

Collective Management of Copyright Role and Models of Reproduction Rights Organisations

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Purpose of the Study

The purpose of this study 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 Organisations (RROs), as collective management organisations 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 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 unauthorised photocopying.

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

This study 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 good legislation and the formation of new RROs in countries where one does not yet function.

It is our hope that this study will provide background information for legislators who need to consider an appropriate legislative solution to wide-scale photocopying, and to give an overview of the outcome of various options and their functionality in different countries throughout the world.

Moreover, this study is designed for other interested parties as a general study about reprography and collective management, and an appropriate guide to the licensing of photocopying through the services of RROs.

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¹ The views expressed in this study are those of the writer.

Three Pillars of Well-functioning Copyright System

LEGISLATION, ENFORCEMENT, MANAGEMENT

Reproduction Rights Organisations (RROs)

Reproduction Rights Organisations – 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 acquire the necessary copyright permissions from one source – the RRO – for large-scale photocopying and many digital usages.
- ❑ **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 whole publications for commercial purposes is a clear infringement and requires rapid enforcement measures. Anti-piracy actions are a necessary complement to licensing.
- ❑ **Encouraging and protecting creativity:** Remuneration to authors encourages creativity and to publishers it encourages investment in new products and services. Any country that cherishes its national cultural values and advances in the field of culture, science and education will recognise the merits of intellectual property.
- ❑ **Promoting national culture and cultural diversity:** Unauthorised photocopying and pirated publications always hurt the national market most. 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 biggest cultural sectors in a society, covering a whole range of products and services, in both analogue and digital formats.

The printing press was a truly revolutionary new technology in its time, the 15th century. Previously, books were copied by hand, and consequently there was no mass market for publications. The first copyright law was born in the United Kingdom in 1710 as a 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 States² 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 markets³.
- ❑ There are over 6 600 daily newspapers with total aggregate circulation of 392 million daily titles worldwide in 2003⁴.

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 visual image of publications. Their works are brought to the market by **publishers**: book, journal, magazine, periodical and newspaper publishers. In case of sheet music, composers, songwriters and music publishers are involved.

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

1.2 How is Copyright Managed in Print and Publishing?

Individual management of copyright⁴ is typical in print and publishing, i.e. rights are acquired and exercised by direct contracts between authors and publishers. Collective management of rights is common in the field of reprography.

A writer usually concludes a publishing contract with a publisher and gives the company 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

² Publishing Market Watch, Sectoral Report 2: Book Publishing, © 2004, European Commission (15 Member States in 2002)

³ International Federation of the Periodical Press (FIPP) at www.magazineworld.org, September 2004

⁴ World Association of Newspapers, May 2004

conclude licence agreements with publishers. A scientist may entrust a scientific journal publisher 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 organisations. 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 Answer

Reproduction Rights Organisation (RROs) license 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 without the consent of authors and publishers, it represents a threat to all involved in print and publishing.

If you as a user need to photocopy an article or a chapter from each of several publications, it would be impractical, if not impossible, to ask for permission directly from authors and publishers all over the world. Examples of such instances 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 wide-scale photocopy access to the world's scientific and cultural printed works, authors and publishers have established Reproduction Rights Organisations (RROs) to act as intermediaries and facilitate the necessary copyright clearances.

RROs derive their authority from contracts with rights holders and/or national legislation. Each year, national RROs license 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 started almost as early as the first national copyright laws were enacted, and has developed through the centuries alongside technological development.

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 organisation was established in 1850, also in France. Similar organisations 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 finally the Internet.

Photocopying machines became commonplace in the late 1960s and the beginning of the 1970s. This called for appropriate solutions to the increasing levels of unauthorised

photocopying, to turn it into a lawful activity, securing access to users and remuneration to authors and publishers.

As early as 1955, a decision of the Federal Court of Justice in Germany stated 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 holders⁵. In 1957, the collecting society VG WORT was established in Germany as a general literary rights organisation for authors and publishers.

The first RRO to specialise in the management of reprography, BONUS⁶, was established in 1973 in Sweden. By September 2004, RROs were functioning in close to 50 countries, and every year new RROs are established.

The purpose of this study is to provide information about one of the most important developments for authors and publishers in recent decades. 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**.

2.2 What is the Rationale of Collective Management?

In cases where individual management of copyright is either impracticable or impossible, rights holders have established professional organisations 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 organisation, including RROs:

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

By mandating professional organisations to manage copyright in practice, 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 their return on investment that enables them to bring new books and other publications to the market.

This study highlights different legislative solutions and operational models for licensing and collecting remuneration for reprography.

3 LEGISLATIVE FRAMEWORK

3.1 International Legislation

⁵ Collective Management of Copyright and Related Rights by Dr. Mihály Ficsor, WIPO Publication No. 855 (E)

⁶ BONUS PRESSKOPIA since 1999

The foundation of modern copyright law is the Berne Convention⁷. 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 of authorising or prohibiting 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 authorise 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 contents of the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**⁸. The TRIPS Agreement is 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 new **WIPO Copyright Treaty (WCT)** states the same principle in its Article 10.

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

- ❑ Limitations or exceptions concern only “special cases”, and are not generalised;
- ❑ They do not conflict with the normal exploitation of the work;
- ❑ They do not 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 restrictions to be permissible.

The effects of photocopying may be different to those of digital copying. Consequently, the proper legislative solution for each of these two cases of copying may be different.

3.2 European Union Legislation

The Directive on the harmonisation of certain aspects of copyright and related rights in the information society⁹ deals with the reproduction right and possible exceptions and limitations.

⁷ In September 2004, 156 countries have adhered to the Berne Convention

⁸ In September 2004, 146 countries have adhered to the TRIPS Agreement

⁹ Directive 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001

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 on **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 compensation¹⁰”*.

The Directive introduces 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 right¹¹.

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 jeopardise this point of departure in national legislation. Consequently, wide-spread photocopying should not be left unremunerated in cases of mass exploitation.

National legislations may include **free uses** – 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 premises. 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 of creativity, i.e. fair remuneration to rights holders and incentive for future creations.

¹⁰ Article 5.2 (a)

¹¹ Preamble 18 of the Directive mentions “extended collective licences” as management arrangements.

4 DIFFERENT MODELS OF RRO OPERATION

4.1 Different Options

Without good legislation there is little room for an RRO to operate; to license photocopying and collect remuneration for authors and publishers.

It is therefore of paramount importance that legislation provides for a solid and unambiguous basis, to the benefit of 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, the main legislative options will be highlighted with some concrete examples of their outcomes in different parts of the world.

4.2 Voluntary Collective Licensing

In voluntary collective licensing, the RRO issues licenses to copy protected material on behalf of those rights holders who have given it a mandate 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 the Anglo-American (common law) tradition, base their activities generally on voluntary contracts.

In the **United States**, collective licensing through Copyright Clearance Center (CCC) is based solely on non-exclusive contracts. Authors and publishers determine which works are to be included in different licensing programmes. In some programmes they 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. Copyright Licensing Agency Limited (CLA) in the **United Kingdom** operates under the following provisions of the Copyright Act:

- ❑ CLA must be officially recognised as the national RRO.
- ❑ In cases where licences are available, free use provisions – such as in the field of education (“fair dealing”) – cease to apply.
- ❑ A Government Minister oversees licensing schemes and licensing bodies, and may extend the scope of existing licensing schemes.
- ❑ A Copyright Tribunal adjudicates in disputes between users and licensing bodies.

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 this law, the Japan Reprographic Rights Center (JRRC) was registered and designated as a management business operator in 2002.

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

There are countries where legislation clearly encourages rights holders to establish reproduction rights organisations. For instance, the **Jamaica** Copyright Act of 1993 allows for certain limitations and exceptions in the right of reproduction, in cases where voluntary licensing is not readily available. After the establishment of Jamaican Copyright Licensing Agency (JAMCOPY) such photocopying became subject to a licence.

Table 1
Voluntary collective licensing: country, organisation, year of incorporation

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

Trinidad and Tobago: The Trinidad and Tobago Reproduction Rights Organisation (TTRRO), 2004

Uruguay: Asociación Uruguaya para la Tutela Organizada de los Derechos Reprográficos (AUTOR), 2002

Zimbabwe: ZIMCOPY, 1995

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 licence** vis-à-vis users. Since no collective management organisation 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 licence and compulsory collective management.

4.3.1 Extended Collective Licence

An extended collective licence extends the effects of a copyright licence 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 authorising 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 such rights holders as are not represented by the organisation.

During the 1970s the **Nordic countries** adopted a legislative solution called the extended collective licence. Under these laws, agreements between users and organisations 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 to countries where rights holders are well organised.

The **characteristics** of an extended collective licence 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 a possibility of prohibiting the use of their works.

In **Denmark**, collective management organisations must be approved by the Danish Ministry of Culture. To qualify as an organisation under the extended collective licence system, Copy-Dan has to represent a substantial number of rights holders of a certain type of work 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.

Starting originally in the Nordic countries, this legal technique has also been adopted in Malawi¹² and Russia, and is under consideration, *inter alia*, in Canada.

Table 2
Extended collective licence: country, organisation, year of incorporation

Denmark: Copy-Dan Writing, 1980
<i>Finland: KOPIOSTO, 1978</i>
<i>Iceland: FJÖLIS, 1984</i>
<i>Norway: KOPINOR, 1980</i>
<i>Russia: Russian Rightholders' Society for Collective Management of reprographic reproduction rights (COPYRUS), 2002</i>
<i>Sweden: BONUS PRESSKOPIA, 1973</i>

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 organisation. This safeguards the position of users, as an outsider cannot make claims against them. The agreements with users can only be made by an organisation approved by the Ministry of Culture.

Compulsory or obligatory collective management is used in other licensing areas besides reprography. 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, organisation, year of incorporation

France : Centre Francais du Droit de Copie (CFC), 1984 and Société des Editeurs et Auteurs de Musique (SEAM),1988
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¹² The Copyright Society of Malawi (COSOMA) has started reprography licensing in 2004 (observer status in IFRRO)

4.4 Legal Licence

The licence to photocopy 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 licence**”. If rights holders can negotiate the royalty rate with the users – although they are not able to refuse authorisation – the term “**compulsory license**” can be used. Both statutory and compulsory licences fall under the broader term of legal licences, 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’ legislations, 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 Licence

The permission to photocopy 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 licence is only introduced for education and for government copying. In others, a legal licence covers all copying.

In **Australia**, an educational statutory licence and government copying provisions are part of the Australian Copyright Act of 1968. 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 licences 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 respectively, provided that fair compensation is paid to the national RRO, Stichting REPROECHT. The reproduction right fee is set by statute. An amendment of the Dutch Copyright Act of 1912, accepted in March 2002, extended the effect of the legal licence. After a legislative process lasting some years, it now covers the public sector and the business sector.

In **Switzerland**, a legal licence covers schools, public administration, libraries, copy-shops, services, industry and trade. Tariffs are negotiated between the national RRO, ProLitteris, and users’ associations. Thus, tariffs are agreed and not fixed by statute. They are, however, subject to ratification by the Federal Arbitration Commission.

Table 4
Legal licence: country, organisation, year of incorporation

Australia: Copyright Agency Limited (CAL), 1974
<i>The Netherlands: Stichting REPROECHT, 1974</i>
<i>Singapore: Copyright Licensing and Administration Society of Singapore Limited (CLASS), 1999</i>
<i>Switzerland: ProLitteris, 1974</i>

4.4.2 Private Copying Remuneration with a Levy System

A small copyright fee is added to the price of copying equipment such as a photocopying 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**:

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

In most countries, 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 two countries where legislation provides for a levy on the underlying material, i.e. photocopy paper (Nigeria and Poland, in principle but not operational).

In **Belgium**, to take an example from a country with an equipment and operator levy, 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 the rights holders in order to compensate these copies for private use (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, Centro Español de Derechos Reprográficos (CEDRO) operates a voluntary licensing system outside private copying. It is thus a mixed system that is run in parallel: an equipment levy to compensate rights holders for private copies, and voluntary licences for users who need to make non-private copies.

Table 5
Levy system: country, organisation, year of incorporation

Austria: Literar-Mechana, 1959 - reprography in 1996
<i>Belgium: REPROBEL, 1994</i>
<i>Czech Republic: Divadelní a Literární Agentura (DILIA)¹³, 1949 - reprography in 1996</i>
<i>Germany: Verwertungsgesellschaft WORT (VG WORT), 1958 and Verwertungsgesellschaft Bild-Kunt (VG Bild-Kunst), 1969</i>
<i>Greece: Greek Collecting Society for Literary Works (OSDEL), 1997</i>
<i>Hungary: Hungarian Alliance of Reprographic Rights (HARR), 2000</i>
<i>Lithuania: Agency of Lithuanian Copyright Protection Association (LATGA-A)¹⁴, 1990</i>
<i>Nigeria: The Reproduction Rights Society of Nigeria (REPRONIG), 2000</i>
<i>Poland: Association of Copyright Collective Administration for Authors of Scientific and Technical Works (KOPIPOL)¹⁵, 1995</i>
<i>Portugal: GESTAUTOR¹⁶, 1999</i>
<i>Romania: CopyRo, 1997</i>
<i>Slovak Republic: LITA, Society of Authors¹⁷, 1942 - reprography in 1998</i>
<i>Spain: Centro Español de Derechos Reprográficos (CEDRO), 1988</i>

The levy system has also been introduced in a number of other countries, such as Bulgaria, Ecuador¹⁸, Italy¹⁹, Peru²⁰, Republic of Korea²¹ and Slovenia²².

¹³ Associate Member of IFRRO

¹⁴ Associate Member of IFRRO

¹⁵ Associate Member of IFRRO

¹⁶ Associate Member of IFRRO

¹⁷ Associate Member of IFRRO

¹⁸ AEDRA (Asociacion Ecuatoriana para la gestión colectiva de Derechos Reprográficos de Autor), incorporated in 2001

¹⁹ SIAE, the multipurpose collective management organisation in Italy is by law designated to take care of the collection of levies.

²⁰ PROAUTOR (Sociedad Peruana de Derechos Reprográficos), incorporated in 2003.

4.5 In Summary

All the different legal systems have proven to be functional, and substantial earnings have been collected to the benefit of authors and publishers around the world.

During the year 2003²³ the **total domestic collection** for reprography and certain digital uses by RROs around the world was **380 Million euro**. Division under different operating systems²⁴ is as follows:

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

Whichever option is chosen, the establishment of an RRO will provide an important support mechanism for copyright legislation and increase the earnings of national rights holders, thus encouraging and supporting their creative input and investment

5 ORGANISATIONAL ISSUES

5.1 Legal Status and Form

RROs as collective management organisations take many different legal forms depending on the legislation in the country. Most RROs are not for profit organisations.

Some RROs deal, only or primarily, with reprography, whereas others are engaged in multiple activities.

Many of the oldest organisations stem from **general literary rights organisations** which later started to deal with reprography as part of their activities. Some examples of such organisations are:

- ❑ Dramatic, Artistic and Literary Rights Organisation (DALRO) in South Africa was incorporated in 1967 and started to collect reprography fees in 1990. It is a multi-purpose collecting society also managing public performance and broadcasting rights and reproduction rights in visual works of art.
- ❑ 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 levy and public lending right.
- ❑ ProLitteris in Switzerland started with reprography collection when it was incorporated, and now also manages broadcasting rights in literary works and reproduction rights in visual art.
- ❑ VG WORT in Germany was incorporated in 1958 and started with reprography in 1965. It also manages public lending right, private copying, video rental and various secondary broadcasting rights.

²¹ Korea Reprographic and Transmission Rights Center, incorporated in 2001

²² Collection of levies by Copyright Agency of Slovenia (AAS)

²³ Figures refer to the year 2003/2004 or 2002/2003 depending on the financial year of the organisation

²⁴ Income is referred to the operating system from which the main revenue comes

There are also **coalitions** or “**umbrella organisations**”. In these organisations many different groups of rights holders are gathered together for management of various secondary uses. Some examples of such organisations are:

- ❑ Copy-Dan in Denmark: an umbrella organisation for several independent organisations, including Copy-Dan Writing. Other organisations under the umbrella deal with cable retransmission, blank tape levies, educational recordings and visual arts.
- ❑ KOPIOSTO in Finland started its activities with reprography, and also manages audiovisual works in cable retransmission and blank tape levies.

Reprography can also be included as a management area in **multi-purpose organisations** that have usually started with the management of musical works. A relevant consideration, especially in smaller countries, is to evaluate how many different collective management organisations are feasible in the same country.

- ❑ 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.
- ❑ COSGA in Ghana is another example where the management of reprography by “CopyGhana” is initiated under the auspices of the multi-purpose organisation.

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

- ❑ In some Caribbean countries, including Jamaica, Trinidad and Tobago and Barbados, the feasibility of a regional RRO network is under consideration.
- ❑ Similar considerations are taking place in some South Pacific nations, including Samoa, Solomon Islands, Tonga and Nauru, in collaboration with WIPO and the Pacific Island Forum.

The most suitable organisational structure needs to take into account national circumstances and infrastructure.

5.2 Mandates

An RRO as a collective management organisation can only manage the rights of its members, who have given 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 make rights holders aware of their rights before the activities of an RRO can effectively start. Awareness campaigns may be needed for educating rights holders on copyright rights that exist in legislation.

Mandates can be given **individually** by authors and publishers²⁵ to the RRO. This is the case in many countries.

²⁵ Figures refer to the situation in summer 2004

- ❑ Copyright Clearance Center (CCC) in the United States has mandates from over 10 000 publishers and from hundreds of thousands of creators either directly or through their publishers or other agents.
- ❑ Centro Español de Derechos Reprográficos (CEDRO) in Spain has 5 967 authors and 992 publishers as its members.
- ❑ ProLitteris in Switzerland has 6 161 creators and 624 publishers as its members.

Many RROs derive their mandates **through authors' and publishers' organisations**. These organisations are in turn mandated by their members. In these cases, participating authors' and publishers' organisations are members of the RRO.

- ❑ Bonus Presskopia in Sweden has as its members 15 authors' and publishers' organisations.
- ❑ Jamaican Copyright Licensing Agency (JAMCOPY) has ten member associations.
- ❑ Japan Reprographic Rights Center (JRRC) has three members, which in turn have members as follows:
 - Council of Authors' Societies (4.156 literary and 2.060 artistic authors and 4.917 photographers)
 - Copyright Council of Academic Societies (777 STM Societies)
 - Copyright Council of Publishers (275 book publishers and 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 exist in a number of countries. Authors' and publishers organisations are members of the RRO, but individual rights holders are affiliated to the organisation and/or have given an individual mandate.

- ❑ The Canadian Copyright Licensing Agency (Access Copyright) has 35 member publisher and creator organisations, and as affiliated rights holders 5 900 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 organisations (the Irish Writers' Union and the Irish Screenwriters & Playwrights Guild) and individually from publishers (over 135 book and periodicals publishers)
- ❑ KOPIOSTO in Finland has 45 member organisations 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 the local RRO and work closely in collaboration with the 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).

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

When the organisation functions on the basis of a **legal licence**, it normally serves all rights holders of the given field. Only some of them may be direct members of the RRO:

- ❑ Copyright Agency Limited (CAL) in Australia has 22 757²⁶ members of whom 7 841 are direct members.
- ❑ VG WORT in Germany represents about 398 000 authors and 7 500 publishers.

Irrespective of the way in which the mandate from rights holders is received, proper representation is one of the fundamental features in the work of an RRO.

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

5.3 Internal and External Control

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. Different external control mechanisms exist in various countries.

Internal control and the highest decision-making power is normally in the hands of rights holders. They participate and make decisions in the **General Assembly** where they nominate the Board of Directors and the Chair of the RRO. The dual representation of authors and publishers is reflected in many RROs by an equal number of representatives on the Board of Directors. In some RROs, the Chair represents authors and publishers at given intervals.

The **Board of Directors** is in charge of the policy decisions of the organisation. The Board normally nominates the **Chief Executive Officer**, who has the responsibility for operations.

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

- ❑ Copyright Clearance Center (CCC) in the United States has publishers, creators and users in its Board of Directors.
- ❑ Jamaican Copyright Licensing Agency (JAMCOPY) has in its Board seven Creator Representatives and seven Publisher Representatives and one Government Representative.

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

²⁶ April 30, 2004

The most common requirement is that the RRO needs to be **authorised 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 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, part of the appointment of Stichting REPROECHT as an independent rights organisation entails government supervision. The Minister of Justice has instituted a *Supervisory Tribunal* that, since its inception in 1985, consults several times annually 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 the function of controlling collective management organisations. It also functions as an Arbitration Body in cases of disagreement concerning tariffs. The decisions of this Arbitration Body may, however, be taken to normal courts if 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 management business of copyright, with the aim of securing a fair operation of such business, facilitating the exploitation of works.

Copyright Tribunals exist in some countries. Under the UK law, licensees may refer a licence to the Copyright Tribunal if they are dissatisfied. Collective management organisations may not launch such referrals. The Tribunal's decisions are binding on both parties.

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

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, and ideally should participate.

It is in the users' interest to be able to obtain permission to copy different types of material. It is equally in the rights holders' interest to allow 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.

Table 6
Groups of rights holders in reprography

Authors
- Non-fiction authors, including authors of teaching material
- Fiction and drama writers
- Journalists
- Translators
- Visual artists: painters, sculptors, graphic designers and illustrators
- Photographers
- Composers and songwriters
Publishers of
- books, journals, periodicals, magazines, newspapers and sheet music

It is important to incorporate as many groups of rights holders into the work of an RRO as possible. In many cases, authors and publishers of literary works have started the operation, and other groups of rights holders have joined later on. Wide representation of different groups of rights holders is a key issue for an RRO.

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 representing 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 there are special collective management organisations for visual arts and photographs, and these organisations may be members of, or otherwise affiliated to, the local RRO.

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

6.2.2 Musical Works

Special conditions apply to the copying of sheet music, because it is especially vulnerable to copying – by copying one page the whole work may be consumed.

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

The recent European Union Directive²⁷ takes into account the special position of sheet music, and does not allow exceptions or limitations to photocopying of sheet music.

In some countries there are special collective management organisations for licensing reprography of musical works. Their status and legal regime may be different from that of the RRO in the same country.

6.2.3 Newspapers and Similar Publications

Newspapers and similar publications are frequently photocopied by most user groups, and especially in trade and industry.

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 in different countries and jurisdictions.

In most countries where newspaper material is included in the repertoire of the RRO, rights holders participate in the work of the national RRO. In the United Kingdom, there are two separate organisations: The Copyright Licensing Agency (CLA) and The Newspaper Licensing Agency Limited (NLA).

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 they have, in principle, territorial application. Taking into account the three-step-test included in all major copyright treaties, it is important to secure a situation where the rights of participating rights holders are sufficiently secured. To this end, IFRRO has prepared **principles for international document delivery**²⁸. 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.

6.3 Foreign Rights Holders

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 same conditions as its national rights holders. Remuneration that has been allocated to foreign rights holders is distributed by virtue of these bilateral agreements.

IFRRO has two types of **Model Agreements** for reciprocal representation, which can be used as the basis for bilateral discussions. They are framework agreements, and the particular circumstances in each case need to be taken into account. A key element is to define carefully the repertoire which forms the scope of the agreement. Since RROs have

²⁷ DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001, Article 5.2 (a)

²⁸ to be ratified by the Annual General Meeting of IFRRO in October 2004

differences in their national representation, the repertoires of two contracting RROs need not necessarily be the same, but rather reflect the national circumstances.

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

Some RROs, especially in the initial stage, prefer to sign a Model Agreement **Type B**. As with the Type A Agreement, the Type B Agreement involves an exchange of repertoire, but there is no actual transfer of fees. The two RROs involved agree that remuneration shall remain in the country in which it has been collected. For instance, the agreement between Kopiosto in Finland and Fjölis in Iceland means that whatever is collected for photocopying of Icelandic works in Finland remains in that country, as a fair equivalent to 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 secures in its own country a wide representation: first of its own national rights holders through mandates, and secondly that 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 know what works, when and where are used. This information is needed for collection and distribution purposes.

Licensing agreements between the RRO and the user set out the **licensee's obligations: payment and reporting**. Users' involvement is important in understanding what they are paying for. It is in the rights holders' interest that no unnecessary copying takes place, and a duty to monitor copying volumes gives the user a good opportunity to evaluate photocopying habits.

There are many different ways for an RRO to get relevant usage data. In principle, the following options are used:

- Full reporting: the user informs the RRO about the 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 to the options available for distribution of remuneration.

6.4.2 Licensing and Tariffs

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

Copyright legislation in the country defines the possibilities for licensing. Vast and/or ambiguous free usages may effectively hamper the activities of an RRO. This is irrespective of whether they are in the form of “fair use”, “fair dealing” or 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
Church administration
Copy shops and other places where photocopying machines are open to the public

When deciding which category of users to target first, existing legislation and its interpretation, as well as the local infrastructure, play a role. Most European countries have started by licensing educational institutions. In countries where most photocopying takes place in copy-shops, it is important to ensure that legislation enables licensing in this sector.

- ❑ The first licensing agreement in Singapore was concluded between CLASS and INSEAD for its Asia Campus in 2002, followed by the agreement with the Ministry of Education for all its secondary schools, junior colleges and government-aided schools in 2003.
- ❑ In South Africa, DALRO started with 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 licence was with the Government of Jamaica for photocopying in the public sector in 2002, covering a three-year period.
- ❑ In Japan, licensing started in 1992 within trade and industry, and the major part of photocopying revenue collected by JRRC (Japan Reprographic Rights Center) still comes from that source.
- ❑ In Argentina, CADRA started collection in 2002 from copy-shops.

An **RRO licence** typically grants authorisation to copy a portion of a publication, in a limited number of copies, for the internal use of institutional users. The purpose of photocopying in the education field is normally defined as a supplement to the normal supply of educational material, not as replacement for the acquisition of textbooks and other teaching materials. In administration and businesses, the purpose is 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 used in photocopying licences covering large sectors.
- ❑ **Transactional licensing** gives a user a 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 licence agreement sets out the **terms and conditions** of copying. In general, photocopying of whole books and other publications is prohibited. In cases of out-of-print books, special arrangements may exist with the permission of rights holders.

The limits of copying differ in various countries, for example:

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

Common **tariff structures** are **price per page** and **price per student/employee**. Tariffs normally differ in different user categories, such as education, public administration and businesses.

In practice, the calculation of the fee 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, leading to the copying volume per student.
- ❑ The number of pages per student is multiplied by the page price.
- ❑ As a result, there is a fee per student to be paid.

Some examples of current **page rates** 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 on this basic rate may be applicable.

ProLitteris, Switzerland:

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

Some concrete examples of **fees per student** in two countries:

The Copyright Licensing Agency (CLA), the United Kingdom:

- ❑ State higher education: 7.00 euro (£4.08) per full time equivalent student and year
- ❑ State secondary schools England & Wales: 1.87 euro (£ 1.09) per pupil and year

ProLitteris, Switzerland:

- ❑ Universities: 9.15 euro (14 CHF) per student and year; based on the survey results that 35 % of material copied in universities is of copyright protected material.
- ❑ Upper secondary schools: 3.05 euro (4.60 CHF) per student and year; based on the 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 some concrete idea about the size of photocopying fees. For instance in Australia, the amount of photocopies per student and year equals 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 licence fees to those whose works are copied. The aim is to maximise the distribution to rights holders and minimise the costs, while maintaining sufficient accuracy.

Distribution of collected remuneration to the owners of rights is a key issue for an RRO. A basic principle of collective management of individual copyrights is that remuneration should be distributed to rights holders according to the **actual use** of their works. This general principle applies to remuneration for reprographic reproduction as well. Thus, ideally, each rights holder would receive individual remuneration according to the actual photocopying of his or her work.

However, for practical and administrative reasons, this is often impossible. Therefore, 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 principle, two **main options** exist in distributing photocopying remuneration:

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

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

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

Full reporting forms an ideal basis for distribution. It means that users record details of every copyright work that is copied. Whereas the advantage is obvious, this method may be perceived as burdensome to the user and entails a lot of costs for the RRO.

- ❑ Copyright Clearance Center (CCC) in the United States 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 organisation, the British Library Document Supply Center. When documents are delivered to organisations undertaking research for commercial purposes, such clients pay a copyright fee set by

the rights holder, and information on this transaction leads to exact payment to the rights holder.

In **partial reporting** users report their copying during a certain period of time. The collection of relevant data can also be based on **surveys using sampling methods**. Distribution is in these cases based on a sample of actual copying instances.

- ❑ In Denmark, 5% of all the schools covered by the school licence have to report all copying of copyrighted material to Copy-Dan for 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% of education institutions for a period of six weeks. During the sampling period users must make extra copies. Sampling is not carried out on an annual basis, but additional data are collected from a limited number of users reporting their copying. Distribution is based on a combination of sampling and reporting data.

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 underlying rationale behind this distribution method is that all material that exists on the market can be photocopied, and at some stage 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 licences, 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 to ProLitteris their works: 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 amount 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 in 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 distributes remuneration to its member organisations 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 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 can be determined on the basis of survey results.

- ❑ In Norway, Kopinor normally carries out surveys in each sector every 5 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 decided by different methods:

- ❑ Split is based on stipulations in national legislation, for instance in Belgium (REPROBEL) and Romania (CopyRo).
- ❑ Split is based on agreement between the parties in most countries, including Germany (VG WORT), Norway (KOPINOR) and the United Kingdom (CLA).
- ❑ 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 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, depending on the case. The width and variety of services in this field varies greatly.

7.2 Acquiring Digital Rights

Acquisition of digital rights requires discussions with rights holders – authors and publishers – and, in many cases, new mandates.

Most existing RROs started with photocopy licensing. Thus, their mandates from rights holders have 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 photocopying licences.

The acquisition of digital rights requires discussions with owners of rights, creators and publishers, and in most cases **new mandates**. The most appropriate form of management is frequently discussed in most RROs

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

Presentations within the framework of IFRRO have enabled RROs and rights holders to learn from each other and to be inspired by the vast possibilities that exist.

7.3 Bilateral Agreements

It is important to also acquire foreign repertoire for digital uses. Digital use in case of transmission over the Internet is, by definition, international.

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

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

7.4 Current Licensing Methods and Practices

In the digital field, licences are often based on transactional licensing, which may allow rights holders to set the prices individually 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 answers from rights holders and RROs.

Copyright Clearance Center (CCC) in the United States licenses digital uses 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 permissions and the content itself, maintaining the security and tracking further 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, **Copyright Licensing Agency (CAL)** applies a press clipping licence that allows agencies to scan, store and distribute newspaper articles to their clients, and the downstream licence allows government and corporate clients of these agencies to internally distribute the clips by e-mail or Intranet.

In a similar case in France, **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 for displaying these digital reviews on their Intranet.

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

In the United Kingdom, the **Copyright Licensing Agency (CLA)** offers blanket scanning licences to the Further Education sector. On a similar basis, blanket scanning licences, 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 so called retrodigitisation by libraries; digitisation and use of older material, and Intranet digitisation and use of material which is not published in digital form.

7.5 Some Legislative Solutions

In some countries, statutory provisions exist in copyright legislation that also covers some forms of digital uses.

Legislation has widened the **definition** of copying and/or reprography to include some electronic usages. 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 Licences of Copyright Licensing Ltd (CLL) with tertiary educational institutions allow electronic copying and access to students. The **Jamaican** Copyright Act defines copying to include “storing the work in any medium by electronic means”.

Statutory provisions apply to electronic copying in certain countries:

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

In **Switzerland**, there is a legal licence for extracts of copyright protected works for internal information and documentation within schools, universities, business and professions. ProLitteris is in charge of this legal licence.

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

The applicability of the levy systems to the digital environment has been widely discussed, owing to the emergence of business models including digital rights management systems. Whereas rights holders, and RROs as their representatives, fully support 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 in paper form, and thus outside the applicability of DRM systems. These materials can easily be digitised, for instance by scanning, and used further in the electronic chain. Thus, for some years to come the digital levy systems and evolving DRM systems will need to work side by side, in a complementary manner.

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

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

8 IFRRO REPRESENTS RIGHTS HOLDERS' INTERESTS

8.1 IFRRO - the International Link

The International Federation of Reproduction Rights Organisations (IFRRO) links together all RROs as well as national and international associations of rights holders.

National Reproduction Rights Organisations are Members of IFRRO. Such RROs exist today in close to 50 countries, and the number is increasing year by year. Rapid development in many countries is due to the efforts of local authors and publishers, supported by IFRRO and its Members. Longstanding development cooperation bears fruit on all continents, to the benefit of authors and publishers and the international community.

National associations of authors and publishers are Associate Members of IFRRO. The following International Associations are Associate Members of IFRRO:

- European Newspaper Publishers' Association (ENPA)
- European Writers' Congress (EWC)
- Federation of European Publishers (FEP)
- International Federation of the Periodical Press (FIPP)
- Fédération Internationale des Traducteurs (FIT)
- International Council of Graphic Design Associations (ICOGRADA)
- International Federation of Journalists (IFJ)
- International Publishers Association (IPA)
- International Associations of Scientific, Technical & Medical Publishers (STM).

8.2 Main Tasks of IFRRO

IFRRO's main task is to provide positive legislative and operational ground for its members, and to inform about the positive impact of a well-functioning management framework in the society.

IFRRO began 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. Since 1988, IFRRO has been an independent Federation with its own agenda, eligible to speak on behalf of its members in front of national and international bodies.

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

As such, IFRRO has **three primary purposes**, which will be briefly described as follows:

1. Fostering the creation of RROs world-wide.
2. Facilitating formal and informal agreements and relationships between and among its members; and
3. 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 none exist so far.

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

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

The **Development Fund** of IFRRO receives its funding as voluntary contributions from the membership. It is recommended that an amount equivalent to the membership fee of IFRRO is annually dedicated to this Fund. Members are free to decide whether they want to attribute the money to a certain region or leave this to the Board's discretion.

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, i.e. the 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 qualifications for each.

8.2.2 Relationships between Members

IFRRO is the sum of its Members, and its strength lies in the multiplicity of different rights holders gathered together in the Federation.

A lot of work is being done by different **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 it 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). It was originally developed by publishers to be used in the network environment, but is now applied to all kinds of copyright protected material. IFRRO participates 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. Many IFRRO meetings provide for a worldwide forum for exchange of information and experience.

8.2.3 Awareness Raising

Now, perhaps 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, arranged for instance by the World Intellectual Property Organisation (WIPO). Bringing together governmental representatives and private sector representatives has proved fruitful for both parties.

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

8.3 Cooperation Agreement with WIPO

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

This work was intensified in October 2003, when a Cooperation Agreement was concluded with WIPO. This Agreement offers possibilities for both organisations 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 organisations, 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 organisations of the countries to which the Cooperation Agreements 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”.*