

Collective Management of Text and Image- Based Works





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About the author

Ms. Tarja Koskinen-Olsson has solid experience of collective management of copyright and related rights in different creative sectors, both in Finland and in different parts of the world.

Starting with collective management of rights in the music sector, she continued to build appropriate solutions for the text and image and audiovisual sectors in Finland, where she functioned as the CEO of KOPIOSTO, the joint copyright organization of the country.

She served as Chairperson of the International Federation of Reproduction Rights Organisations (IFRRO) in the 1990s and later on as the Honorary President of the federation.

She now devotes her time to discussing appropriate solutions with policy makers and practitioners in developing and least-developed countries, working as International Adviser of Olsson & Koskinen Consulting.

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Tarja Koskinen-Olsson
International Adviser

Introduction

This publication offers a general description of collective management of copyright in the text and image sector. It gives insight into the legislative framework and national operational systems in different parts of the world. The first edition of this publication was published in 2005 under the title “Collective Management in Reprography.” Since then, a number of changes have taken place both in legislation and practical operations.

Publishing is an important sector among the creative industries that base their activities on copyright protected works, so called copyright industries. According to the national studies carried out in 42 countries based on WIPO’s methodology,¹ these industries contribute with 5.18 percent to the gross national product (GDP). Press and literature, as this sector is called in the studies, represents 39 percent of the total, thus being the single most important sector in the majority of countries.

The publishing industry consists of a vast variety of different types of publications, such as books, journals, magazines and periodicals, newspapers, sheet music and song books. These are published both as physical copies and in digital formats.

Publications include both text and images. Collective management can facilitate access to text and image-based works in cases where it is impractical or impossible to manage rights individually. Collective management of image-based works in stand-alone format is outside the scope of this publication.

The primary goal of this publication is to offer information to policymakers considering appropriate legislative responses to widespread copying and communication in society. Given the various usages of text and image-based works today, the legislators may need to consider the solution that best fits the different purposes. Seldom does only one legislative model meet with users' needs to access works and rights holders' needs to be remunerated for their use. The complexity calls for careful consideration and in many cases a combination of solutions, based on individual exercise and collective management of rights.

The publication is also a tool for practitioners of intellectual property rights and offers an overview to persons working in collective management organizations (CMOs). Users of text and image-based works and other stakeholders can also benefit from understanding how collective management functions in practice in educational institutions, corporations, and public and private administration, to name a few examples.

The legislative framework needs to offer a solid foundation that can be applied to new and innovative ways in which protected works can be used in the marketplace. Based on an appropriate framework, new licensing solutions can be negotiated between rights holders, their representatives and users. This is where collective licensing can be an answer to some scenarios.

A healthy publishing market is a prerequisite for literary and visual authors to create and for publishers to invest in a 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 copying.

It is my hope that this publication will serve as a useful information tool for a range of different users.

A well-functioning copyright system

There are three prerequisites for a well-functioning market for text and image-based works:

- The legislative framework, based on international treaties, forms the basic foundation.
- Elimination of unauthorized uses through effective enforcement mechanisms is a necessity.
- Individual licensing and collective management of copyright ensures reward for rights holders.

This publication concentrates on collective management. Whereas rights in the publishing industry are in most cases exercised individually, collective management complements direct licensing in cases where it is impracticable or impossible to license individually. The publication explains how CMOs can facilitate access to works protected by copyright.

The ultimate aim of collective licensing is to serve rights holders, users and the society at large, by:

- *Creating a compliance culture:* It needs to be quick and easy for users to obtain the necessary copyright permissions. Collective licensing offers a convenient way to be compliant in many cases.
- *Securing a healthy publishing market:* Licensing and enforcement support each other, both striving toward the same goal by different means. Copying of entire publications on the market is a clear infringement of copyright, requiring rapid and effective enforcement measures by the relevant authorities. Enforcement measures are needed to support licensing.

- *Encouraging and protecting creativity*: Ensuring that copyright owners are remunerated encourages authors' creativity and provides incentives for publishers to invest in new publications. Any country that cherishes its national tradition and advances in the field of culture, science and education recognizes the foundation that intellectual property legislation provides.
- *Promoting national culture and cultural diversity*: Unauthorized copying and pirated publications always hit hardest at the national level. In many smaller language groups, the local market provides the only marketplace for national rights holders. Solid legislative framework and effective enforcement mechanisms are necessary tools to promote diverse national culture.

1 Publishing as a core copyright industry

Developments in the marketplace

Publishing is one of the largest cultural sectors in society, covering a range of products and services, and making available text and image-based works in both analogue and digital formats.

Technology has been a driving force throughout history. The printing press was a truly revolutionary new technology when it was invented in the 15th 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 as a direct response to the printing press.

Photocopying became commonplace in the late 1960s and early 1970s, producing a need for an appropriate solution to combat increasing levels of unauthorized photocopying. The goal was to turn copying into a lawful activity by securing access to users and remuneration for authors and publishers.

When the internet became widely used in the 1990s, copying started to turn into digital copying. While copying on paper still exists, it has been supplemented by digital forms of exploitation. New ways of using protected text and image-based works are invented regularly – hence the need for innovative and user-friendly licensing methods.

Developments in the digital marketplace have increased the creation, dissemination and use of text and image-based works dramatically. Scanning, storage, retrieval and online delivery are commonplace. Many materials are available online irrespective of the time and space of the user.

How is copyright managed in the publishing sector?

Individual exercise of rights, based on direct contracts between authors and publishers, is the standard in the publishing industry. Collective management plays an important role in cases where it is impracticable or impossible to exercise individual licensing.

Authors and publishers are considered to be rights holders in the publishing industry. They own or exercise copyright based on legislation and/or contracts.

Authors include:

- Writers of fiction and non-fiction
- Translators
- Journalists
- Scientists and other professional writers
- Visual artists, including illustrators and photographers
- Authors of musical works.

Publishers bring to the market:

- Books
- Journals
- Magazines and periodicals
- Newspapers
- Sheet music and song books.

An author customarily concludes a publishing agreement with a publisher and gives the publisher the rights to publish and bring the work to the market, in all formats that are included in the agreement. In return, the author gets a share of the sales price as royalty and/or other agreed payments and thus benefits from the economic success of the work. Publishers distribute and license the use of works, including new services offered by online platforms.

A journalist is in many cases employed by a newspaper publisher, and the ownership of rights over works produced is covered by the employment contract or by legislation. Freelance authors and photographers normally conclude licensing agreements with publishers, on either an exclusive or non-exclusive basis.

While copyright in the publishing industry is in most cases exercised through direct contracts, there are many cases where rights can be most effectively managed by CMOs. This is the scope of this publication: explaining the role of collective management of text and image-based works.

The role of collective management

CMOs license the reproduction and communication to the public of materials protected by copyright in cases where it is impracticable or impossible for rights holders to act individually.

Copying in both analogue and digital forms takes place everywhere in society and represents a massive use of text and image-based works. It would in many cases be complex for users to clear the necessary permissions on an individual basis.

If a user needs to copy an article or chapter from a number of publications, it would be close to impossible to ask for permission directly from authors and publishers all over the world. To facilitate legal access, rights holders have entrusted some of their rights to CMOs, who act as an intermediary between rights holders and users, delivering services to both parties.

2 Collective management of text and image-based works

Development of CMOs over time

Collective management is an old phenomenon in some creative sectors. It began at almost the same time as the first national copyright laws were enacted. It has expanded to new fields over the centuries, prompted by technological advances.

Copyright has been managed collectively since the late 1700s. It started in France in 1777, in the field of theatre, with management of dramatic and literary works. Collective management is most common in the field of music, where the first CMO was established in 1850, also in France. Today, CMOs function in approximately 130 countries around the world.

The term collective management organization (CMO) has been preceded by different references, such as “collecting society,” a term still used in a number of countries. Other terms include “collective administration societies” and “licensing bodies.”

Different creative sectors often use their sector-specific terms, including:

- Performing rights organizations (PROs), for management of rights in musical works
- Music licensing companies (MLCs), for phonogram producers’ rights
- Performers’ rights collective management organizations (PMOs)
- Reproduction rights organizations (RROs) in the text and image sector.

CMOs also manage rights in works of visual art and photography, as well as audiovisual and dramatic works.

This publication uses the generic term CMO. In cases where the activities of reproduction rights organizations are described, the term RRO is used.

The following is a generic definition of collective management of copyright and related rights:

In a collective management system, rights holders of protected works authorize a collective management organization to manage their rights.

RROs as specialized CMOs

Copying on paper or analogue copying gave rise to RROs. Due to the central role of the right of reproduction in licensing, these organizations adopted the name reproduction rights organizations. Today RROs license both analogue and digital copying and communication.

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 company, to be used by its employees, could not take place without the consent of rights holders. This led to the establishment of VG WORT² in Germany as a general literary rights organization. VG WORT manages among other things analogue and digital copying on behalf of authors and publishers.

The first RRO to specialize in the management of photocopying, BONUS Copyright Access,³ was established in 1973 in Sweden. An agreement was negotiated and concluded with the relevant government authority and covered paper copying in educational institutions. At the start of 2023, RROs managing text and image-based works functioned in around 85 countries all over the world.

The activities of RROs are the same as for other CMOs. They can be summarized as follows:

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

In other words, it can be said that there is a money-in and money-out part of the operation. The money that the organization collects is not its own money, but money that it holds in trust before distribution to rights holders. Consequently, the majority of CMOs are not-for-profit organizations.

By mandating professional organizations to manage rights in practice, authors can concentrate on their creative activity and get remuneration for the use of their works, not only in their own country but in foreign countries with which the organization cooperates. Publishers also rely on RROs to receive remuneration for agreed uses, as part of the return on investment that enables them to bring new publications and other services to the market.

Collaboration between other CMOs and specialized RROs

Not only text is copied from a publication, but works of visual art, photographs and sheet music are frequently copied as well. In order to be able to license all kinds of materials that can be copied, RROs have established a number of partnerships.

Inclusion of visual material

There are several ways to incorporate permissions to copy visual material into the license of an RRO. Visual artists and photographers have established their own CMOs in a number of countries, and they can conclude a cooperation arrangement with the RRO. As a result, the RRO is in a position to grant comprehensive licenses and thus better serve user needs.

This is the case for instance in Argentina, where Centro de Administración de Derechos Reprográficos (CADRA),⁴ the local RRO, represents visual artists on the basis of a representation agreement with the dedicated visual artists' CMO, Sociedad de Artistas Visuales Argentinos (SAVA).⁵

In other countries, visual artists and photographers join the relevant RRO directly, individually or through their representative CMO. In the United Kingdom, the Design and Artists Copyright Society (DACS)⁶ and the Picture Industry Collecting Society for Effective Licensing (PICSEL)⁷ are members of the Copyright Licensing Agency (CLA),⁸ the national RRO. In Australia, visual artists and photographers join the Copyright Agency (CA)⁹ as a visual artist member and thus participate in the same way as authors of text-based works. This is also the case in the Republic of Korea, where visual artists join the RRO, Korea Literature, Academic works and Art Copyright Association (KOLAA)¹⁰ directly.

Irrespective of the way in which visual artists and photographers participate in the licensing of text and image-based works, it is essential that the share due to them is distributed efficiently. This can take place either directly from the RRO or through their specialized organization.

Copying of sheet music

Special conditions often apply to copying of sheet music, because this material is particularly vulnerable to copying. By copying one page, the whole work may be consumed.

Thus, the limits according to which copying musical works 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, if not authorized by music publisher rights holders on a case-by-case basis.

In some countries, specialized CMOs license reproduction of sheet music. The legislative framework under which they operate may be different from that of the RRO in the same country. For instance, legislation may not permit certain exceptions or limitations for copying of sheet music. This is the case for instance in the European Union.

Music publishers may also authorize the RRO directly to include their repertoire in certain or all licenses. Again, enabling access to the whole repertoire is essential and something that users of protected material are looking for.

Copying of news material

Newspapers and similar publications are copied frequently 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 situations of journalists differ widely across jurisdictions and countries, and this needs to be taken into account in licensing.

In some countries where newspaper material is included in the repertoire of the RRO, rights holders in this field participate directly in the work of their national RRO. This is the case for instance in France, where the Centre Français d'exploitation du droit de Copie (CFC)¹¹ manages reproduction rights in press publications in analogue format on the basis of obligatory collective management for reprographic reproduction rights and in digital format on the basis of voluntary mandates for digital reproduction and communication rights.

In some countries there is a separate organization established by rights holders of news material. Cooperation agreements between the two organizations can be concluded, ensuring covering licenses for some or all licensees. For example, in the Republic of Korea, the Korea Press Foundation (KPF)¹² has entrusted KOLAA to offer licenses for the photocopying of newspaper works. This is also the relationship in the United Kingdom, where NLA Media Access (NLA)¹³ functions as a specialized CMO for publishers of news material. NLA licenses for schools, colleges and universities are managed by CLA under an agency agreement.

General literary rights organizations

CMOs in the text field can also have other tasks besides managing rights in relation to analogue and digital copying and communication. Such organizations can be called general literary rights CMOs. Literar-Mechana¹⁴ in Austria is an example of such an organization.

These organizations can license public performances and broadcasting of literary works, public lending rights as well as cable retransmission, to mention some examples. It is up to the rights holders in each country to decide which kind of solution would best serve rights holders and users of that country.

Coalition and “umbrella” organizations

Coalition-type organizations function in some countries. In such a coalition, rights holders in different sectors have joined together for the management of various secondary uses. For instance, such an umbrella organization can manage certain rights in audiovisual works, together with text and image-based works. This is the case for instance in Finland, where Kopiosto¹⁵ functions as the national RRO.

In smaller countries in particular it may be profitable and cost-effective to group together different tasks and licensing areas.

Multipurpose organizations

Licensing of text and image-based works can also be part of the tasks of so-called multipurpose CMOs. They have usually started with licensing musical works and later expanded their licensing to also include analogue and digital copying. Tanzania and Botswana are examples of countries with multipurpose CMOs, with the Copyright Society of Tanzania (COSOTA)¹⁶ and the Copyright Society of Botswana (Cosbots)¹⁷ as national CMOs.

Under certain circumstances it may be feasible to consider how many different CMOs can effectively operate in the same country. Sometimes it is better to incorporate all activities in the same organization. This can also facilitate contacts with users, as they know that different kinds of licenses can be obtained from the same organization.

Regional activities

In some small countries, regional activities for collective management of text and image-based works have been developed. Universities in these countries may serve students from the whole region, which is the case for instance in the Caribbean and the University of the West Indies. A network of five RROs grouped together in the Caribbean Reproduction Rights Organizations' Agency (CARROSA)¹⁸ is in a better position to serve user needs in such circumstances. CARROSA is hosted by the Jamaican Copyright Licensing Agency (JAMCOPY).¹⁹

3 Legislative framework

International legislation

The foundation of modern copyright law is the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention). The right of reproduction is often said to be the cornerstone of copyright. In the digital environment, the right of communication to the public, including making available to the public, has become an important element in cases where protected materials are delivered online.

Right of reproduction

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 their work “in any manner or form.” Reproduction of works takes many different forms, such as:

- Printing
- Copying on paper, analogue copying
- Scanning
- Digital copying
- Electronic storage in databases.

The exclusive right of reproduction to authorize or prohibit the reproduction of a work may be subject to exceptions or limitations under the Berne Convention, subject to the three-step test. According to Article 9(2) of the Berne Convention: “It shall be a matter of 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 works 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 (the TRIPS Agreement), administered by the World Trade Organization (WTO). The relevant stipulation is contained in Article 13 of the TRIPS Agreement.

The same principle is expressed in Article 10 of the WIPO Copyright Treaty (WCT), concluded in 1996.

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

- Exceptions and limitations 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 interest of the rights holder.

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

Combining exceptions with licensing

Countries may have exceptions or limitations concerning the use of text and image-based works in libraries and certain activities in education and research. Given the huge volume of copies made in education, compatibility with the three-step test criteria does not often exist. It is therefore important to consider how best to combine exceptions or limitations with licensing activities. In encountering ever-changing user needs, licensing can in most cases guarantee access to the widest possible repertoire while at the same time enabling rights holders to be remunerated for the use of their works.

License override

In some countries, in particular where legislation follows common law principles, the right to use works under an exception may not apply if a suitable licensing agreement is available. This can be called license override. In practice this means that if an educational institution knows or should know that a license agreement is available for the use in question, it may not copy or use works

under the exception. Rather, it has an obligation to negotiate a license agreement, normally with the relevant RRO. This mechanism applies among others in Kenya, the United Kingdom, Hong Kong and Jamaica.

Fair compensation

Another possibility is to consider fair compensation for rights holders in certain cases of exceptions or limitations. We can talk about compensated exceptions as one solution in particular in the field of education. More on this option is included later in this chapter.

Right of communication to the public, including making available to the public

The WIPO Copyright Treaty (WCT) of 1996 is an important instrument to tackle issues related to the digital environment. Among others, the treaty includes a broad scope of the right of communication to the public for all categories of works. The substance of the right of communication to the public can be incorporated into national law by different rights, such as the right of distribution in the United States and the right of transmission in Japan.

The right of communication to the public is the right to authorize any communication to the public, by wire or wireless means, including “the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them.” This expression covers, in particular, on-demand, interactive communication through the internet.

Especially in higher education, learning resources are often stored in databases and offered to registered students by the use of passwords. Students can retrieve the materials irrespective of their location, in some cases also in different countries. This is an example of making available to the public, and some applications are described in chapter 8.

European Union legislation

Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society (InfoSoc Directive) 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 authorize 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 exception of sheet music, provided that rights holders receive fair compensation."

The InfoSoc Directive sets out that fair compensation is due when certain exceptions or limitations apply, including reprography. This is a minimum requirement for member states to provide exceptions and limitations to an exclusive right. Arrangements concerning management of rights may apply in specific cases.

Recital 35 of the InfoSoc Directive offers guidelines for national legislators on the concept of fair compensation, by explaining that rights holders should receive fair compensation to compensate them adequately for the use made of their works under exceptions and limitations. The determination of the form, detailed arrangements and the level of such compensation is left for the member states to decide.

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market Directive (DSM Directive) further describes the right of reproduction and its adaptability to the digital

environment, including digital cross-border teaching activities (see chapter 8).

National legislations

Legislative choices vary from country to country, but national copyright legislation needs to be in harmony with commonly accepted international and regional norms.

Since the right of reproduction is an exclusive right, exceptions and limitations should not jeopardize this point of departure in national legislation. Consequently, large-scale analogue and digital copying is subject to licensing.

National legislation may include free uses, meaning no consent and no remuneration, only in carefully defined special cases. General “fair use” or “fair dealing” provisions may lead to a situation where the use made under an exception or limitation prejudices the legitimate interest of rights holders. This could easily be the case for instance in universities and other educational institutions where massive copying of protected material takes place.

Clarity in national legislation plays a key role. As an example, in Zambia, some universities refused to enter into licensing agreements with the Zambia Reproduction Rights Society (ZARRSO)²⁰ because complex legislative language allowed them to interpret the exceptions in the copyright legislation more broadly than intended. In 2021, the Attorney General of Zambia issued a legislative interpretation clarifying that educational institutions that copy copyright protected works must sign a license agreement with ZARRSO.

In any legislation, there should be a balance between the legitimate interests of users and the rights of rights holders. This is where the services of RROs can play a major role in the society. They facilitate rapid and lawful access to copyright protected works in a relatively inexpensive way. They also enhance creativity by offering incentives to authors to create new materials and publishers to invest in future publications.

Private copying remuneration

The Berne Convention allows member states to provide for exceptions and limitations to the right of reproduction, provided that the conditions of the three-step test are met. Many jurisdictions have applications for usages that are qualified as “private copying,” i.e., reproduction for private and personal use.

The rationale is that it is practically impossible to grant permissions for private copying to large numbers of individuals and to monitor how such permissions would be subsequently followed. In general, the solution is found in an exception or limitation to the exclusive right on the condition that fair compensation is paid to authors and other rights holders for loss of revenues or harm caused to the rights holder whose work has been copied. This is currently the only efficient mechanism for compensating creators for the widespread copying of their works for private use.

As a rule, private copying exceptions only apply in cases where the underlying work is legal. Thus, the remuneration is not a remedy for unauthorized copying, nor a substitute licensing. From the perspective of the international legal framework, it is not compulsory for countries to compensate rights holders when their exclusive right is limited for the purpose of private copying.

A global study²¹ from 2020, carried out by the International Confederation of Societies of Authors and Composers (CISAC), found that at international level there are at least 74 countries that have a private copying remuneration system in their legislation. However, only 38 have effectively implemented it. Among these countries, 21 are in the European Union, six are in Central and Eastern Europe, four are in African countries and four are in North and South American countries.

From an economic perspective, private copying remuneration has been recognized as an important and stable source of income for rights holders. It also contributes to enhanced creativity, as rights holders have better chances to concentrate on their creative activity.

Due to its nature and the impracticality of collecting the remuneration on an individual basis, many countries have chosen the option of obligatory collective management for collection and distribution of private copying remuneration.

The list of equipment and media that are included in the private copying schemes varies in different countries. As technology changes the scenario, some countries have included the concept of “storage media of any kind” to tackle the rapidly changing landscape. This is the case for instance in Austria. Ghana’s regulation encompasses a list of media and devices covered by private copying levies, not only MP3s and CDs, but also “all the other material prescribed by the Minister and by law.” The Regulation of 2010 was under revision in 2022.

Regarding new technologies such as cloud services, some countries have incorporated those services into the scope of private copying levies. In France, cloud storage has fallen within the scope of remuneration for private copying since 2016, according to the provisions of the Code of Intellectual Property.

All kinds of creative works can be copied and are de facto copied for private use. It is therefore important that all types of works benefit from the private copying scheme. Chapter 4 contains specific information on how the levy system has been implemented for text and image-based works.

The private copying exception applies in a very specific remit, under certain legal requirements and with respect for the three-step test.

Stipulations on collective management of rights

International treaties do not have any direct provisions on collective management. However, they set out the legal framework applicable to exclusive rights and criteria for permissible exceptions and limitations. This in turn affects the licensing possibilities of CMOs. Both European Union legislation and many national legislations include legal frameworks to regulate collective management of rights.

The relevant stipulations can be included in:

- The Copyright Act and regulations
- Separate legislation on collective management of rights and CMOs
- General legislation on companies, associations, etc.

The following is a list of typical provisions:

- CMO approval and suspension processes
- Form and structure of a CMO
- Membership and representation of rights
- CMO supervision
- Reporting
- Complaints handling and dispute settlement procedures.

The most common requirement is that a CMO needs to be authorized or approved by the relevant authority to function as a CMO. The approval may be limited in time, for instance for three or five years, after which a renewal process needs to take place. The approval can also be continuous, provided certain reporting requirements are met.

Supervision of ongoing activities customarily includes a duty to provide the annual report and audited accounts to the relevant authority.

Special legislation on collective management exists in some countries.

- The German patent office has the responsibility for overseeing the operations of CMOs. It also provides an arbitration board in cases of disagreement concerning tariffs. The decisions of this arbitration board may be appealed in normal courts of law, if parties are not satisfied with the decision.
- In Japan, the Law on Management Business of Copyright and Neighboring Rights has been in effect since 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. The role of a copyright tribunal is to determine license fees in the event of the CMO and the prospective licensee failing to agree. This is the case for instance in Singapore, where the Intellectual Property Office of Singapore (IPOS) can resolve disputes relating to licenses and license schemes in relation to a work or other subject matter.

European Union legislation

[Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing in musical works for online use in the internal market \(CRM Directive\)](#) was approved in the European Union. This provides for a comprehensive and detailed legal framework for the operations of CMOs.

The CRM Directive includes the following main chapters:

- Representation of rights holders and membership and organization of CMOs
- Management of rights revenue
- Management of rights on behalf of other CMOs
- Relations with users
- Transparency and reporting.

The chapter concerning management of rights revenue includes detailed stipulations on collection of remuneration, distribution and management of fees and other authorized deductions. The CRM Directive sets European-wide standards of transparency and governance, which are essential to ensuring that relationships with rights holders and users are based on a solid foundation. The European CMOs need to publish a yearly transparency report and make it publicly available.

4 Different operational models for RROs

Different solutions for different usage areas

Legislation has a bearing on the operational model in which an RRO works. In today's marketplace, the use of copyright protected works varies a great deal in different usage areas. It is therefore most beneficial that both the legislative framework and the operational model are tailored to best suit the marketplace.

What is common to all models is that without a solid legislative basis there is little room for an RRO to effectively license reproduction and communication of copyrighted works, and thus provide lawful access to different kinds of users. It is therefore of paramount importance that legislation provides an unambiguous basis for the RRO operation. Lack of clarity serves neither rights holders nor users. At worst, it can lead to years-long litigation and huge costs as a result.

All different solutions should be founded on the following main principles:

- They should guarantee equitable remuneration to authors and publishers for the use of their works.
- They should facilitate users obtaining legal access to works within a rapidly changing environment.

It is common for an RRO to operate with several operational models, depending on the usage area and the corresponding legislative framework. For example, copying in educational institutions can be different from that in research and development (R&D) dependent corporations. To best serve the

user needs is one of the guiding principles in the management of text and image-based works.

Voluntary collective licensing

Under voluntary collective licensing, the RRO issues licenses to copy material on behalf of those rights holders who have given it a mandate to act on their behalf. This model is a natural point of departure in managing exclusive copyright rights of authors and publishers.

RROs obtain licensing authority from mandates given by rights holders and through agreements concluded with RROs in other countries. These agreements can be based on reciprocal representation.

Mandates from rights holders can be exclusive or non-exclusive. For instance, in the United States, the Copyright Clearance Center (CCC)²² carries out collective licensing based solely on non-exclusive agreements with rights holders. The rights holders determine which of CCC's various licensing programs they wish to be part of, and which works are included in the different programs. In some licensing programs, rights holders set individually the price of each work. This can encourage rights holders to participate in as many programs as fit their needs and expand participation over time.

Even in the case of voluntary licensing, copyright legislation can include stipulations that govern the operations of the RRO. The 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.
- An educational licensing scheme with CLA is underpinned by a copyright exception, which means that where a particular work is not included in a license, an educational establishment would still be able to copy it in the defined case of the exception.

The rationale of the provision is to ensure that educational institutions have effective licensing schemes available, and it functions as a safety net in this regard.

Support mechanisms for voluntary collective licensing

Some countries have introduced mechanisms that support voluntary collective licensing. The underlying rationale is to support the development of different collective licenses to respond to users' needs when they conclude a licensing agreement with an RRO.

It is virtually impossible for an RRO to represent by agreement all rights holders in its own country, let alone rights holders all over the world. A support mechanism in the law thus supplements a voluntary license in defined cases and secures the legal position of non-represented rights holders.

It is important that licensing negotiations can take place on a voluntary basis, in negotiations between the RRO and the user or their representative. This is the very nature of exclusive rights. However, users may have a legitimate interest in securing their interest with regard to rights holders who are not represented by the organization.

There are different types of support mechanisms for voluntary collective licensing:

- Extended collective license (ECL)
- Legal mandate
- Legal presumption of representation.

In legislation applicable in the European Union, these three support mechanisms are grouped together as collective licensing mechanisms with an extended effect (CLEE). The directive on copyright and related rights in the DSM Directive acknowledges that CLEE mechanisms in national law allow a CMO to offer licenses on behalf of rights holders, irrespective of whether they have authorized the organization to do so. The provision is optional and subject to restrictions and safeguards.

Extended collective license

An ECL extends the effects of a copyright license to also cover the works of non-represented rights holders. The CMO issuing such a license must distribute the remuneration to represented and non-represented rights holders on an equal basis.

In the 1960s the Nordic countries adopted the extended collective license to cover licensing of musical works in broadcasting. In the 1970s the system was extended to cover photocopying. The mechanism was over time extended to also cover digital uses in defined cases. It is a prerequisite that the organization which concludes an agreement with the extension effect represents a substantial number of rights holders whose works are used under the specific licensing agreement. The extension effect thus covers a relatively small number of non-represented rights holders, and consequently the system is best suited to countries where rights holders are well organized and represented by the RRO.

On a general level, the elements of an ECL include the following:

- The CMO and the user conclude an agreement on the basis of free negotiations.
- The agreement is by law made binding also on non-represented rights holders when the agreement has been concluded.
- The users may use all materials lawfully, without the possibility of receiving claims from non-mandating rights holders or having to face criminal sanctions.
- Non-represented rights holders have a right to individual remuneration on the basis of the law.
- Non-represented rights holders have in most cases the right to prohibit the use of their work (opt-out) and the CMO has the obligation to inform users of such cases.

We can take Denmark as an example of the Nordic countries. The CMO must be approved by the Danish Ministry of Culture as the relevant authority. To qualify as an organization under the ECL system, Copydan Writing²³ as the Danish RRO has to represent a substantial number of national and foreign rights holders whose works are used under the licensing scheme. An agreement between users and Copydan Writing gives the user the right to exploit the works of represented and non-represented rights holders.

Apart from the Nordic countries, among others Czech Republic, Hungary, Romania and Slovenia have introduced some form of ECL into their national legislation.

A further example of the ECL system comes from Malawi. Article 58(3) of the Copyright Act states that:

A collective license agreement permitting the use of works of authors represented either directly or through their associations by the Society, representing, as confirmed by the Minister, a substantial part of the authors concerned whose habitual residence is in Malawi, shall, subject to the terms and conditions of the agreement, extend to the use of works of authors whom the Society does not represent.

Such works need to be of the same nature as works that are covered by the ECL and limited to the uses permitted by the agreement.

The article further specifies that the ECL applies to reproduction “for use in education.” It also sets out the conditions for its applicability. The Copyright Society of Malawi (COSOMA)²⁴ is the relevant CMO in Malawi. The extended collective license system in Malawi applies also to other types of licensing agreements, such as broadcasting and simultaneous and unaltered retransmission of broadcast programs.

Legal mandate

Another legal technique to address the position of non-represented rights holders is called legal mandate.

- Under this scheme, the national law mandates a representative CMO to conclude licensing agreements also on behalf and for the benefit of non-member rights holders.
- This can be described as a legal or statutory mandate.
- Contrary to the ECL mechanism, the mandate is extended, not the license itself.

For example, in France, CMOs may extend their authorization to works owned by non-members, provided the CMO’s mandate is sufficiently representative.

Legal presumption of representation

Under this mechanism, a representative CMO is presumed to represent the interests and rights of both member and non-member rights holders. However, there is no legal mandate upfront to represent non-member rights holders. For instance, in Germany, the CMO managing rights in out-of-commerce works is presumed to represent non-member rights holders under certain conditions (see chapter 7 for out-of-commerce works).

Obligatory collective management

Management of reproduction rights as exclusive rights is a voluntary act. However, in the case of obligatory collective management rights holders cannot make claims on an individual basis. Thus, when considering obligatory collective management, the provisions of the Berne Convention, in particular the three-step test, must be taken into account. The obligatory collective management model is also called mandatory or compulsory collective management.

In 1995, legislation in France introduced the concept of obligatory collective management in the remit of reproduction rights for photocopying, subject to legal requirements. Even though the management is voluntary, rights holders are legally obliged to make claims only through a CMO. This safeguards the position of users, who conclude an agreement with the CMO, as they are not subject to individual claims by rights holders. Such agreements with users can only be made by an organization approved by the Ministry of Culture as the relevant authority.

CFC is the RRO appointed by the French Ministry of Culture to manage reprographic reproduction rights. By virtue of the law, it represents all French and foreign works (books and periodical publications such as journals, magazines and newspapers, as well as sheet music). While the obligatory collective management only applies to photocopying, CFC can license digital copying under a voluntary mechanism and extended collective management for digital uses in education.

Obligatory collective management has been adopted in a number of countries for reproduction for private and personal purposes (see chapters 3 and 4 for private copyright remuneration).

Lithuania, Poland and Romania are examples of countries with this solution.

Legal licenses and usage areas

Under a legal license regime, 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. A legal license constitutes a remuneration right, instead of an exclusive right.

This legal license system is called and can be described by different names, subject to the specificities in the law. Under a statutory license, not only the permission to use a work is given by law, but also the royalty rate to be paid is determined by statute.

If rights holders can negotiate the royalty rate with users, even though they are not in a position to refuse authorization, the term compulsory license is used in some jurisdictions. Both of these terms fall under the generic term legal license, and management of rights is non-voluntary.

It is important that the most suitable legislative framework is introduced, taking the specific usage areas into account. In many countries, a legal license is limited to education and government copying. In view of growing needs for copying in educational institutions, this solution is introduced or considered in some countries. When set out in respect of the Berne Convention, a legal license may be a solution that mitigates the loss in revenue from the rights holders' perspective and offers users access to a varied and vast repertoire in education. Because legal licenses limit rights holders' exercise of their rights, such licenses must comply with the requirements of the Berne Convention.

In Australia, education licenses and government copying schemes are managed by the CA as the declared collecting society for the administration of these two areas with a legal license, based on a scheme where parties can negotiate the license fees. For other sectors, such as businesses, voluntary licenses are offered. Similar provisions are also introduced in Singapore.

In Switzerland, a legal license covers schools, public administration, libraries, copy shops, services, trade and industry. Tariffs are not fixed by statute, but negotiated between the national RRO, ProLitteris,²⁵ and users' associations based on a set of rules included in the copyright law. The tariffs are also subject to ratification by the Federal Arbitration Commission.

In Japan, in 2020, the copyright legislation was amended to include a statutory license for educational use of copyright works. In April 2021, the Society for the Administration of Remuneration for Public Transmission for School Lessons (SARTRAS)²⁶ started the SARTRAS statutory license collection from educational institutions for specific public transmissions of all types of copyright works, including books, magazines, music, arts, photographs, broadcasting programs, etc., of both domestic and international origin. The license fees vary according to the level of education, with the lowest fees for kindergarten and the highest for universities.

The Japanese RROs are working to develop voluntary licensing schemes to complement the statutory license, which limits the use to cases where:

- Uses of copyright works are for classroom uses only, and
- Such reproductions and transmission do not unreasonably prejudice the interest of copyright owner in light of the nature of the reproduction, purpose and the work and number of copies for the reproduction.

Private copying and reprography levy for text and image-based works

In a private copying remuneration system, also called a levy system, a copyright fee is added to or incorporated into the price of copying equipment and media, which can be used to reproduce copyright protected works. As all types of material are copied for private use, it is important that the system ensures remuneration for rights holders in all creative sectors: music, audiovisual, and text and images.

Importers and manufacturers are generally liable for paying the fees. The collection is taken care of by a CMO or a designated government authority, such as the customs or revenue authority. The proceeds of the fees are then distributed to rights holders by their representative CMO. Typically, the RRO for text and image-based works is either a member of, or has a mandate or distribution agreement with, the central CMO administering the private copy scheme, in order to ensure the distribution of text and image share to the appropriate rights holders.

The model was first developed for reprography in Germany in the 1980s and has since been implemented in many countries in Europe. It is also increasingly used in Africa, for instance in Algeria, Burkina Faso, Côte d'Ivoire, Ghana and Malawi.

In the text and image sector, the system can consist of two different levies, often supplemented by an operator fee:

- Private copying levy, in which a fee is collected for equipment and media that can be used to copy different types of protected works, such as PCs, smartphones and tablets. The collected revenue is distributed to the different rights holders of music, audiovisual, and text and images through their CMOs. This is the case for example in France, the Netherlands and Ghana.
- Private copying levy combined with a reprography levy, in which there is both a private copying levy and a separate reprography levy. The latter applies to equipment that can only reproduce text and image-based works, such as multifunctional copying machines, scanners and printers. This is the case in Burkina Faso and Germany. The reprography levy is usually not limited

to private use and can apply to equipment that is used for educational purposes and other types of professional use.

An operator fee, also described as a user fee, is payable by copy shops, schools, colleges, universities, libraries, and government and research institutions, which all copy large volumes of protected works.

The operator fee is an annual flat fee per device or a fee proportional to the number of copies made, paid to authors and publishers via RROs by “large-scale users” of copying devices. There are variations as to which operators should pay the fee, and the application of the operator fee varies considerably. Whereas only copy shops pay the operator fee in Poland, the application in the Czech Republic covers:

- Schools
- Higher education institutions
- Public administration
- Businesses
- Libraries and copy shops.

In many countries, these systems evolve over time. For example, in Burkina Faso, the Bureau Burkinabè du Droit d’Auteur (BBDA)²⁷ commenced operations in 1987. The remuneration system, including the private copying remuneration and a reprography levy, was introduced in 1999. At that time, the levy was only distributed to the music and audiovisual sectors. In 2019, in line with technological developments, the legislation was amended to include the text and image sector as beneficiaries of the dual levy system.

A list of countries which remunerate authors and publishers of published works through a reprography levy system is found in the report *International Survey on Text and Image Copyright Levies*, published by WIPO and IFRRO.²⁸

A list of countries with a private copying remuneration system is found in the CISAC Private Copying Global Study.

5 Establishment and governance of an RRO

Establishment of a new RRO

The success of an RRO depends on the confidence of different stakeholders – rights holders, users and the government. Consequently, when forming an RRO it is important to focus on creating credibility in the RRO and collective management of copyright.

For legislation to function and bear tangible fruits, rights management is needed. In cases where individual exercise of rights is either impracticable or impossible, rights holders can establish RROs to manage their rights in text and image-based works. As professional organizations, RROs can concentrate on their core activity – rights management.

The establishment of an RRO must be supported by rights holders. Preparations in establishing a new organization can include the following tasks:

- Establishment of a forum for discussion
- Formation of a preparatory working body – a committee or a working group
- Involving a broad group of rights holders in the discussions to achieve good representation
- Awareness-raising among rights holders
- Examining the role of authors' and publishers' associations as channels of engagement
- Contacts with the international link – IFRRO²⁹ and its members
- Ensuring compliance with the legal requirements for official authorization or approval

- Drafting the statutes, including the structure and objectives of the organization
- Drafting mandates to be granted by rights holders
- Making a feasibility study of the market: how many potential licensees exist in each sector.

The feasibility study can then be developed into a business plan once the organization is formed. Issues to tackle in a business plan for an RRO include the same elements as for any other business, taking into account the non-profit nature of the organization:

- Market analysis, including products and services and market strategy
- Operational and financial requirements
- Potential risks and success factors
- Identification of competing services.

It is crucial to have a dialogue with the authority in charge of copyright (such as the copyright office). Awareness activities can greatly benefit from joint interactions, particularly with regard to potential users. Positive messaging about the role and functions of an RRO is important. Messages can be built on elements such as the following:

- An RRO is a bridge between users and rights holders.
- It is easy to be compliant if you have an agreement with your RRO.
- Legal access to a wide variety of works is vital to research and development in your company.

It is important to build credibility and authority in the marketplace, irrespective of the legal framework.

The role of authors and publishers

The success of an RRO depends on broad support from rights holders. In principle, all authors and publishers whose works can be copied can benefit from collective management.

As well as support from individual authors and publishers, it is important to obtain the support of local author and publisher

associations. This support enhances credibility in early dealings with the government, potential licensees and IFRRO.

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 sound conditions.

Besides literary works, works of visual art and photography as well as sheet music can be copied. Ideally, all rights holders should participate in some way in the licensing activities. Chapter 2 includes some examples of ways to include different repertoires in an RRO license.

Organizational form, statutes and mandates

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

Organizational form

An RRO's legal status is dependent on national legislation.

Examples of existing organizational forms include:

- Limited liability companies
- Associations
- Cooperatives
- Foundations.

Legal incorporation and registration are subject to the chosen organizational form and the country's legislation. Provisions in general law apply in this regard. Registration as an organization takes place before authorization or approval from the relevant authority, if that is a requirement in the country.

Statutes and organizational scope

The statutes define the organizational scope of the organization. The main task of an RRO is to grant licenses for the reproduction, communication and other uses of protected works of behalf of its constituencies. Rights management is thus the main task of any CMO.

Apart from rights management, many organizations have additional tasks, such as:

- Advocacy for an enabling legislative environment as a precondition for licensing
- Awareness and information about copyright as a prerequisite for compliance
- Assistance in enforcement activities of relevant authorities.

Some RROs deal exclusively with reproduction and communication of text and image-based works. Others may be engaged in managing other rights.

Many of the oldest organizations began as general literary rights organizations. For instance, in South Africa, the Dramatic, Artistic and Literary Rights Organization (DALRO)³⁰ was incorporated in 1967 and started licensing analogue copying in 1990. DALRO is a multipurpose organization that also manages performance and broadcasting rights in literary works and reproduction rights in works of visual art.

Mandates

As a CMO, an RRO operating under a voluntary licensing scheme can only license the rights of its members, on the basis of a mandate to act on their behalf.

Mandates can be given individually by authors and publishers to the RRO. This is the case in most countries. However, some RROs derive their mandates through authors' and publishers' organizations. Irrespective of this, it is important that there exists a clear mandate given to the RRO, and that the organization knows who the mandating rights holders are.

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 give an individual mandate to the organization.

In certain cases, existing bodies have jointly set up and work in close collaboration with the local RRO. For example, in the United Kingdom, the CLA was founded by the Authors' Licensing and Collecting Society (ALCS) and the Publishers' Licensing

Services (PLS), DACS and PICSEL are also members of CLA for works of visual art and photography.

When an RRO functions on the basis of a legal license, it is normally designed to serve all rights holders in the relevant field, although not all of them may be direct members of the RRO. It is nevertheless important for the RRO to have contact information with as many rights holders as possible in order to be in a position to distribute royalties effectively.

Mandates from foreign rights holders are in most cases derived through agreements with RROs in other countries. These agreements are based on national treatment principle. Each RRO, in its own territory, represents foreign repertoire under the same conditions as it represents the repertoire of national rights holders.

Agreements between RROs are often reciprocal by nature. Remuneration allocated to foreign rights holders is distributed through the partnering RRO.

In general, it is of paramount importance that every RRO secures wide representation of both national and foreign rights holders. This is needed to serve the needs of rights holders and users in the best possible way.

Internal and external control

An RRO functions as a trustee or agent for rights holders. Internal control is in the hands of its constituencies, authors and publishers and their representatives. External control may be exercised by the relevant authority, subject to the legislation in the country concerned.

Internal control

The highest decision-making power is customarily vested in rights holders. They participate and make decisions in the general assembly, where they elect the board of directors and can hold the organization accountable for its actions. According to the statutes of some organizations, the assembly also directly elects the

chairperson. In other organizations, the chairperson is elected by the board of directors from among its members.

In many RROs, the dual representation of authors and publishers is reflected by an equal number of representatives in the board of directors. In some organizations, the chairperson is an independent person. RROs can also consider electing experts in different fields, such as technology, to complement the knowhow of the board. These experts may either have an advisory role, or be full members of the board, subject to the statutes of the organization. Moreover, a governmental representative can participate in the work of an RRO in cases where this is regulated in the copyright law or relevant regulations or where the statutes of the RRO so determine.

For instance, in Jamaica, the board of JAMCOPY is structured to comprise at a minimum four creator groups (authors and publishers), three user groups, three competency-based directors (legal, communication and accounting) and one government representative.

One of the most important tasks of the board of directors is to appoint the chief executive officer (CEO), who has overall responsibility for the operations. There should be a strategic partnership between the board and the CEO, the guiding principles being:

- The chairperson leads the board, and
- The CEO leads the company.

The board's role can be grouped into three different categories:

- The strategic role, defining and reviewing the strategic direction of the RRO
- The advisory role, providing support and advice to the CEO
- The supervisory role, monitoring the legitimacy of the activities.

The board needs to monitor carefully that the legal requirements, as defined in legislation, are followed. This part is of the supervisory role and internal control, which the board exercises together with the members of the organization.

External control

External control of an RRO can take many different forms, subject to national legislation.

At the very start of the operations, CMOs in many countries must be authorized or approved by the relevant authority. For instance, in Colombia, the National Copyright Directorate (Dirección Nacional de Derecho de Autor), a special body of the Justice and Interior Ministry, has approved Centro Colombiana de Derechos Reprográficos (CDR)³¹ to function as the national RRO.

Apart from the approval process, ongoing supervision can imply that the RRO often needs to deliver the annual report and audited accounts to the regulator. On the basis of this information, the regulator can follow the developments and ask for additional information, as the case may be.

6 Practical operations of an RRO – from licensing to distribution

The practical operations of collective management organizations are virtually the same in any type of CMO. This can be encapsulated by: money in and money out.

In the following chapters, the activities are described from the RRO perspective.

Monitoring the use of works

An RRO needs to identify which works are used, as well as where and by whom such uses take place. This information is necessary for collection (money in) and distribution of remuneration (money out).

Licensing agreements between an RRO and a user establishes the licensee's two main obligations: payment of remuneration and reporting. Users' involvement is important so that they understand what they are paying for and to ensure compliance with the licensing terms and conditions. It is in the rights holders' interest to verify that the extent of copying does not exceed what is necessary to meet the users' needs. The responsibility to monitor copying levels gives the user an opportunity to evaluate if all copying is necessary and change usage patterns, if needed.

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 and volumes are measured at given intervals using statistical methods.

Information gathered from users can be different. It can identify categories of works used or be title-specific information. The type of information gathered designates to a large extent what options are available for distribution of remuneration. Whereas full reporting may not be practicable in the case of analogue copying, information gathering from digital uses is often facilitated by technology.

Licensing areas

Significant amounts of copies from protected works are made every year in educational institutions, by governments and other public bodies, in companies and associations as well as by individuals.

National copyright legislation has a direct bearing on the licensing possibilities of an RRO. Broad and/or ambiguous exceptions or limitations may hamper the licensing activities of an RRO. This is irrespective of the form in which such free uses are stipulated – be it “fair use,” “fair dealing” or specifically defined exceptions or limitations.

Potential licensing areas include the following:

- Education at all levels
- Public administration – government, regional or local
- Trade and industry
- Public and research libraries
- Cultural institutions and other similar bodies
- Religious bodies
- Copy shops and other places where copying possibilities are made available to the public.

Remuneration for private use can be collected through a levy system.

It is one of the important strategic decisions of the organization to decide where to start licensing. Existing copyright law and case law play a crucial role, as well as the local infrastructure. RROs in most countries have begun their activities by licensing educational institutions. In countries where high-volume copying takes place in copy shops, this could be the first area. As high volumes of usages, increasingly in digital form, take place in trade and industry, first targeting R&D dependent organizations would be a logical choice.

Following are some real-life examples of various national decisions concerning the first licensing target:

- In Singapore, education was the first licensing target, and the first agreement was concluded in 2002 with a single institution, INSEAD. This was then followed with other licenses between the Copyright Licensing and Administration Society of Singapore (CLASS),³² the Ministry of Education and Institutes of Higher Learning.
- In Malawi, licensing also started within education in 2004, the first agreement being that between COSOMA and the Malawi College of Accountancy. By 2021, licensing covered educational institutions, including secondary schools, vocational training centers and universities.
- In Japan, licensing began with trade and industry in 1992. In 2020, an amendment of the copyright law introduced a legal license for copying and public transmission in educational institutions.
- In Argentina, CADRA began collecting remuneration from copy centers that serve educational institutions in 2002. By 2021, licensing agreements covered universities and other higher education institutions and libraries. Apart from analogue copying, institutions can now also include digital copying in their agreement.

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. Copying is normally defined as a supplement to the normal supply of educational material, not as a replacement or substitute for the acquisition of books and other teaching materials. In administration and businesses, copying is for internal information and research.

There are two main methods of licensing:

- Repertoire licensing gives a user permission to copy from any publication in the RRO's repertoire, within the limits of the agreement. In generic terms, this kind of licensing is also called blanket licensing.
- Transactional licensing gives a user permission to copy certain defined works. This licensing is often used in document delivery and licensing of course packs and other similar compilations. Transactional licensing can also be called work-by-work licensing or title-specific licensing.

The licensing agreement sets out the terms and conditions for permitted copying and possible other usages. In general, copying of whole books and publications is prohibited. Out-of-commerce publications are a special issue described in chapter 7.

The limit of copying is customarily between 10 percent and 20 percent from a publication, including possible limits on how many pages can be copied from a single publication. Materials intended for single use, such as exercise books in schools, often may not be copied at all. Special rules may also apply to copying of sheet music.

Tariff structures

Tariffs normally differ depending on the category of user, such as education, public administration and businesses. Within the framework of education, the volume of usage is highest in universities and higher education as compared to primary education and kindergarten.

The two most typical tariff structures are:

- A price per page copied
- A price per student or employee.

The following example shows possible steps in determining licensing fees in the educational field:

- Users report and/or statistical surveys indicate how many pages of copyright protected materials are being copied during a year.
- The total volume of copying is divided by the number of students, arriving at a figure that represents the copying volume per student/year.
- 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.

The price for digital copies is customarily higher than that of analogue copying.

Measurements have been made in different countries indicating the average number of copies being made, for instance in universities. Whereas the numbers vary from country to country, from 300 to 400 pages per year per student is an illustrative example. This volume is equal to two books per student every year.

Distribution of remuneration

The ultimate goal of rights management is distribution to rights holders. Distribution of collected license fees is made to those whose works are copied. Whereas methods may vary, the goal remains the same.

An RRO needs to have a distribution policy that ensures regular, transparent and accurate distribution to rights holders, decided by rights holders at the general assembly, as the highest decision-making body.

A basic principle of collective management of individual rights is that remuneration should be distributed to rights holders according to the actual use of their works. In cases of transactional licenses, for instance for course packs, the principle of actual use can be easily applied.

Where this is not possible for practical and administrative reasons, solutions that mirror actual use as far as possible have been found. In repertoire licenses, RROs often base their distribution on some form of statistically obtained data. This data is collected from a subset of users over a specific period.

In general, there are two main options for distributing collected remuneration by the RROs:

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

Title-specific distribution

Title-specific distribution very much echoes the reporting system in use in a given country. The main methods of obtaining data are:

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

In many countries, a combination of the different approaches is used.

Full reporting is an ideal basis for distribution. This means that users report details of every copyright work copied. While the advantages of this method are obvious, the administrative burden on both the users and the RRO can be substantial. However, in the digital environment full reporting can be facilitated by technology.

- In the United States, CCC uses a variety of methods to collect and distribute remuneration. In full transactional licensing a licensee maintains a record of each instance of copying. CCC then invoices the actual copying, on the basis of rates that are individually determined by the participating rights holders, and the collected revenue is distributed to rights holders accordingly, after deduction of a service fee.

Partial reporting and surveys mean that a group of users report their copying over a specific period of time. Statistical methods are then used to embark upon a solid representation of total copying. For instance, data gathered from a small institution gets a lower weight in interpreting the results as compared with a large university. The end result is a statistical representation of all copying instances.

- In Denmark, a number of educational institutions covered by a license are each year chosen to report their copying of copyrighted literary works to Copydan Writing for a period varying from a semester up to 12 months, depending on the type of educational institution. The number of educational institutions chosen to report is based on statistical analysis, ensuring a representative data collection. The reporting identifies the source publication, for instance using the ISBN/ISSN,³³ the number of pages and also the number of students that received the material.
- In Australia, a representative sample of universities are surveyed by Copyright Agency each year for a period of 12 weeks about their digital use of works. The university monitoring system is staggered over a 12-month period so that all periods of activity are covered, and more than three universities are surveyed at the same time. An individual university participates approximately once every three to five years.

If it is not feasible to collect data from actual users, distribution can be based on the principle of objective availability. The underlying rationale is that all materials on the market can be copied, and at some point probably will be copied. Remuneration is thus allocated to all materials that are on the market at a given time. Rights holders report their works and publications to the RRO. The reported publications can have a different value/weight in calculating the remuneration, as surveys show that non-fiction works are copied more frequently as compared to fiction works, to give a practical example of the system. This is a way of combining information from rights holders, with the results of statistical surveys showing what genre of works are copied most.

This distribution method is often used by RROs that manage remuneration for private copying. As it is practically impossible to find out what individual persons copy, the objective availability method is fit for distributing money collected from fees on equipment and media.

The principle of analogy can be applied in certain cases, where it is not feasible to gather information from the actual usage. In this system a set of reports from another licensing area is used to provide the data set for a distribution. For instance, distribution of

revenue to fiction works could be based on information that the RRO has from public lending of the same category of works.

Non-title-specific distribution

In some countries rights holders have opted for non-title-specific distribution of remuneration. Statistical surveys are in these cases designed to collect generic data regarding the volume and genre of the material, instead of identifying the specific publication. Data is collected from a limited number of users under an agreement, for a defined period of time. Such surveys are customarily conducted every four to five years.

Under this distribution method, remuneration is channeled to authors and publishers in an indirect way. The RROs distribute remuneration to their member organizations representing authors and publishers. The rights holder organizations generally decide the criteria for distribution, but they are accountable to the RRO that collects the money. Authors may have different schemes, such as grants, or authors may supply information about their works in the market, which can form the basis of distribution. Publishers can provide data on their respective market share, and remuneration calculated on that basis can be paid to individual publishers. This has similarities with the analogy principle.

This method of distribution only applies to national rights holders. The share due to foreign rights holders must be independently verified or calculated on the basis of statistical surveys and distributed through the corresponding RRO or CMO in the receiving country.

- In Norway, Kopinor³⁴ contracts with independent research companies to conduct annual surveys of its main licensing sectors. Web questionnaires, which measure several key variables, are typically used. The questionnaire asks the user to distinguish between copies from analogue sources, such as photocopies, and digital sources, for instance the internet. Moreover, information on content types, such as textbooks, fiction and online newspapers, and material types, such as non-fiction text, fiction text, photos and illustrations, are included. Also, the country of origin is identified. Results from the last five years are aggregated to form the annual distribution, which

ensures a reliable and predictable basis for the non-title-specific distribution system.

The share of authors and publishers

The share between authors and publishers can be determined using different methods:

- The split can be based on stipulations in national law or regulations.
- The split can be based on an agreement between parties and can be different in different types of materials, such as fiction and non-fiction.
- The split can also be determined by the board of an RRO, subject to ratification by the AGM.
- The split can be based on individual contracts between authors and publishers.

Irrespective of all methods and variables, the distribution method of an RRO needs to be clear, transparent and easily understandable for both users and rights holders. Information on the distribution methods should be available in such a form that even non-dedicated persons understand the rationale. This contributes to the reputation of an RRO and builds credibility in the marketplace.

IFRRO as the international organization that unites the RROs

The International Federation of Reproduction Rights Organisations (IFRRO) is an independent, not-for-profit membership association. It facilitates, on an international basis, the collective management of reproduction and other rights in text and image-based works through cooperation with its member RROs.

As of January 2022, IFRRO had over 150 members from more than 85 countries around the world. The members represent many millions of authors, visual artists and publishers of books, journals, newspapers, magazines and printed music.

The IFRRO Secretariat is based in Brussels, Belgium, and it is an important first contact for persons exploring collective management of text and image-based works.

The mission of IFRRO

The mission of IFRRO is to develop and promote effective collective management to ensure that the copyrights of authors and publishers are valued through the lawful and remunerated use of text and image-based works.

According to its mission:³⁵

- IFRRO facilitates co-operation among RROs as well as among creators, publishers and their associations. Through this network IFRRO stimulates creativity, diversity and investment in cultural goods as a useful tool for rightsholders, consumers, the economy and society as a whole.
- IFRRO works to develop and increase public awareness of the need for effective RROs and to support joint efforts of publishers, authors and other rightsholders to develop rights management systems worldwide.
- To develop its mission, IFRRO develops studies and engages in information exchanges, fosters relationships between and among its members. The federation develops tools to encourage the efficient and effective transfer of rights and fees between rightsholders and users, consistent with the principle of national treatment.

IFRRO provides a worldwide forum for the exchange of information and experiences in the rapidly evolving area of collective management of text and image-based works. It arranges regional and national seminars and other awareness-raising events, either alone or in collaboration other organizations.

Some of the activities by IFRRO are described on a general level in the following sections.

The members of IFRRO

IFRRO has two membership categories: collective management organizations, and national and international associations of authors and publishers. A list of members can be found on the

IFRRO website. IFRRO has also published a directory of members, available online.

To support its members and to develop solutions for new challenges in the collective management of text and image-based works, IFRRO has established a number of technical working groups and committees. They can concentrate on a particular copyright material, such as artistic works or newspapers, or a specific area of collective management, such as the levy system or public lending rights. Through participation in these committees IFRRO members can develop their knowledge and skills in the respective area.

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 exist yet. For that purpose, IFRRO has established regional committees. They cover the following geographical areas:

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

The regional committees are the focal point of IFRRO's work in each region. They meet regularly, and each committee works closely with the secretariat in developing development priorities and projects.

To support this work, IFRRO also has a development fund. Its purpose is to provide financial assistance toward establishing and developing new RROs, and to support other projects. In such projects IFRRO works closely with partner organizations such as WIPO.

An example of IFRRO's relationship with regional and international bodies is the WIPO-IFRRO public-private partnership in a number of North and West African countries. The project has led to successful outcomes such as implementation of legislation and regulations on reprography, as well as enhanced capacity in the CMO sector, leading to first payments to authors and publishers in the text and image sector in these countries.

IFRRO studies and publications

Over the years IFRRO has published a range of reports and publications, independently and in collaboration with other partners. These publications include in-depth information on many subjects that are described in this publication on a general level.

The following is a list of some of these publications:³⁶

- *A Quick Guide to Collective Management of Reproduction Rights in Text and Image-Based Works*
- *A Quick Guide to Distribution of Copyright Revenue in the Text and Image Sector*
- *Digital Business Models*
- *International Survey of Text and Image Copyright Levies* (WIPO and IFRRO)
- *Licensing of Out-of-Commerce Works*
- *Facilitating Access to Works for Print-Disabled Persons*
- *Identifier and Metadata Standards in the Publishing Industry* (IPA³⁷ and IFRRO).

7 Separate legislative issues related to text and image-based works

In this chapter, four different issues related to text and image-based works are described in a general manner. The aim is to highlight cases where special legislative provisions may be considered to enhance the functioning of the market in the publishing sector.

Public lending right

Public lending right (PLR) is the legal right that allows authors and other rights holders to receive payment from the government to compensate for the free loan of their books by public and other libraries.

This right is not included as an exclusive right in the Berne Convention. However, in the European Union, Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rental and Lending Directive) recognizes lending as an exclusive right enabling rights holders to authorize or prohibit lending of their works. A number of other national legislations also have stipulations on PLR.

According to PLR International,³⁸ there were 35 countries with a PLR system in operation in September 2021. It is further estimated that there are an additional 25 countries that have PLR legislation but do not currently have any system in operation.

Almost all of the European Union member states have a functioning system. Australia, Canada, Israel and New Zealand are also among countries with a PLR system. In Africa, Burkina Faso, Ethiopia and Mozambique include a right to authorize lending, and

Malawi and Zanzibar are in the process of implementing this right by drafting regulations to that effect.

The form of PLR varies, and falls under the following three main categories:

- Copyright-based system: lending as an exclusive right
- PLR as a remuneration right
- PLR as state support for national culture.

Systems based on copyright are managed by CMOs, alongside other relevant rights. Remuneration right-based systems are customarily run by a body designated by the government.

In the case of e-lending and e-books, libraries operate under publishers' or aggregators' licenses.

Different operational models for PLR

The two main operational models are as follows:

- In a loans-based system payment to authors is related to how often their books are lent out by libraries. The payment is based on a rate-per-loan system and it therefore reflects actual usage of works.
- In a stock-based system payments relate to the number of copies of a certain title held by libraries. An annual or periodic census of book stock is made for PLR purposes.

There are also other calculation and payment models, such as:

- Payment based on book purchases
- Payment per registered library user
- Payment is made as travel or study grants
- Part of PLR funds go to authors' pensions.

PLR systems cover both the limitation to the exclusive right and the remuneration of at least authors, such as writers, visual artists and translators. Publishers also receive PLR payments in at least nine countries.

In some countries only public libraries are included in the system. In others, educational, school and scientific libraries are also covered. All PLR systems cover printed publications.

Publications for blind and visually impaired persons

In order to achieve a sound legislative framework for the use of copyright protected material for blind and visually impaired persons, the Marrakesh Treaty was concluded in 2013. The treaty entered into force in 2016.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) is the latest international copyright treaty administered by WIPO. It has a clear humanitarian and social development dimension. Its goal is to create a mandatory set of exceptions and limitations for the benefit of blind, visually impaired and otherwise print disabled persons (VIPs).

The treaty requires contracting parties to introduce a standard set of exceptions and limitations to copyright rules in order to permit reproduction, distribution and making available of accessible format copies of published works. The exceptions are applicable to enable production in formats designated to be accessible to VIPs, and to permit exchange of these accessible format copies across borders by organizations that serve those beneficiaries, recognized as authorized entities.

The treaty clarifies that beneficiary persons are those affected by a range of disabilities that interfere with effective reading of printed material. The broad definition includes persons who are blind, visually impaired or print disabled, or persons with a physical disability that prevents them from holding and manipulating a book.

Works “in the form of text, notation and/or related illustrations, whether published or otherwise made available in any media,” including audiobooks, fall within the scope of the treaty.

Authorized entities

An important element is the role played by authorized entities, which are the organizations in charge of performing the cross-border exchange. The rather broad definition of the term encompasses many non-profit and government entities. They are either authorized or “recognized” by the government as entities that provide many functions, including education and information access to beneficiary persons.

Authorized entities have a duty to establish and follow their own practices in several areas, including establishing that persons they serve are beneficiary persons, discouraging unauthorized uses of copies, and exercising “due care” in handling copies of works.

The Accessible Books Consortium (ABC)

The ABC³⁹ is a public-private partnership led by WIPO. The goal is to increase the number of books worldwide in accessible formats – such as braille, audio, e-text and large print – and make them available to people who are blind, have low vision or are otherwise print disabled.

Partners in the consortium include:

- Organizations that represent people with print disabilities, such as the World Blind Union (WBU)
- Libraries for the blind
- Standards bodies
- Organizations representing authors, publishers and CMOs.

Authors are represented by the International Authors Forum (IAF), publishers by the International Publishers Association (IPA) and collective rights management organizations through IFRRO. A number of RROs assist rights holders in their respective countries in rights clearance for publications in accessible formats.

Orphan works and out-of-commerce works

The use of orphan works and out-of-commerce works may require specific stipulations in copyright legislation with the aim of facilitating access to works which are classified as being orphans or out-of-commerce.

Orphan works

A work will qualify as an orphan work after an appropriate form of “diligent search” has been carried out and it is established that the owner of the copyright cannot be identified – or, if identified, cannot be located.

Different countries have opted for solutions with the aim of facilitating access to works which might otherwise remain unused.

In the European Union, Directive 2012/28/EU on certain permitted uses of orphan works (Orphan Works Directive) sets out uniform rules across the EU with respect to the use of orphan works. A work considered as orphan in one member state is considered as orphan in all member states. Beneficiary organizations are among others publicly accessible libraries, educational establishments and museums, as well as archives, film or audio heritage institutions, and public-service broadcasting organizations.

The Orphan Works Directive requires that designated Competent National Authorities forward information about orphan works to the Orphan Works Database, which is managed by the European Union Intellectual Property Office (EUIPO).

Out-of-commerce works

Out-of-commerce works are works that are still protected by copyright but are no longer or have never been commercially available. Cultural heritage institutions customarily have vast amounts of out-of-commerce works in their collections. These works can be valuable for research and education purposes, among other things.

Mass digitization of out-of-commerce works prompted the need to consider legislative solutions to overcome difficulties in obtaining all necessary permissions from individual rights holders.

In order to assist cultural heritage institutions in fulfilling their mission in the European Union, the Copyright in the DSM Directive (2019/790) introduced a new licensing mechanism for out-of-commerce works. The aim is to make it easier for cultural heritage institutions to obtain licenses from CMOs representing the relevant rights holders.

This license-based solution is complemented by a new mandatory exception to copyright that will only apply in cases where there is no representative CMO to negotiate with the institution, thus making the license-based solution impossible. This approach includes safeguards to protect the interests of the rights holders. They can easily and effectively exclude their works from the out-of-commerce licensing mechanism or from the application of the exception at any time (opt-out mechanism).

Out-of-commerce works portal

A single and accessible portal for information on out-of-commerce works has been established by EUIPO on the basis of the DSM Directive. The aim is to facilitate the identification of literary works, audiovisual works, photographs, phonograms and works of art, among others. Information needs to be published in the portal six months prior to making use of works, for instance by distributing or making them available online. The portal also provides information about the opt-out mechanism, which should make it easier for rights holders to withdraw their works from the system.

The determination of the out-of-commerce status of a work takes place outside the portal, according to the requirements in national law. There shall be a “reasonable effort” requirement to determine commercial availability.

Press publishers’ right

In the European Union, the DSM Directive introduces, among other issues, a new right for press publishers to authorize the online uses of their press publications by information society service providers.

The new provision was introduced in light of the problem that publishers of press publications had been facing in licensing

the online use of their publications to new online services, such as news aggregators and media monitoring, making it more difficult for them to recoup their investments. It was decided that the organizational and financial contribution of publishers in producing press publications needed to be recognized and further encouraged to ensure the sustainability of the publishing industry and thereby foster the availability of reliable information.

The new right, which lasts for two years from the date of publication of the relevant press publication, will be available to press publishers established in the European Union. It has no retroactive effect and leaves copyright protection in the relevant press publication unaffected. The notion of press publication includes literary works, but also videos and images. It does not include scientific journals and websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of the service provider, such as a news publisher.

The beneficiaries will be able to license the use of their press publications with regard to information society service providers. In this sense, the press publishers' right is a business-to-business right and it is not enforceable against individual users in relation to non-commercial uses of press publications. The right does not cover linking, nor does it extend to individual words or "very short" extracts.

Authors of press publications will be entitled to an appropriate share of the revenues realized through licensing of online uses of press publications.

Apart from in the European Union, the question of press publishers' right is under review in many countries.

8 Evolving perspectives

This chapter offers some considerations for both policymakers and rights holders and their organizations, and emphasizes the need to understand the market in order to make copyright work in practice. It also emphasizes the need for flexible and adaptable legislative frameworks.

Raising awareness about future perspectives is important, to keep all stakeholders aware of developments. This can take place through public-private partnerships, for example. WIPO for Creators⁴⁰ is such a partnership, with many organizations as participants.

Understanding market needs

Understanding the needs of users is a prerequisite in any kind of business; this also applies to rights management by CMOs. Both legislators and organizations representing rights holders need to be aware of market developments and changing user needs.

A feasible legal framework is a prerequisite for the work of RROs. Taking into account that changes in technology and user behavior take place constantly, an optimal legal framework supports and does not restrict innovative licensing solutions. Flexible and adaptable rules benefit the whole society.

It would be difficult, if not impossible, to think that legislative changes would always be at the forefront of developments. On the contrary, legislation may lag substantially behind. This being the case in most circumstances, it is desirable that the negotiating

partners – rights holders and their RROs and users or their representatives – can negotiate and agree on workable solutions.

The needs of the users vary from country to country, and also within different user groups. In the following, some examples are given to illustrate a few evolving usage scenarios both within the educational sector and in corporations.

Educational sector

Different online resources for educational purposes have been developed, in addition to professionally curated platforms offered by educational publishers. Such resources are available online to the students who have enrolled on courses. In some cases, educational institutions may offer services to students from different countries. The solutions described below give a snapshot of this varied market.

A virtual learning environment (VLE) in educational technology is a web-based platform for the digital resources for study courses, usually within educational institutions. It presents resources, activities and interactions within a course structure and provides for the different stages of assessment. VLEs also usually report on participation and have some level of integration with other institutional systems.

Open educational resources (OERs) can be defined as teaching, learning and research resources that are either placed in the public domain or contain an open license that permits others to share, reuse and modify them. OERs need to address copyright compliance in the selection of existing copyright protected material.

Massive open online courses (MOOCs) are large virtual classrooms that can be accessed by students worldwide. The courses are often supported by leading academic institutions of higher education. Course reading for MOOCs can include published content, such as book excerpts, journal content and scientific articles, in addition to the materials produced the by the course leaders. Subject to mandates, RROs can assist rights holders in also clearing rights for open networks.

Corporations

Employees in corporations, in particular in R&D dependent companies, use copyrighted material in multiple ways: they share, store and retrieve within the company, which can have entities all over the world.

As large amounts of data are available in many cases, it becomes important to automate search functions with the help of artificial intelligence (AI), in order to gather information that is most relevant to the case as quickly as possible.

In this context, companies relying on R&D typically acquire licenses to use scientific and technical works through professionally curated platforms or tailor-made collective licensing programs, such as those offered by CCC in the United States.

Private copying and reprography levies

In recent years, technological developments have made copying much easier, through a wide variety of media and devices, including online. Many internet users now copy text and image-based works using cloud services, including personal lockers and other storage devices. A recent decision of the Court of Justice of the European Union (C-433/20) has confirmed the importance of existing solutions for copyright levies being flexible enough to accommodate these developments. Ways this can be managed include:

- Broadening the scope of the remuneration system to cover mass storage devices
- Ensuring the fee applies to devices used to access the cloud
- Negotiating with online platforms that host copyright protected content.

In the Netherlands, since 2018, the private copying tariffs have been reviewed with an uplift on tariffs for PCs, tablets and smartphones used to access cloud copying. Market surveys have shown that owners of PCs, notebooks, tablets and smartphones frequently use cloud services, and many synchronize stored content automatically with a cloud service.

Another emerging area is refurbished devices, where used smartphones and tablets are repaired and resold.

Keeping track of developments in technology

Technology is constantly evolving, and the need to keep track of and develop services in a proactive manner is a prerequisite for successful collective management. RROs must understand the necessity of an appropriate technical infrastructure, including identifiers and metadata. Additionally, close tracking and understanding developments in AI-related technologies are vital for all creative industries.

A significant part of the work of CMOs, including RROs, is managing data – about the works in their repertoire and about the rights holders. WIPO Connect, software for CMOs, is currently being developed to also encompass text and image-based works. Matching that data with information about the works that have been copied under the licenses managed by RROs is critical for efficient distribution of collected remuneration. Rights and money flows between and among RROs also depend on data exchange and data matching.

These data flows are important to the effectiveness and efficiency of RROs. Standard identifiers not only underpin the data flows, but also enable their automation. For these reasons, unambiguous identification of the works and of the parties involved (authors of text and visual materials, publishers, RROs, etc.) is essential in the text and image sector.

Identifiers

Many standard identifiers are governed by the International Organization for Standardization (ISO), an international non-governmental standard-setting body made up of representatives from the national standards organizations of its member countries. It develops voluntary, consensus-based international standards across a range of industries.

Content standards

- International Standard Book Number (ISBN) is a unique identifier for books. Each edition of a book is allocated a separate ISBN. ISBN has been the fundamental standard for book identification around the world since the early 1970s. RROs use ISBNs to uniquely identify the titles that they license and represent.

- International Standard Serial Number (ISSN) is a unique identifier for serials, such as journals magazines and newspapers. ISSNs are widely used by RROs to uniquely identify the titles that they license and represent.
- Digital Object Identifier (DOI) is a persistent identifier used to identify, among other things, academic journal articles, professional and government content, citations, data sets and research reports. It is both an identifier and a system for resolving identifiers to uniform resource locators (URLs). DOIs are used by RROs to uniquely identify individual journal articles that they have licensed.
- International Standard Content Code (ISCC) is an open and decentralized digital media identifier for multiple media types (text, image, audio, video) designed for blockchain-based registration, but it can also be used locally. The ISCC is a content code that is created from the content itself, and it is currently being standardized by the ISO.

Party identifiers

International Standard Name Identifier (ISNI) is a unique number to identify contributors to creative works and those active in their distribution so that every published work can be unambiguously attributed to its creator wherever that work is described. From IFRRO's perspective this includes authors, artists, publishers, CMOs and other entities involved in the creative value chain.

ISNI is primarily intended to be a “bridging identifier” in that it links other party/name identifiers. It is applicable in all kinds of circumstances, irrespective of the industry and the sector. It was first published in 2012. IFRRO is a founding member of the ISNI International Agency (ISNI-IA), the organization that manages and supervises the standard on behalf of ISO.

Message standards

Message standards enable the automated exchange of information between different parties (for instance RROs) for agreed applications. These involve the definition of mandatory and voluntary fields for inclusion in the message and are closely mapped to the business practices, message flows and data structure of the users.

- The ONIX messages for exchanging information on distribution and repertoire are IFRRO initiatives in this area. Because it is widely used in the publishing industry, IFRRO has designated ONIX for RROs as a preferred message format for IFRRO members.
- Two messages have been developed: ONIX for Repertoire (ONIX-RP) and ONIX for Distribution (ONIX-DS). These message formats help RROs to simplify and streamline the transfer of distribution and repertoire data between each other and to rights holders.
- ONIX-RP allows the sharing of “repertoire” information between RROs, a repertoire being the definition of a set of resources to which a specific set of rights or permissions relate. In other words, ONIX-RP allows RROs to share with each other the mandates that they hold from rights holders.
- ONIX-DS allows the sharing of “distribution” information between RROs. Distribution is the how revenues are allocated by an RRO. A distribution message therefore typically accompanies a payment, and informs the recipient of the elements that make up the payment.

Solutions combining licenses and content

Combining copyright licenses with content can be a viable solution, based on cooperation between RROs and publishers. Such services have been developed for both the educational sector and the corporate market.

In the following, some examples are given, to illustrate the solutions.

Education

In the United Kingdom, CLA has worked with higher education institutions (HEIs), publishers and technology partners to develop a web-based platform, called the Digital Content Store (DCS). The system combines a searchable repository of digitized books and journal extracts with an online workflow management tool.

With the DCS system, users can, for example:

- Verify ownership
- Check permissions
- Share and use content from other HEIs.

Similarly, CLA has worked with schools (K-12), publishers and technology partners to develop the Education Platform (EP). The EP is an online service which gives schools access to digital resources to use for teaching and facilitates the making and sharing of copies with students within the terms of the CLA license.

Corporations

In the corporate sector, users may wish to have not only copyright licenses but also workflow solutions, which enable users to quickly obtain and share scientific, technical and medical content for use at their corporations. The RightFind suite of services, developed by CCC in the United States, assists enterprises to access, integrate and collaborate with innovative licensing, content, software and professional services. For example, the document delivery service RightFind Now allows users to search for and order individual articles, book chapters, conference proceedings and other documents. This combines the copyright license with the content.

Licensing beyond text and images

In the educational sector, educators do not only use text and image-based works, but also broadcasts, videos and games. In corporations, licensing beyond text and images can include other types of protected materials, such as educational videos and podcasts.

New patterns of content creation, use and reuse include video, audio and podcasts. RROs can develop licensing mechanisms themselves or partner with other CMOs and rights holders in order to provide answers to user needs for more varied licensed content.

In New Zealand, Copyright Licensing NZ (CLNZ)⁴¹ has opted to cooperate with other CMOs in the country to facilitate access to copying music and broadcast materials. New Zealand schools can access all three licenses (print, music and video) through one

agency in a combined structure called “Get Licensed.” The tertiary sector is licensed separately by each CMO.

In the United States, audio and video content had been asked for by corporate users. CCC developed a motion picture license as an annual license that allows organizations to use movies and TV shows to enhance employee training, sales presentations and company meetings.

9 In conclusion

The ultimate goal in collective management is to find sustainable solutions for the use of text and image-based works in such a way that the interests of both users and rights holders are in balance. Making copyright work in the marketplace also benefits society at large.

A well-functioning collective management system enhances the availability of diverse and rich repertoire in all usage areas. In today's marketplace change is a constant, and this demands foresight and careful consideration from all stakeholders involved.

For policymakers, seeing the legislative framework and licensing options as complementing each other is important. It is not likely that legislation alone can bring a solution in the currently changing landscape.

For rights holders and the RROs representing them, constant follow-up of developments in usage patterns and technology becomes essential, in order to serve the two constituencies – rights holders and users.

It is my hope that the information included in this publication will help policymakers draft swift and balanced legislative frameworks, as a prerequisite for making copyright work.

Endnotes

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