically obtained data**. Data is collected from a subset of users over a specific period of time.



In general, there are two **main options** for distributing photocopying remuneration:

- Title-specific distribution;
- Non-title specific distribution.

**Title-specific distribution** can be based on different underlying data, with the following main methods:

- Full reporting
- Partial reporting
- Surveys
- Objective availability, possibility to be copied.

**Full reporting** is an ideal basis for distribution. It means that users record details of every copyright work copied. While the advantage is obvious, this method may be burdensome to the user and entail high costs for the RRO.

- The Copyright Clearance Center (CCC) in the United States of America uses a variety of methods to collect and distribute remuneration. In so-called “full transactional reporting” a licensee maintains a record of each instance of copying. CCC then invoices according to each use, and the revenue is distributed to rights holders accordingly.
- The agreement between the Copyright Licensing Agency Limited (CLA) and the British Library covers the activities of the world’s leading document supply organization, the British Library Document Supply Center. When documents are delivered to organizations that undertake research for commercial purposes, the copyright fee is set by the rights holder, and the records of the licensing transaction are used to enable exact payment to the rights holder.

Under **partial reporting**, users report the copying that they carry out over a certain period of time. The collection of relevant data can also be based on **surveys using sampling methods**. Distribution in these cases is based on a sample of actual copying instances.

- In Denmark, 5% of all schools covered by the school license must report to Copy-Dan all copying of copyrighted material that takes place over a period of 12 months. Reporting is done by submitting an extra copy.
- In the United Kingdom, the sampling period used by the Copyright Licensing Agency (CLA) is shorter than that used in Danish schools; CLA samples 2.5% of schools annually for a period of ten weeks within ten Local Education Authorities per term, over a three-year cycle in geographic rotation. During the survey sampling period users are asked to make an extra one-page identifying copy of each copyright copying event, recording the number of pages copied and the number of copies taken.

If it is impossible or not feasible to collect information from the users, distribution can be based on the principle of **objective availability** or **possibility to be copied**. The rationale underlying this distribution method is that all material that is available on the market can be photocopied, and at some point probably will be copied. Remuneration is therefore allocated to material on the market. Rights holders themselves report their works and publications to the RRO. This distribution method is often used by RROs that manage legal licenses, especially levy systems. As it is almost impossible to collect user data from private persons, this distribution method is a cost effective way of obtaining distribution data.

- In Switzerland, rights holders report their works to ProLitteris: ISBN/ISSN-number, name of the publisher and of the author, title of the book or the article, number of copies, number of pages, price, year of publication, genre (fiction, non-fiction, scientific work, scholarly textbook) and language of the work. Calculation of remuneration is based on these parameters, and each work gets its share of remuneration during a certain number of years (fiction 25 years and newspapers one year).

In some countries rights holders have opted for **non-title specific distribution** of remuneration. Statistical surveys are designed to collect generic information regarding the volume of copying of different types of material, rather than identifying the specific publication. 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.

Under this distribution method, remuneration is channelled to authors and publishers in an indirect way. The RROs distribute remuneration to its member organizations representing authors and publishers. It is generally left to the rights holders' associations to decide on the criteria for distribution. Authors usually have grant schemes and may fund common activities. Publishers combine data on market share and pay the remuneration individually to publishers. This method of distribution applies only to national rights holders. The share due to foreign rights holders can be determined on the basis of survey results.

- In Norway, KOPINOR normally carries out surveys in each sector every five years. Surveys are carried out by independent statistical bureaux, engaged jointly by KOPINOR and the user. The survey identifies 15 different categories of publications (such as textbook, scientific journal, sheet music and newspaper) and 15 different types of material (such as poetry, scientific text, photo, illustration and musical notes). For each area, data is processed into a matrix, which is used as a basis for calculating the remuneration.

In distribution, the **share between authors and publishers** can be determined using different methods:

- The split is based on stipulations in national legislation, for instance in Belgium (REPROBEL) and Romania (CopyRo).
- The split is based on agreement between the parties in most countries, including Germany (VG WORT), Norway (KOPINOR) and the United Kingdom (CLA).
- The split is based on contracts between authors and publishers.

In conclusion, an RRO is accountable to its constituencies, i.e. rights holders. But beyond that, the distribution method of an RRO needs to be clear, transparent and easily understandable for both users and society at large.

## 7 DIGITAL COPYING AND DISSEMINATION

### 7.1 Issues at Stake

With technological development, photocopying is becoming more and more digital, or is being completely replaced by digital copying.

Over the last ten years, issues relating to digital technology have been widely discussed within IFRRO. It is important for **rights holders, RROs and IFRRO** as their international forum to:

- Explore strategic issues surrounding the increased use of electronic reprography and digital distribution of intellectual property;
- Provide a forum for sharing technical information and data that might enable RROs to enhance their traditional services and provide new services to creators, publishers and users;
- Examine means for IFRRO to enhance its own use of electronic services and to provide data and information to all RRO members.

Many RROs are licensing certain digital uses, based on mandates from participating rights holders and/or on legislation, as the case may be. The breadth and variety of services in this field vary greatly.

### 7.2 Acquiring Digital Rights

Acquisition of digital rights is a central issue in digital copying and requires close consultations with rights holders.

Most existing RROs started by licensing photocopying, and their mandates from rights holders have accordingly been limited to reprographic reproduction. The definition of reprography varies and, in certain countries, includes some forms of electronic reprography, i.e. digital copying that is equivalent to photocopying. In some countries, copying of prints from the Internet is included in the scope of photocopying licenses.



The acquisition of digital rights requires consultations with rights holders, creators and publishers and, in most cases, **new mandates** must be obtained.

Digital rights acquisition also gives rise to discussions within the IFRRO community as to the most appropriate form of management of these rights. Within the IFRRO framework, RROs and rights holders have been able to learn from each other, inspired by the numerous approaches that are being tried in various countries.

Individual management of rights is a natural point of departure in cases where it is feasible from the rights holders' and users' perspectives. Many RROs encounter strong user needs and requirements, owing to their role as a central focus point in rights clearance. Rights holders, especially large publishing houses, may have invested heavily in their own services and consequently want to license their materials individually whenever possible. Many publishers, especially smaller ones, may greatly benefit from the services of RROs.

In most cases, progress has been made through different **pilot projects** whereby all parties involved get valuable information in order to develop digital licensing services. After careful consideration and evaluation of the situation, digital rights have been added to the repertory of many RROs. In cases where individual management of rights is not possible or feasible, the services of an RRO have proven to be beneficial.

### 7.3 Bilateral Agreements

In order to effectively license digital uses, it is also necessary to acquire foreign repertoire. Digital use in the case of transmission over the Internet is, by definition, international.

Current IFRRO Model Agreements are only applicable to reprographic reproduction. Drafting of new model contractual principles, "**digital bilaterals**", is currently underway.

Arrangements between RROs, based on mandates from national rights holders, will form the basis for international cross-border licensing. A current example is the set of principles for international document delivery mentioned earlier.

## 7.4 Current Licensing Methods and Practices

In the digital field, licenses are often based on transactional licensing, which may allow rights holders to set the price for each work.

The following list of examples will provide a snapshot of some variations currently in use or under development in different countries. The scenario is rapidly evolving, demanding new and effective responses from rights holders and RROs.

The **Copyright Clearance Center (CCC)** in the United States of America licenses digital use on limited-access, internal corporate and academic networks, and for Internet and e-mail dissemination via its Digital Permissions Service (DPS) and Republication Licensing Service (RLS). CCC has also developed an end-to-end digital rights licensing and reprint service, called Rightslink. Rightslink enables publishers and other content providers to offer their copyrighted material online, instantly delivering both permission and the content, maintaining security and tracking use of the content.

The **Canadian Copyright Licensing Agency (Access Copyright)** has offered a Post Secondary Electronic Course Content Service (PECCS) since 1999 to provide universities with electronic reserves licensing. Most publishers and creators have now granted digital conversion and importation rights through a new mandate, and the online licensing system allows for transactional licensing of digital use of works.

In Australia, the **Copyright Licensing Agency (CAL)** applies a press clipping license that allows agencies to scan, store and distribute newspaper articles to their clients, and a downstream license that allows government and corporate clients of these agencies to distribute the clips internally by e-mail or Intranet.



In France, the **Centre français d'exploitation du droit de copie (CFC)** licenses both press clipping agencies for their distribution of digital press reviews to their clients, and companies and government agencies for displaying these digital reviews on their Intranets.

In Spain, the **Centro Español de Derechos Reprográficos (CEDRO)** is developing a pilot project with the Spanish Open University to license digital use of printed works. New digital mandates were approved by the Annual General Meeting of CEDRO in summer 2004.

In the United Kingdom, the **Copyright Licensing Agency (CLA)** offers a trial blanket scanning license to the Further Education sector. On a similar basis, blanket scanning licenses, authorising e-mail attachments of scanned published material, have been issued to the commercial and professional sectors for company-wide use.

In Germany, **Verwertungsgesellschaft WORT** currently licenses off-line (CD-ROM) and on-line use of older material, and digitization and Intranet use of material which is not published in digital form, as long as the original publisher makes this new digital edition himself or gives his consent.

## 7.5 Some Legislative Solutions

In some countries, statutory provisions in copyright legislation cover some forms of digital use.

Legislation has broadened the **definition of copying** and/or reprography to include some electronic usage. For instance in **New Zealand**, under the Copyright Act the term "copying" includes storing the work in any medium by any means, in accordance with current international norms. The **Jamaican** Copyright Act defines copying to include "storing the work in any medium by electronic means".

**Statutory provisions** also apply to electronic copying in certain countries:

In **Australia**, the Australian Copyright Act allows electronic reproduction and/or communication of works without the prior consent of the copyright owner in certain specific cases. Remuneration is payable to rights holders in two cases: educational statutory license and government copying provisions. The Copyright Agency Limited (CAL) collects and distributes remuneration under these provisions.

In **Switzerland**, the legislation provides a legal license for use of extracts of copyright-protected works for internal information and documentation purposes within schools, universities, business and professions. ProLitteris is in charge of administering this legal license.

In **Denmark**, the **extended collective license**, as a legislative support for voluntary licensing, has been extended to cover digital copying in education. COPY-DAN Writing, which has licensed analogue copying for educational purposes, extended its area of licensing to include scanning of published works in closed networks such as Intranets. It also covers certain digital use in research libraries.

**Legal licenses combined with levy systems** cover a range of equipment that can be referred to as “digital reprography” equipment. Levy systems cover such equipment and carriers as scanners, multifunction devices, printers, CD/DVD burners and PCs.

The suitability of levy systems in the digital environment has been widely discussed, owing to the emergence of business models that deploy digital rights management (DRM) systems. Whereas rights holders and RROs representing them fully support development of new business models in the digital environment – and are thus in favour of DRM systems and their further development – they are at present only a partial solution. Especially in the print and publishing sector, the majority of material is still made available in paper form and thus DRM systems do not apply. These materials can easily be digitized, for instance by scanning, and used further in the electronic chain. Thus, for some years to come digital levy systems and evolving DRM systems will need to function in parallel, in a complementary manner.

The above describes only a few of the legislative solutions currently applicable in different countries.



## 8.2 Main Tasks of IFRRO

IFRRO's main task is to provide positive legislative and operational support for its members, and to provide up-to-date information on the positive impact of a well-functioning collective management framework in the society.

IFRRO was created in 1980 as a working group of the Copyright Committee of the International Publishers Association and the International Association of Scientific, Technical and Medical Publishers. In 1984, IFRRO was established as an informal Forum. Since 1988, IFRRO has been an independent Federation with its own agenda, eligible to represent its members before national and international bodies.

In 1998, IFRRO opened its Brussels offices, confident in its increasing role in promoting fair, coherent and transparent rules for reprography, especially in the growing global and digital environment.

IFRRO has **three primary purposes**, which can be briefly described as follows:

- Fostering the creation of RROs worldwide;
- Facilitating formal and informal agreements and relationships between and among its members; and
- Increasing public and institutional awareness concerning copyright and the role of RROs in conveying rights and royalties between rights holders and users.

### 8.2.1 Fostering the Creation of New RROs

One of the main tasks of IFRRO is to encourage the creation of new RROs in countries where they do not yet exist.

For that purpose, IFRRO has established **Regional Committees** and a **Development Fund**. Regional Committees cover different geographical areas as follows:



- **Asia/Pacific** Committee
- Committee for **Latin America and the Caribbean**
- Development Committee for **Africa and the Middle East**
- **European Group** and its **European Development Working Group**.

The **Development Fund** of IFRRO is funded through voluntary contributions from the membership. IFRRO recommends that each RRO dedicates to the Fund an amount equivalent to its annual IFRRO membership fee. Members are free to decide whether the money is attributed to activities in a certain region, or can leave it to the discretion of the Board to decide how the money would be used.

The purpose of the Fund is to allocate and/or lend funds needed for the establishment and development of new RROs and to finance special projects meeting the social and cultural objectives of IFRRO. Specifically, a project must:

- Support collective management of copyright;
- Be self-sustainable in the long-term.

There is a two-tier system of **loans and grants**, with special conditions for each.

### 8.2.2 Relations between Members

The strength of IFRRO lies in the multiplicity and diversity of its Members, that is, rights holders that are grouped together in the Federation.

Much work is being done by different **IFRRO working groups** and **committees**, both permanent and *ad hoc*. Through the expertise of its technical working groups and committees, IFRRO is a pioneer in various fields of activity, such as photocopying of visual material as well as newspapers and similar publications, equipment levies and digital issues.

The **Digital Agenda** is a high priority within the Federation. IFRRO has developed Model Agreements based on reciprocal representation and national treatment, and is currently exploring appropriate applications thereof to the

digital environment. Equally important is the development of standards and identifiers, to be used in the exchange of rights and content over the network. A good example of such a facility is the Digital Object Identifier (DOI), originally developed by publishers for use in the network environment but now applied to a wide range of copyright material. IFRRO participates actively in the work of the International DOI Foundation.

Through participation in the activities of IFRRO, Members all over the world can get up-to-date and state-of-the-art information on photocopying as well as digital rights management. IFRRO meetings provide a worldwide forum for exchange of information and experience.

### 8.2.3 Awareness Raising

Perhaps now more than ever, there is a need to inform legislators, rights holders, users and society at large about the increased importance of intellectual property rights.

IFRRO arranges regional and national **seminars** and other **awareness raising events**, either alone or in collaboration with other bodies. Representatives of IFRRO are frequent speakers in international and regional meetings, such as those convened by the World Intellectual Property Organization (WIPO). Bringing together governmental and private sector representatives has proven fruitful for both parties.

IFRRO publishes its **Position Statements** and other relevant material on its homepage, which is a useful reference point for issues relating to reprography and digital copying. **Educational material**, such as the present booklet, is also available on the Internet.



### 8.3 Cooperation Agreement with WIPO

IFRRO works in cooperation with the **World Intellectual Property Organization (WIPO)**. Both organizations promote the protection of intellectual property rights throughout the world.

This work was intensified in October 2003, when a Cooperation Agreement was concluded between WIPO and IFRRO. The Agreement offers possibilities for both organizations to work together in the following key areas:

**Awareness promotion activities:** *“WIPO and IFRRO shall cooperate, as appropriate, in developing and strengthening the necessary infrastructure for collective management organizations, as well as in increasing awareness of reprographic reproduction rights, and their benefits to the owners of copyright, users and the society at large.”*

**Training programs** enable partners to *“carry out, jointly or separately, courses for the training of the staff of collective management organizations of the countries to which the Cooperation Agreement relates”*; i.e. developing countries, least developed countries and countries of Central Asia and those of Central and Eastern Europe.

**Information technology includes** *“development of procedures for the documentation, identification, exchange and management of information”*.

## Footnotes

- <sup>1</sup> The views expressed in this publication are those of the writer
- <sup>2</sup> Publishing Market Watch, Sectoral Report 2: Book Publishing, © 2004, European Commission (15 Member States in 2002)
- <sup>3</sup> International Federation of the Periodical Press (FIPP) at [www.magazineworld.org](http://www.magazineworld.org), September 2004
- <sup>4</sup> World Association of Newspapers, May 2004
- <sup>5</sup> Collective Management of Copyright and Related Rights by Dr. Mihály Ficsor, WIPO Publication No. 855 (E)
- <sup>6</sup> BONUS PRESSKOPIA since 1999
- <sup>7</sup> In January 2005, 157 countries have adhered to the Berne Convention
- <sup>8</sup> In October 2004, 148 countries have adhered to the TRIPS Agreement
- <sup>9</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001
- <sup>10</sup> Article 5.2 (a)
- <sup>11</sup> Preamble 18 of the Directive mentions "extended collective licenses" as management arrangements
- <sup>12</sup> COPIBEC replaced UNEQ which started to operate as an RRO in 1984
- <sup>13</sup> The Copyright Society of Malawi (COSOMA) has started reprography licensing in 2004
- <sup>14</sup> Associate Member of IFRRO
- <sup>15</sup> Associate Member of IFRRO
- <sup>16</sup> Associate Member of IFRRO
- <sup>17</sup> Associate Member of IFRRO
- <sup>18</sup> Associate Member of IFRRO
- <sup>19</sup> AEDRA (Asociacion Ecuatoriana para la gestión colectiva de Derechos Reprográficos de Autor), incorporated in 2001
- <sup>20</sup> In Italy, SIAE manages legal licenses for private copying made within copy centres
- <sup>21</sup> PROAUTOR (Sociedad Peruana de Derechos Reprográficos), incorporated in 2003
- <sup>22</sup> Collection of levies is done by the Copyright Agency of Slovenia (AAS)
- <sup>23</sup> Figures refer to the year 2002/2003 or 2003/2004 depending on the financial year of the organization
- <sup>24</sup> Income is referred to the operating system from which the main revenue comes





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

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