



Educational Material on Collective Management of Copyright and Related Rights

Module 5: Management of rights for visual arts and photography

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PURPOSE OF THE MATERIAL

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

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

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

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

Each module is written as independent reading, together with Module 1. For instance, a reader who is interested in the audiovisual field can study Modules 1 and 3.

The experts are Ms. Tarja Koskinen-Olsson (Finland/Sweden) and Mr. Nicholas Lowe (the United Kingdom). Their short bios are annexed.

How to use the material

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

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

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

Terminology

A glossary of terms is included. This glossary also offers some explanations and alternative terms as used in various countries.

GLOSSARY OF TERMS USED IN THE TRAINING MATERIAL

(EXPLANATION OR ALTERNATIVE TERM IN PARENTHESIS)

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

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

Collective management (also called collective administration)

Collective management organization (CMO) (also called collective rights management organization (CRM); previously known as collecting society)

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

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

Grand rights (dramatic and dramatico-musical works)

Individual exercise of rights and collective management of rights

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

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

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

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

Owner of rights (author or subsequent owner of rights)

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

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

Reciprocal representation agreement (specific form of representation agreement)

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

Remuneration right (right to equitable remuneration, fair compensation)

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

Reprography (also called reprographic reproduction)

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

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

Small rights (non-dramatic musical works)

Transactional license (work-by-work license)

Voluntary collective management (management of exclusive rights)

PUBLICATIONS ON MANAGEMENT OF RIGHTS FOR VISUAL ARTS AND PHOTOGRAPHY

- European Visual Artists (EVA): 10 years EVA, Collective management societies for visual arts in Europe, September 2007
- IFRRO Publication: “The Art of Copying: a Guide to the Incorporation of Visual Material in Reprographic Schemes and Licences”, 2006
- WIPO Publication: Learn from the Past and Create the Future: The Arts and Copyright, 2007
- WIPO Guide on the Licensing of Copyright and Related Rights, Chapter III: Graphic and Pictorial Works, 2005
- REPROBEL, Public Lending Right, 9th International PLR Conference, September 2011, ISBN 9789090266602

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MANAGEMENT OF RIGHTS FIN THE FIELD OF VISUAL ARTS AND PHOTOGRAPHY (MODULE 5)

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August 31, 2012

CHAPTER 1

OVERVIEW OF RIGHTS MANAGEMENT IN VISUALS ARTS AND PHOTOGRAPHY¹

A wide variety of creators work in the field of visual arts, such as painters, sculptors, graphic artists, illustrators, architects and photographers. They all have copyrights over their works.

Artists and photographers or their representatives usually sell their works through individual contracts. A painter, for example, sells his painting to an art collector and a photographer gives a right to publish her photograph in a book through a licensing contract.

There are many cases in the visual arts and photography sector, however, where individual contracts are impossible and where collective management offers viable solutions.

One example is auction sales. Paintings and other works of art are generally sold to private individuals, companies, or museums. Most works of art rarely stay with the same museum, gallery or family collection. They are in fact often auctioned or sold through art dealers many times over the years.

In many countries, the rights of artists in these cases are respected over the course of repeated sales by means of so-called resale right (*droit de suite*). This right is based on Article 14^{ter} of the Berne Convention and contributes to the artist's well-being by guaranteeing that a small percentage of the resale price goes to the artist. The resale right was first introduced in 1920 in France after World War I to benefit the widows and orphans of artists who died in the war. The system is now spread among countries in all regions, with legislation in over 40 countries recognizing the resale right. However, in many of these countries the right is not yet effectively implemented.

The scope of the resale right varies from country to country, but most frequently covers any graphic, photographic or cultural work sold in an auction or gallery. The percentage paid to an artist or his heirs varies as well, but is generally up to five

¹ From *Artist to Audience*, WIPO-CISAC-IFRRO, 2004.



percent of the resale price. A directive issued in 2001 harmonized this right in the 27 countries of the European Union.

Museums play an important role in the dissemination of art, through their permanent collections and temporary exhibitions. Their collections are increasingly available online as well, where consumers can view and enjoy them regardless of where they live.

The works of many artists have become popular through reproductions as posters and postcards sold in museum shops, as well as in art books and exhibition catalogues. Indeed, art is merchandised in an increasing number of creative ways. All of this requires copyright clearance, which has led to the establishment of collective management organizations (CMOs) in the field of visual arts and photography.

1.1 Players in the market

A wide range of professionals work with visual material, such as fine artists, illustrators, photographers, craftspeople, cartoonists, architects, animators and designers. Main users and intermediaries are art-dealers, museums, television and films producers, book publishers and companies.

Visual material covers a wide range of works that are being used extensively in today's media landscape. Works of visual art and photography are in this context called by the generic name visual material.

Visual material can take many forms:

- fine art, such as painting and sculpture;
- photography, such as documentaries and reportage;
- illustrations, such as cartoons, diagrams and maps;
- craft and applied art, such as jewelry and ceramics;
- design, such as graphic design;
- architecture; and
- prints, such as engravings and woodcuts.

Several rights holders exist, for example, where a work of fine art has been photographed and the picture of the work is published in a book. The rights of the artist and those of the photographer go hand-in-hand and permissions to use the work are needed from them and the publisher.

The term of visual creators is used to cover rights holders for visual material. These communities are fragmentary in that they are comprised primarily of small

independent businessmen or rights holders. When they group together, it is customarily in their own guilds or associations dealing with the promotion of working conditions and the status of artists in the society.

The existence of national guilds or associations for visual creators is important in many respects. Where rights are exercised individually, guilds can assist with contractual terms and other conditions for work.

Due to the nature of their independent work, it has not always been easy to convince visual creators of the need to manage rights collectively. In recent decades, the number of CMOs representing visual creators has, however, risen to some 50 organizations.

Taking into account the variety of users, individuals would not easily find all instances where their works are used. Auction houses and art dealers, museums and photo libraries are among major users of visual material. Just to mention a few examples, television and film companies use works of art, illustrations and photographs in their programs; and companies print pictures of art work in their brochures and publish them on the websites.

1.2 How is copyright exercised and managed in the field of visual arts and photography?

In the field of visual material, the most common way is the individual exercise of rights. For example, a painter or a sculptor can sell his work to a museum or an individual. Galleries often sell works of art on commission, on behalf of the artist. Galleries also function as art-dealers, selling previously acquired works of art.

The individual exercise of rights takes place when an artist exhibits his works or when the artist or his or her representative sells or licenses his or her work to the buyer. It is important to realize that the selling of a piece of art does not include transfer of copyright.

An illustrator concludes a license agreement with the user, for example a book publisher. The license can be exclusive or non-exclusive in character. A photographer does the same with a magazine, and the license agreement defines how the licensee can use the photograph.

Artists' unions play an essential role in making their members aware of their copyright rights and in advising them on contractual practices. In some countries, they have also developed model licenses for their members, thus facilitating individual negotiations.



However, there are cases where collective management is the only feasible solution, for artists and users alike. Associations and guilds can be active in the establishment of CMOs for collective management of rights.

Raising awareness is often a necessary first step in the establishment of a CMO, as visual creators in many countries are unaware of their copyright rights. Awareness-raising campaigns, using existing networks, trade associations and publications can be important ways to reach visual creators.

In some countries, visual creators establish their own CMOs specializing in the management of visual material. In some other countries, visual material is managed by multipurpose CMOs that may also deal with musical and literary works.

1.3 Collective management as a solution

The scope of collective management varies from country to country and services can also be different for various groups of visual artists. The birth history of the organization may also play a role.

The first specialized CMO for visual art, ADAGP (*Société des Auteurs dans les Arts Graphiques et Plastiques*)² was established in 1953 in France by artists such as Chagall, Miró and the CoBrA Group.

The following year, in 1954, three Dutch organizations of professional photographers founded BURAF0³ in the Netherlands. In 2008, BURAF0 transferred collective rights management to a joint organization, *Stichting Pictoright*,⁴ representing all visual artists.

Today, CMOs dealing with visual material function in some 50 countries on all continents. They manage a wide variety of different rights of visual creators. Some rights, such as reprography and private copying, are managed jointly with other repertoires.

In today's media landscape, digital images are used extensively. Some CMOs have established image banks to be able to provide users with high-quality digital images together with the accompanying rights.

In some countries, CMOs handle what is known as primary rights of visual artists. In this context, primary rights⁵ include reproduction rights, broadcasting rights and communication to the public rights. For instance fine artists transfer in many countries management of their primary rights to a CMO.

² www.adagp.fr.

³ www.fotografenfederatie.nl/burafo.

⁴ www.pictoright.nl.

⁵ More details are included in Chapter 3, Section 1.

CMOs can also render services and legal advice to their members in relation to their direct contracts where they manage their rights individually. Taking into account the numerous instances where works of visual art can be used in today's media landscape, it is getting more and more difficult for individual authors to manage their rights in all instances.

When it comes to what are known as secondary rights,⁶ it would be next to impossible for an individual creator to manage the rights themselves. Reprography, private copying, public lending right and cable retransmission right are typical examples of secondary rights. Management in these areas is interlinked with other repertoires, such as text, music and audiovisual, and a user could not negotiate with all rights holders or genres individually.

The resale right is a remuneration right that entitles authors to a share when their original works of art are sold, for instance, in an auction. Due to its nature, the resale right is most effectively handled through collective management. In some countries, collective management is prescribed by law. In others where this is not the case, experience shows that collective management offers clear advantages not only to creators but also to auction houses and other art dealers. It would be cumbersome for auction houses to be in charge of the payment of resale royalties to artists nationally and internationally.

1.4 Market and economic contribution

Creative industries are among the major contributors to the economic growth of a nation and to the creation of jobs. Many countries have conducted studies on the economic contribution of copyright industries to their gross domestic product (GDP), showing an average contribution of 5.4 percent.⁷

In these studies, the contribution of visual material is customarily measured by two parameters: visual and graphic arts and photography. Together they represent a small, but important share (5 percent) of the total contribution.

Works of visual art are customarily sold to users by the artists themselves and by art galleries and other wholesale or retail outlets. Art rental is a relatively new phenomenon that, in the majority of cases, leads to sale. Sales through auction houses are a major form of purchase in developed art markets. In some cases, works are commissioned by the acquirer and copyright laws in many countries include special provisions on commissioned works.

Photographers market their works themselves or use photo agencies and libraries as their representatives. Photo agencies license photographs for different uses, such as

⁶ More details are included in Chapter 3, Section 2.

⁷ *WIPO Studies on the Economic Contribution of the Copyright Industries*, 2012.



advertising and media companies. Photo archives and museums grant permissions to use photographs in their collections.

The Design and Artists Copyright Society (DACs)⁸ in the United Kingdom commissioned a survey, *“An economic analysis of copyright, secondary copyright and collective licensing”* in 2011. According to this survey, carried out by PricewaterhouseCoopers, the average income from collectively managed rights is 4 percent of an artist’s total income. This average does not, however, show the whole picture since, for 34 percent of artists, collectively managed royalties represent more than 10 percent of their total income and, for 12 percent of artists, they represent more than 50 percent of their income.

⁸ www.dacs.org.uk.

CHAPTER 2

RESALE RIGHT

The rationale for the resale right is that the transfer of ownership creates value, both economically and culturally, and the artist should be entitled to a share in that value. It is also described as a “right to follow” or a right of participation.

Works of art have become important investments that maintain and augment their value over time. In times of recession, they are regarded as safe investments and some record sums have been paid for artwork in auctions.

In countries where the art market is developed and there exists a secondary market for artistic works with auction houses, it is important that the copyright legislation includes stipulations on the resale right (*droit de suite*).

In this system, visual creators receive a copyright remuneration for the resale of their artwork. The concept is based on the following rationale: when an original work of art is sold again after its first transfer, the artist has a right to remuneration. It is important that the resale right is defined as an inalienable right. Otherwise, the pressure from art dealers to have this right transferred to them would be excessive. Another rationale for the inalienability of the resale right is that this right is closely linked to the author and is meant to protect him; it is not just a tradeable right.

Details of collection and the amount to be paid are defined in national law. As collective management is the most effective way to handle the resale right, it would be feasible to prescribe this by law.

2.1 Legislative framework

The resale right is the most important right and is specific to visual art and other genres where original works are sold after their first sale.

International treaties

Article 14^{ter} of the Berne Convention deals with “*droit de suite*” (resale right) in works of art and manuscripts and states the following:

“The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work”.



According to the second paragraph of Article 14^{ter}, this applies only to countries that have stipulations on the resale right in their national legislation. This makes the right dependent on reciprocity rather than national treatment, which is the main rule in the Berne Convention.

The procedure and amounts for collection are to be determined by national legislation, according to paragraph 3 of the same article.

The concept “an original work of art” includes, in general, what the artist recognizes as original by signature, number or other traditions, such as:

- paintings;
- sculptures;
- graphic prints;
- photographs; and
- craft, such as glassware, ceramics and tapestries.

Regional legislation: the European Union

In Europe, the Directive on the resale right for the benefit of the author of an original work of art⁹ defines the resale right as *“an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author”*.

The act of resale involves sellers, buyers or intermediaries and the remuneration is payable by any of these professionals.

National legislation

Despite the non-obligatory nature of Article 14^{ter} of the Berne Convention, a number of countries recognize the resale right. There are stipulations on the resale right in more than 50 countries, but not all these countries have a functioning system to collect resale royalties for artists. Any country with a developed art market would hamper its artists from making a living from their creations if the law does not contain relevant stipulations or implementing regulations are still pending.

⁹ Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale rights for the benefit of the author of an original work of art.

2.1.1 Regional example from Europe: Germany¹⁰

In Germany, the resale right was introduced by the 1965 Copyright Law. The law did not originally lay down any specific procedure for the application of this right. Auctioneers and dealers refused to pay the resale right royalties, claiming that they were not true vendors. They also refused to disclose the name and address of true vendors, referring to the requirement of professional secrecy. Finally, in 1971, the Federal Supreme Court decided that auctioneers and dealers could decline to disclose the identity of the vendor, but only on condition that they themselves paid the remuneration.

The law of 1972 supplemented the provisions on the resale right in Germany. It introduced a general obligation to provide information and fixed the rate of royalties as well as a threshold price. The law also empowered an authors' society to request information, so as to save auctioneers and dealers from being overwhelmed with individual requests. Collective management was thus given an important role in the management of the resale right.

VG BILD-KUNST¹¹ is the German visual arts CMO that manages the resale right in Germany.

2.1.2 Regional example from Asia-Pacific: The Philippines

Chapter XI (Sec. 200 "Sale or Lease of Work") of the Intellectual Property Code of the Philippines, Republic Act No. 8293, introduces a resale right in the following way:

"In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5 %)".

This right has not been managed yet, since the decree has not been published, but a CMO for visual artists, FILVADRO (Filipino Visual Art and Design Rights Organization)¹², was established in 2010.

¹⁰ Based on WIPO publication "Collective Management of Copyright and Related Rights" by Dr. Mihály Ficsor

¹¹ www.bildkunst.de.

¹² <http://filvadro.wordpress.com/author/filvadro>.



2.1.3 Regional example from Africa: Senegal

Article 19 of the Senegalese Copyright Act 1973 (as amended up to January 24, 1986) introduces a resale right in the following manner:

“Authors of graphic or plastic works shall have, notwithstanding any transfer of the original work, an inalienable right to share in the proceeds from any sale of the work by auction or through a dealer. After the author’s death, this droit de suite shall subsist to the benefit of his heirs during the term of protection provided for in Article 40. The right shall be constituted by a levy, in favor of the author or his heirs, of 5 percent of the proceeds from the sale”.

The *Bureau Sénégalaise du Droit d’Auteur* (BSDA)¹³ is a multipurpose CMO which also manages the rights of visual artists.

2.1.4 Regional examples from Latin-America: Peru and Uruguay

Article 82 of the Copyright Act of Peru (Legislative Decree No 822 of April 23, 1996) stipulates the following:

“In the event of resale of works of three dimensional art, either at public auction or through a professional art dealer, the author, and on his death his heirs or legatees, shall enjoy, for the duration of the protection of the economic rights, an inalienable and unrenounceable right to collect three per cent of the resale price from the vendor, it being possible to agree on a different percentage.”

The *Asociación Peruana de Artistas Visuales* (APSAV)¹⁴ is the visual arts CMO in Peru. It was established in 1998 and received its approval from the relevant authority in 1999. APSAV also collects resale right royalties, but collection is small due to a limited number of customers.

In Uruguay, the *Asociación General de Autores del Uruguay* (AGADU)¹⁵ is very active in collecting resale right royalties. AGADU is a multipurpose CMO managing different repertoires and thus offering economies of scale for different repertoires.

¹³ www.bsda.sn.

¹⁴ <http://cp0269.culturaperu.org/perfil>.

¹⁵ www.agadu.com.uy.

2.2 Management of the resale right

Details concerning management of the resale right must be defined in national law. The clearer the provisions of the law, the easier it is for all stakeholders to agree on a swift procedure and avoid extended battles over details.

Management of the resale right is best done collectively through the services of CMOs. Much speaks in favor of collective management of the resale right and experience shows that, thanks to the international network of CMOs, the scheme runs effectively and the revenue to foreign artists is exchanged and reaches authors cross borders.

Legislation in many countries fixes the rate at a certain percentage, such as 5 percent.

In countries of the European Union, the rate varies from 5 percent to 0.25 percent, depending on the sales price. However, the total amount of the royalty may not exceed EUR 12,500.

The scale is as follows:

- a) 4 percent for the portion of the sale price up to 50,000 €;
- b) 3 percent for the portion of the sale price from 50,000.01 € to 200,000 €;
- c) 1 percent for the portion of the sale price from 200,000.01 € to 350,000 €;
- d) 0.5 percent for the portion of the sale price from 350,000.01 € to 500,000 €;
- e) 0.25 percent for the portion of the sale price exceeding 500,000 €

By way of derogation, members States may apply a rate of 5 percent for the portion of the sale price up to EUR 50,000.

2.2.1 Method of calculation¹⁶

There are, in principle, two ways of calculating resale right royalties. The most common is to base the royalty on the sale price of the work. Another option is to calculate the royalty on the basis of the increase in the price of the work at each sale. In those countries, where the royalty is calculated on the increase, the rate is usually higher than in countries which apply the sale price.

Basing the royalties on the sale price is more practical, as it may be very difficult to find appropriate documentation to calculate the royalty on the increase in price. Practice shows that countries with this method of calculation have encountered difficulties and are not effectively managing the resale right.

¹⁶ "Collective Management of Copyright and Related Rights", Dr. Mihály Ficsor



In both cases, certain threshold prices are fixed, below which the resale right is not applicable. There may also be stipulations on the maximum amount of remuneration.

2.2.2 Liability for payment

In the great majority of countries, the royalty is to be paid by the seller. According to the resale right directive of the European Union, the seller is obliged to pay the royalty, the seller being the person or company that brought the work of art to auction; the United Kingdom, however, has put it at the charge of the buyer.

Nonetheless, member States may provide that the salesroom, art gallery or art dealer is liable, or shares liability with the seller, for the payment of the royalty.

In practice, the collections are customarily made from auctioneers and art dealers. It is fairly easy to control auctions, but more difficult with galleries. Galleries play a dual role; they act as salesrooms working on commission on behalf of artists, but also act as art dealers selling previously acquired works of art.

2.2.3 Necessary information

One of the key issues in the management of the resale right is the right to information. This is particularly important for CMOs managing the resale right. Without information about the resale of works of art, it would simply be impossible to exercise the right.

Art galleries and art dealers must register the relevant data. When all practical work is done by CMOs instead of individual authors, not only does it become easier for art professionals, but the functioning of the system is monitored systematically. In Germany for instance, the copyright law (Article 26 (5)) provides that requests for information may only be presented through a CMO.

CHAPTER 3

COLLECTIVE MANAGEMENT OF PRIMARY AND SECONDARY RIGHTS

Visual materials are used as stand-alone items or jointly with other repertoires in a variety of ways. Visual creators need to decide if they want some or all of their primary and secondary rights to be managed collectively.

Visual material is reproduced in books, magazines and periodicals, as posters and postcards, and on CD-ROMs and other multimedia platforms, to mention a few examples. Corporations use visual material in their presentation brochures, annual reports, calendars, and as merchandise. Works of visual art find their way into advertisements and they are sometimes reproduced as puzzles. The reproduction right is thus central to the management of visual material.

Many users also make their material available on the Internet. According to the WIPO Copyright Treaty (WCT), this is covered by a right of communication to the public, including making material available to the public. Broadcasting companies use visual material in their programs which are webcast through the Internet or offered as on-demand services.

Where visual material is used jointly with other repertoires, collective management is often the only feasible way of management. A lot of visual material is embedded in publications, and users want to get all the necessary copyright permissions from one CMO. Rights holders of literary and visual material therefore often cooperate. The same applies to cable retransmission and private copying remuneration.

3.1 Primary rights

Many CMOs manage primary rights on behalf of some or all visual creators. Fine artists and craftspeople are among the creators whose primary rights are most often managed collectively.

The term “primary rights” is typically used by CMOs representing visual material, even though this might sound a bit unusual when we talk about collective management. What is meant is the management of rights on an individual, work-by-work basis.

To take an example: fine artists, such as painters, sculptors and craftspeople can transfer their primary rights to a CMO. In this case, the transfer of rights takes place by a direct mandate from the artist to the CMO. Licensing takes place by identifying each individual work and collecting remuneration for its use.



Photographers may wish to manage their primary rights on an individual basis, but join the CMO for their secondary rights.

Primary rights include the following:

- reproduction rights;
- broadcasting rights;
- rental rights;
- communication to the public rights, including making material available; and
- merchandising rights.

3.1.1 Reproduction rights

Reproduction rights are managed collectively in many countries. Works of visual art are often used in the publishing and press sectors, as well as in audiovisual productions.

It is important that legislation recognizes an exclusive right of reproduction for all major uses of works of visual art. Where exceptions or limitations to the exclusive right exist in national law, their scope should always be clear and well defined. For visual arts, illustrations in publications for teaching purposes is one area where difficulties in interpretation have occurred in some instances; thus clear provisions are preferable.

Reproduction rights are licensed by the CMO to a licensee using a standard authorization or contract and a predefined tariff structure. Examples of use include the following:

- inclusion of pictures of artworks in print, such as books, magazines, newspapers;
- stand-alone items, such as posters and postcards;
- inclusion of artworks in film and television programs.

The tariff for inclusion of a work of art in a book is dependent on the print run of the publication and the size and place of the work. Front cover customarily costs more than back cover, a large picture inside the book more than a small picture, for example. The bigger the print run, the bigger the royalties paid to the visual artist.

For postcards, the tariff is usually a percentage of the selling price of the card, excluding VAT. The licensing agreement specifies whether it is based on the amount of copies printed or sold; for occasional users it would most commonly be based on all printed copies.

For example, AUTVIS (Association Brasileira dos Direitos des Autores Visuais)¹⁷, in Brazil, manages reproduction on behalf of its members. It can be a question of books, postcards or the Internet, just to mention a few.

3.1.2 Broadcasting rights

Audiovisual programs also include visual material. It may be a question of art programs, or of a work of art being shown as a background object.

Broadcasting rights are licensed to broadcasting companies for showing programs with works of art on their channels. In this case, it is important to ensure good monitoring on the part of the broadcaster. Information from the broadcaster forms the basis for distributing revenue to rights holders.

The tariff for inclusion of a work of art in an audiovisual production can be twofold: a fixed remuneration per work for the reproduction, and a time-based fee for performance of the program.

There are many cases in which a CMO licenses visual material for use in television programs. Popular uses include illustrations in children's programs and photographs in documentaries.

In some cases, a CMO concludes a lump sum agreement with the national TV channels, and the distribution of remuneration is based on information from broadcasters.

Some CMOs have entered into general agreements with TV channels together with the CMOs of other repertoires. In this case, a percentage of the channel's income is paid to remunerate all the authors.

3.1.3 Rental rights

Art rental is a relatively new phenomenon. It can involve permanent rentals or renting out works for a period of time that are subsequently sold to the same person.

A corporation may prefer to rent works of art for their office, instead of buying them. This could be on a long-term basis or, alternatively, the user might prefer to change the artwork from time to time. Film producers sometimes rent works of art for a given project. Private persons may first rent a work of art for a period, and then buy it, with rental fees being credited in the sales price.

The copyright royalty can be a percentage of the rental price; BUS¹⁸ in Sweden applies a royalty rate of 8 percent.

¹⁷ www.autvis.org.br

¹⁸ Bildkonst Upphovsrätt i Sverige, www.bus.se



3.1.4 Communication to the public rights, including the making available right

Communication to the public rights may come into the picture when works of art are also delivered through the Internet, subject to national legislation.

In Internet use, different scenarios may emerge:

- print media companies add Internet use; for example, most newspapers and magazines are also available online;
- broadcast programs can be made available on the Internet, as simulcast, webcast or on-demand services;
- museums, companies, municipalities and private persons may have “art collections” on the Internet or include works of art on their webpage.

The tariff for websites may be based on a fixed remuneration per work, month and number of pages viewed per month. Different types of users may have different tariffs, subject to their not-for-profit or for-profit status. Internet and intranet use are often priced differently.

In Switzerland, the use of protected works on intranets is covered by a legal license and the applicable tariff is managed by ProLitteris. Intranet in this context means internal networks in companies, the public administration and educational establishments. The use of works over the Internet is covered by exclusive rights.

In France, for example, AGAGP, together with SCAM¹⁹ and SACD²⁰, has signed an agreement with Dailymotion and YouTube for the communication of its repertoire included in videos.

When dealing with Internet use it is important to pay attention to worldwide rights clearance, if this is required by the licensee. This topic is discussed more in detail in chapter 6.

3.1.5 Merchandising rights

Works of visual art and photography are popular objects in merchandising. They are used in a variety of ways, such as mugs and scarves.

In the case of merchandising, the CMO customarily asks the creators for their consent before giving a license to the producer. Not all authors approve merchandising or all objects where their works are proposed to be placed.

¹⁹ Société civile des auteurs multimedia (SCAM), France, www.scam.fr

²⁰ Société de Auteurs et Compositeurs Dramatiques (SACD), France, www.sacd.fr

A customary tariff structure is a percentage of the selling price, ranging from 10 to 12 percent.

3.2 Secondary rights

Secondary rights are commonly managed by CMOs on behalf of a larger group of people, including fine artists, craftspeople, illustrators and photographers, since it is practically impossible for anyone to act individually. In some countries these rights are called “collective rights”.

In some countries, artists’ unions convey the rights of their members to the CMO, provided that they are properly mandated to do so. This is customary, for instance, in the Nordic countries. In other countries, creators mandate the CMO individually.

Secondary rights customarily include the following uses:

- retransmission of broadcasts by cable or wireless;
- private copying;
- reprography; and
- public lending.

National legislation may prescribe that some of these rights can only be managed collectively. In all cases of secondary rights, visual material is used jointly with other repertoires.

In Switzerland, secondary rights are mostly covered by legal licenses and are compulsorily managed by CMOs. This means that visual creators cannot manage these rights individually.

3.2.1 Cable retransmission

The retransmission of broadcasts takes place when television channels are distributed by cable networks or by wireless means in foreign countries and in the country of origin.

For national broadcasts, the domestic market is the primary market and broadcasters frequently buy rights to broadcast works in their own countries. Television channels are relayed to other countries and areas through satellites and cable networks. In copyright terms, this involves a new use and therefore a separate clearance of copyright is required.

Broadcast programs also include works of art, and it is important to ensure cooperation of the visual arts CMO with the organization that licenses the cable and wireless distribution of broadcasts.



The main groups of rights holders are: authors, including visual creators, performers, film producers and original broadcasters. In some countries, all or the majority of rights holders have grouped together to issue licenses for cable operators. In others, different groups license their repertoires separately. The modalities of cable retransmission and licensing models are discussed in more detail in Module 3 (audiovisual works).

Visual creators' share of cable retransmission revenue varies from country to country, but it is usually contained in the authors' share.

Let us take the example of Sweden. The remuneration is collected by an umbrella organization, COPYSWEDE.²¹ It represents, by mandate, different categories of authors and performers and has concluded cooperation agreements with producers of phonograms, films and broadcasters. The share of film producers and broadcasters is 64.5 percent of the total and that of authors, performers and phonogram producers is 35.5 percent.

The share due to national channels is distributed through specialized national CMOs, including the visual arts CMO BUS, or directly from COPYSWEDE to individual authors and performers. The share due to foreign channels is distributed to the respective CMOs in the programs' countries of origin. In Sweden, the visual arts share varies from 1 to 1.5 percent for commercial channels and from 4 to 5 percent for public service channels, out of the total share of revenue dedicated to authors and performers represented by COPYSWEDE.

3.2.2 Private copying

In countries where private use is remunerated or compensated through a private copying remuneration scheme (sometimes called a "levy"), visual artists can receive remuneration.

Enormous amounts of protected material – music, film, pictures, text – are copied for private purposes every day. Under copyright legislation in many countries this copying may be done without the consent of the copyright owners. Due to the high volumes of private copying, however, legislators in many countries have considered it reasonable and fair to provide for remuneration to creators, performers and producers.

This can take the form of a copyright fee included in the price of blank media and/or recording equipment. The revenue collected from blank carriers and equipment is distributed to rights holders through the services of CMOs. Whereas the collection of private copying remuneration is usually done by one designated CMO or other body, the distribution is carried out by specialized CMOs, including CMOs for visual material.

²¹ www.copyswede.se

Due to digital private copying in particular, the use of visual material has increased. Many new carriers are “hybrid” carriers and all kinds of material can be copied to them. The share of revenue due to visual creators should reflect the amount of visual material that is copied as compared to other repertoires: music, audiovisual, literary works, etc. CMOs representing different repertoires may negotiate their respective shares from time to time, to reflect current usage patterns.

In France, the first point at which revenue is split is in relation to hybrid carriers (carriers that can include all kinds of materials), in order to share the amount collected between audio, video, written works and visual arts remuneration. This split is done on the basis of empirical data obtained through market surveys.

For example, in Austria²², the share allocated to visual creators from video carriers is 2 percent in the case of analogue carriers and 1.75 percent for digital carriers. This revenue is distributed through VBK (Verwertungsgesellschaft Bildender Künstler)²³, the visual arts CMO of Austria.

3.2.3 Reprography

Users normally want to copy all types of material, and there is a wide range of visual material embedded in books, magazines, newspapers and journals, in addition to literary works.

When visual material is reproduced in publications it can be copied in a similar manner to text. A reproduction rights organization (RRO) needs to have a mandate in order to grant licenses for both text and visual material.

In the case of reprography, the collection of revenue is customarily done by the RRO of the country. Visual artists can include their repertoire through their specialized CMO, through artists’ unions joining the RRO or through individual mandates.

Some publications are visual material intensive, and others less so, but the presence of visual material in a publication makes it important for an RRO to acquire relevant representation. This provides the possibility of offering a comprehensive license to users, and the participation of visual creators clearly brings added value to the operation of an RRO.

It is therefore important to consider how to enhance the participation of visual creators. There are several ways for an RRO to acquire mandates from creators of visual material. If visual creators are not organized, raising awareness among visual creators is an important task.

²² www.thuiskopie.nl – International Survey 2010

²³ www.vbk.at



The inclusion of visual material in the operation of an RRO may take many different forms. Depending on the way the RRO has acquired the mandates from visual creators, there are a number of ways to effectively manage comprehensive reprography licenses, collect remuneration and distribute that remuneration to visual creators.

The amount of visual material in different publications and user groups varies widely. There is therefore no standard share that RROs dedicate to visual material. Rather, the share should reflect the actual use of visual material, for instance as measured by reliable statistical surveys.

The IFRRO (International Federation of Reproductive Rights Organisations) publication “The Art of Copying: a Guide to the Incorporation of Visual Material in Reprographic Legal Schemes and Licences”²⁴ offers detailed information on the subject and on different forms of cooperation.

3.2.4 Public lending

Public lending right (PLR) exists in a variety of forms in different countries and regions. This right has always been linked to cultural policies for the promotion of reading.

Public lending rights are sometimes linked to copyright, sometimes to a legislative framework to support authors. Occasionally, these concepts are combined.

In the European Union, the Directive on rental and lending rights and on certain rights related to copyright (Council Directive 92/100/EEC of 19 November 1992) set out public lending rights in copyright legislation, with some national possibilities to adapt and modify their practices. According to the directive (Article 1 (3)):

“‘lending’ means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public; Member States may derogate from [an exclusive lending right] provided that at least authors obtain a remuneration for such lending”.

The first country to introduce the public lending right was Denmark in 1946, followed by Norway in 1947, Sweden in 1954, Finland in 1961, Iceland in 1963, the Netherlands in 1971, Germany in 1972 and the United Kingdom in 1979. In most cases the revenue is paid to authors; in some cases it is also paid to publishers.

Outside Europe, Australia, New Zealand and Israel use public lending rights to promote national creativity. In 1986, Canada introduced a system to support Canadian authors.

²⁴ http://www.ifrro.org/sites/default/files/The_art_of_copying_web_0.pdf

The position of visual creators in PLR schemes varies from country to country. To illustrate the situation, let us take Germany as an example:

There is a general agreement in which all relevant CMOs participate through a joint body²⁵ working under VG WORT (the literary rights CMO). The remuneration can only be collected through a CMO. According to the agreement between the CMOs²⁶, the money from book lending is distributed as follows:

- VG WORT (authors and publishers of literary works): 91.15 percent
- VG BILD-KUNST (authors and publishers of visual works): 6.35 percent
- GEMA (authors and publishers of music): 2.50 percent

In Germany, part of the revenue is distributed as individual payments, while part is used for social and cultural purposes.

Since 2002, a separate payment has been made to related rights holders for non-book lending. Since 2010, the share of book lending has been 84.81 percent and that of non-book lending 15.19 percent.²⁷

3.2.5 Other secondary rights

In countries where a CMO for visual arts has been established and functions well, their services can also be used for the distribution of other rights-based remuneration.

One concrete example is remuneration for the exhibition of works of art in museums and other public places. The exhibition of works of art is, as such, free, based on an exception in copyright law. In some countries, like Germany and Sweden, budgetary funds are allocated to compensate artists for the possibility that the audience can enjoy their works in public places. In both countries this compensation is channeled through the CMO.

²⁵ Zentralstelle Bibliothekstantieme (ZBT)

²⁶ Public Lending Rights in the World, Copyright and cultural policies, including 27 national reports, SOFIA, Editions Dalloz, 2008

²⁷ Public Lending Right, 9th International PLR Conference, 2011, PLR In Germany



CHAPTER 4

CMOs IN THE FIELD OF VISUAL ARTS AND PHOTOGRAPHY

In some countries visual creators are organized in their own CMOs specializing in the management of visual material. In others, multipurpose CMOs manage the rights of visual creators, together with other repertoires.

Historical, economic and social factors have played and continue to play a role in deciding the most appropriate structure to manage the rights of visual creators. There is no universal solution that would fit all countries and circumstances.

In most countries, CMOs representing visual material are stand-alone CMOs dedicated to visual art and photography. In a few countries, photographers have their own CMOs. Often, economies of scale make the joint management of visual art and photography the most feasible option.

In true multipurpose CMOs, all repertoires are managed by the same organization: musical, literary, drama, audiovisual rights and visual creators' rights. In Europe, this is the case for instance in the Baltic States (Estonia, Latvia and Lithuania), Italy and Portugal. In Africa, CMOs in Burkina Faso and Senegal are examples of multipurpose CMOs. In Latin America, this is the case for example in Uruguay.

In Switzerland, literary works and visual works are managed together, but musical works are managed separately by a dedicated CMO. In Germany, visual and audiovisual authors have joined together.

To successfully manage reprography and certain digital uses it is important that RROs manage a comprehensive repertoire. The representation of visual material takes different forms in various countries, but it is important to ensure that users get a license to copy all types of materials.

4.1 Specialized CMOs

When the establishment of a specialized CMO for visual creators is discussed in a given country, it is essential to find out how visual creators are organized and the typical features of the country's art market.

As individual exercise of rights is the most typical way to take care of visual artists' and photographers' copyrights. It may be challenging to convince rights holders of the need to manage some rights collectively. Rights holders may not even be aware of their rights after the first sale.

It is also important to address pertinent issues in individual meetings; each member artist can, for instance, deliver a message to ten colleagues. This form of support is

invaluable to a new CMO at the beginning when funding is scarce and royalties have not yet been paid.²⁸

The management of some of visual artists' primary rights is often a service to the market, as the use of visual material takes on ever-expanding forms. For users, it would be cumbersome to contact each artist individually and to negotiate the price.

The market mechanisms for visual artists and photographers may be different, but when it comes to the management of secondary rights, the similarities are clear. In some countries, secondary rights are called "collective rights".

4.1.1 Regional examples from Latin America: Brazil and Chile

Brazil

AUTVIS (Associação Brasileira dos Direitos de Autores Visuais)²⁹ represents different visual artists and photographers as well as cinematographers and architects in Brazil. It offers a central point to get reproduction licenses for users, such as publishers, producers and TV companies.

It also offers rapid access to participating rights holders and their works on its website.

Chile

CREAIMAGEN³⁰ was established in 1997 for painters, sculptors, photographers and graphic artists. Painters and sculptors, through their association APECH (Asociación de Pintores y Escultores de Chile), and photographers, through their association FOTOP, established CREAIMAGEN and transferred their members' rights to the organization. In 2010, CREAIMAGEN had 310 members. It is a member of CISAC.

CREAIMAGEN represents reproduction rights, communication to the public rights, distribution rights and the resale right (right of participation). Currently, the resale right is impossible to collect for economic and practical reasons, because the 5 percent resale royalty is calculated on the profit, not the selling price.

Both AUTVIS in Brazil and CREAIMAGEN in Chile collaborate with the music rights CMO in their respective countries, using their back office functions.

²⁸ Details concerning the establishment of a new CMO are included in Module 1, chapter 5

²⁹ www.autvis.org.br

³⁰ www.creamagen.cl



4.1.2 Regional example from Asia-Pacific: The Philippines

A CMO for visual artists was established in the Philippines in 2010 under the name FILVADRO (Filipino Visual Arts and Design Rights Organization).

One of the first tasks of a new CMO is membership advocacy, to make visual artists aware of their rights and the positive effects of collective rights management. Membership forums, letters, emails, social networking and websites can be effective tools to address potential members.

FILVARDO launched its membership campaign in September 2011 through a series of face-to-face forums on copyright, supported by messages posted through social networking sites such as Facebook. By the close of the year 2011, FILVADRO had 98 members.

4.2 Multipurpose CMOs

In many countries it would be difficult to manage different repertoires individually. In some countries, the copyright law lays down the concept of one multipurpose CMO, in other countries rights holders themselves choose to manage their rights jointly.

The positive aspect of joint management is that the CMO becomes more easily known to users and the general public. There is no confusion about different rights and repertoires, and the CMO may in fact be on an equal footing with copyright in the minds of users. There is a broad approach to serve all kinds of users and the possibility of bundling licenses when different repertoires are used together.

At a governance level, there may be challenges. The various rights holders usually have representatives in the governing body. In particular, at the beginning of activities, music may be licensed first as it is the most common area of collective management. This can lead to discussions about unbalanced treatment among rights holders. It is, however, very difficult to work on all fronts at the very beginning.

Over the years, the management of different repertoires emerges and the balancing act is achieved. Initially, it may be more effective to let one repertoire be developed, as compared to developing minor activities on all fronts at the same time. Being aware of this challenge can remedy the situation and open discussions in the governing bodies can smooth the way to finding natural priorities.

Regional example from Latin America: Uruguay

AGADU (Asociación General de Autores del Uruguay³¹) was established in 1929 and united the activities of various cultural institutions. AGADU is a multipurpose CMO and manages various repertoires, including visual art and photography.

Apart from traditional rights management tasks, AGADU also houses a museum and documentation center. The documentation center possesses invaluable works that are part of the country's cultural heritage. It is currently working on an archive of photographs and documentaries. Both the museum and the documentation center are situated on the premises of AGADU called "La Casa del Autor" (The House of Authors).

4.2.1 Regional example from Africa: Botswana

COSBOTS (Copyright Society of Botswana)³² was established in 2008. It is mandated by the Copyright and Neighboring Rights Act of Botswana to manage various repertoires.

Collective management is a fairly new phenomenon in Botswana. The new Copyright and Neighboring Rights Act of 2000 (CAP 68:02) included provisions on the establishment of the Copyright Office, headed by the Copyright Administrator. The new provisions (36 A) also called for the establishment of the Collective Management Organization, which is a non-profit making company limited by guarantee.

COSBOTS was registered in 2008, the same year as it received its license. COSBOTS represents rights holders for various categories of works protected by the Act. It started defining tariffs for music users, but is now expanding its activities to cover reprography. Next in line are the rights of audiovisual and visual authors.

4.3 Collaboration with RROs in relation to reprography

A lot of visual material is embedded in publications from which they can be copied. It is therefore essential to ensure the participation of visual creators in reprography schemes.

When visual material is reproduced in publications, it can be copied in a similar manner to text. In order to be able to grant licenses for text and visual materials, a reproduction rights organization (RRO) needs to have mandates from visual artists and photographers.

This can happen through the participation of the specialized visual arts CMOs or their associations or through individual mandates from visual creators.

³¹ www.agadu.org

³² www.cosbots.com



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

4.3.1 Regional example from Europe: the United Kingdom

Reprography is managed by the Copyright Licensing Agency (CLA)³³ in the United Kingdom. The Design and Artists Copyright Society (DACS) represents visual artists. CLA acts as an agent for DACS and collects reprography remuneration on its behalf. Both participate in the work of IFRRO; CLA as a full RRO Member and DACS as an Associate Member.

DACS distributes royalties to visual artists. It actively encourages artists to contact the organization on its website and also uses various channels to spread the message. Any type of visual artist can make a claim and DACS distributes remuneration when visual artists' works have been reproduced in UK books and magazines. In 2011, 14,400 artists in total benefitted from DACS collective licensing schemes.

³³ www.cla.co.uk

CHAPTER 5

PRINCIPLES OF GOVERNANCE AND OPERATION

Collective management of visual material includes, in principle, the same tasks as for any other repertoire: licensing, collection and distribution. Many CMOs in this field have additional tasks, such as legal and contractual advice to their members and support for cultural activities.

Primary rights are managed on an individual basis. A user applies for permission prior to the use, identifies the works to be used and gets a license on conditions specified for each use. CMOs publish their tariffs for each category of use. Only works in the repertoire of the CMO can be licensed. Distribution can be based on actual use in most cases.

This is not the case when dealing with secondary rights. In this field, the CMO may be in the possession of remuneration that cannot be distributed, either because the authors cannot be identified or because they are not represented by the CMO. In such cases it must give the authors entitled to remuneration a reasonable opportunity to claim it. The CMO must do its utmost, within reasonable economic limits, to identify those authors. National laws may include stipulations on the period for which a CMO is required to reserve the revenue share of an unidentified author. After that period, the share of revenue is usually added to the next distribution of the sector in question.

Assumptions may need to be made to achieve individual distribution. It is therefore important that the governing bodies discuss and decide distribution principles and inform their members about the criteria. The goal is to arrive as close to actual use as feasible, bearing in mind cost-efficiency. Distribution principles are typically decided by the highest decision-making body, i.e. a general meeting.

As for any other genre of CMO, governance standards are of utmost importance. The work of CMOs involves dealing with other people's money. Codes of conduct or rules on working principles have been developed to ensure the highest possible standards in the management of visual material.



5.1 Principles of governance

Collective management organizations of all genres recognize that transparency is an important tool to build confidence in authors, users, other CMOs and society at large.

CMOs act as trusted intermediaries for artists and should find the best operational models and practices to strike a proper balance between efficiency and cost-effectiveness.

CISAC³⁴ has adopted Professional Rules for various repertoires and these rules lay down the code of conduct against which the activities of member CMOs can be measured. The rules for visual repertoire entered into force in 2008. They largely follow the EVA standards described below.

European Visual Artists (EVA)³⁵ has a code of conduct that comprises two sections:

- general principles, and
- specific aspects, in particular transparency

The general objectives list the main objectives of the visual artists' CMOs as follows:

- efficient licensing of primary rights, such as reproduction and broadcasting;
- efficient collection of remuneration for secondary rights;
- fair and quick distribution to authors, nationally and internationally;
- facilitating the dissemination of works, without active promotion;
- protecting authors' rights;
- promoting the further economic and moral interests of their members.

Specific aspects of the code list the following issues:

³⁴ International Confederation of Societies of Authors and Composers, www.cisac.org

³⁵ www.eartists.org

Statutes and membership

As most CMOs are established by authors, they should be democratically controlled by authors and estates. The statutes should, at least, include the following:

- the CMO does not aim to make a profit and it acts in a fiduciary capacity;
- the governing body appropriately reflects the membership;
- an effective mechanism for control by members or their representatives is in place;
- a members' general assembly is held at least once a year;
- every author receives full membership and can vote;
- all members are treated equally.

Transparency

It is important that information is published and made available to the general public.

Authors are entitled to receive, as a minimum:

- a copy of the statutes and internal regulations;
- a copy of the distribution rules;
- costs deducted before distribution;
- a copy of the annual report of accounts, as approved at a general meeting;
- information concerning complaints procedures;
- an invitation to the annual general assembly;
- information on legal cases and developments in national and international copyright.

Users are entitled to be informed about:

- the repertoire represented;
- tariffs;
- model agreements, if applicable;
- general distribution rules.



The code further defines rules for the following:

- licensing and tariffs;
- distribution rules;
- management of remuneration that is not distributed;
- administration costs;
- national and international one stop shops;
- social and cultural deductions;
- dispute settlements.

5.2 Operational principles

The basic function of CMOs is to manage the rights of the works of their members – the authors and in some cases the publishers.

CMOs license use on a collective basis by applying agreed tariffs. They also collect royalties and distribute those royalties in a timely fashion to the rights holders. CMOs for visual arts are an important intermediary in the cultural scene. Their members are the authors themselves or their heirs and the most important users are museums, publishers specialized in art publications and art market professionals.

In the case of primary rights, both licensing and distribution can take place on an individual basis. In the case of secondary rights, distribution can be based on the criteria of objective availability. To take reprography as an example: visual creators inform their CMO of all publications where their visual material is included and remuneration is paid for all such works that are available on the market and can be copied.

The issue of cost recovery is particularly important when managing visual repertoire where the market may be limited but there is nevertheless a need for a full service. Some countries' legislation includes maximum limits for costs. It can be challenging to initiate the management of visual repertoire under such circumstances.

5.3 Technical standards

Visual arts repertory is, in the main, identified by the name of its author. Uniform identifiers for all authors, including affiliation and collectively managed rights are the basis for activities.

To distribute royalties to rights holders, a CMO needs tools that meet international standards and are ideally available to all and are interoperable.

Information on authors of all genres and publishers is maintained in a joint IPI System, run by the Swiss CMO, SUISA³⁶, for CISAC. IPI stands for “Interested Parties Information”.³⁷ All CISAC members can consult the information and see the names of authors, their CMO affiliation and which rights are under collective management.

This is the most important tool in identifying and crediting visual repertoire among CMOs.

5.4 Other activities

Many CMOs offer services that are not directly linked to rights management, in order to advance the interests of their members and of visual creators in general.

These CMOs offer legal advice and information on national and international legal developments and pursuing legal cases that have a general impact on the legal situation (case law). They may also offer users information about authors who are not members and would otherwise be difficult to reach.

5.4.1 Regional example from Latin America: Mexico

SOMAAP (Sociedad Mexicana de Autores de las Artes Plásticas)³⁸ in Mexico promotes its members’ works as widely as possible while securing equitable remuneration. SOMAAP also defends its members against unauthorized reproductions, as in the case of “La Tehuana”, a work by artist Osvaldo Barra, which was reproduced in a prestigious art magazine without authorization. SOMAAP settled the case through payment of an indemnity and a public apology in the same magazine.

³⁶ www.suisa.ch

³⁷ www.ipisystem.org

³⁸ www.somaap.mx



5.4.2 Regional examples from Europe: Hungary and Finland

Hungary

Apart from collective management related activities, HUNGART (Collecting Society of Hungarian Visual Artists)³⁹ also undertakes some social and cultural activities. The Hungarian Copyright Act makes it compulsory to pay a fee of 5 percent to the art industry when works of art are sold, even after the end of the protection period (called *domaine public payant*). HUNGART uses this fee to support the work of artists and provide social help for artists. HUNGART must provide information on the use of this money yearly to the relevant ministry.

Finland

The visual artists' organization KUVASTO⁴⁰ has achieved better copyright protection for visual creators. Certain amendments to the Finnish Copyright Act were brought into force by visual artists working with determination and legal support from KUVASTO. The sculptor Eila Hiltunen created the famous Sibelius monument sculpture. It has been the subject of many souvenirs. After an amendment to the law, artists will be entitled to compensation for the reproduction of a work that is permanently displayed in public, if the work is reproduced mainly with commercial intent, such as on a postcard. This amendment is called *Lex Hiltunen*, since the artist was crucial in bringing the amendment into force.

³⁹ www.hungart.org

⁴⁰ www.kuvasto.fi

CHAPTER 6

MANAGEMENT OF RIGHTS IN THE DIGITAL ENVIRONMENT

In the case of Internet use, CMOs must find solutions that facilitate cross-border licensing in an efficient, cost-effective and transparent way. CMOs may consider “one stop shops” to meet particular market needs and, at the same time, safeguard the interests of authors.

In the digital environment two issues materialize. Firstly, how to ensure cross-border licensing, and secondly, whether to engage in content delivery in conjunction with licensing.

OnLineArt is a one stop shop for rights in works of art. It offers worldwide licenses on the works of 30,000 artists for online use. It was created in 2002 by eight visual arts CMOs. It has a common tariff structure and this enables users to receive a standardized and transparent licensing service worldwide.

Some CMOs representing visual material have established image banks and can offer the content in conjunction with the accompanying rights. This is one form of the “one stop shop” concept: to obtain images and the corresponding exploitation license from the same organization.

In the digital environment, the marking of visual images is an important issue. There are various technologies that are used in the identification of images and to track unauthorized use. Watermarking is an example of such technology.

6.1 The activities of OnLineArt⁴¹

OnLineArt was established as a response to offering cross-border licenses in Europe

OnLineArt is a cooperative society with limited liability in Belgium. Its members are CMOs that manage the rights of authors of works of visual art and photography. These CMOs need to be members of CISAC.

The main objectives of OnLineArt are as follows:

- The administration of rights for online use related to works and authors of visual art and photography in the digital environment;
- Monitoring the online use of these works and executing the necessary steps to prevent the illegal use of these works through electronic distribution.

⁴¹ www.onlineart.info



OnLineArt serves both commercial and non-commercial markets. Users can build their websites with images and get the required permission through the joint service. The rights involved in website projects customarily include the right to scan, digitize and store a reproduction of the work and the right of communication to the public, including the right of making available to the public.

OnLineArt members use a common server, where all licenses are registered, throughout the whole process from first contact to the payment of royalties to the author.

6.2 Licensing and image databases

Some visual arts CMOs have established image databases and can offer content in conjunction with the licenses.

The French ADAGP (Société des Auteurs dans les Arts Graphiques et Plastiques)⁴² established an image bank in 2001 and it currently includes more than 16,000 images. Images can be ordered and reproduction rights cleared online on the website. ADAGP does not manage rights for the content of all its members, only for those who have chosen to join the service for their selected images. Every image is marked to prevent unauthorized copying and control its use.

The image bank serves a variety of uses, such as images in books, press, calendars, multimedia, etc. The bank includes images from well-known and lesser known authors and ADAGP offers this service to all members who are interested in making their works available through the image bank.

6.3 Identification methods

The unauthorized use of images has become a major issue in the network environment. The identification of works protected by copyright has become an important issue and the inclusion of metadata (data about data) in the digital material is a requirement.

Delivering products and services in digital form, as a combination of zeros and ones, requires proper identification. The purpose of different identification systems is to know what the work is. Identification systems do not in themselves protect the works from unauthorized use, but merely identify them.

Identification systems fall into two categories according to their purpose:

- Identifiers: numbers and other identifiers;
- Digital signatures and marks: watermarks and fingerprints.

⁴² <http://www.bi.adagp.fr>

Digital signatures and marks can be used for identification purposes. Digital signatures can be used to verify the authenticity of the work and its author. Digital watermarks are hidden messages in all authorized copies of a work, for instance invisible marks in photographs. Their presence certifies that the copy is legitimate and their absence shows that it is unauthorized. Fingerprints are similarly invisible marks which identify not only the work but also the individual user to which it has been licensed; again, the lack of such a mark reveals an unauthorized copy.

Once metadata is embedded in the digital material, the information travels with the content over cyberspace and copyright owners can trace its whereabouts by using specific software that can track it. This is an effective measure in the fight against piracy.

CHAPTER 7

INTERNATIONAL ORGANIZATIONS AND THEIR TASKS

International non-governmental organizations (NGOs) play an important role in promoting good legislation, emphasizing the role of effective enforcement, facilitating the establishment of new CMOs and strengthening the work of existing CMOs worldwide.

Without good legislation, the work of a CMO will not succeed. If legislation is insufficient or unclear, users will not become compliant. Promoting national, regional and international legislation is therefore a central focus for international NGOs.

Yet even with the best legislation, active measures are needed. These include both enforcement and management of rights. In countries and areas where piracy poses a significant threat to creative industries it is essential to convince enforcement authorities to tackle the situation. CMOs can assist in this but enforcement is not their primary task.

Rights management brings in positive results for the members of international NGOs and trade unions. Some of them are directly involved in collective management; others play a more indirect role through lobbying, education and enforcement.

7.1 CISAC

The International Confederation of Societies of Authors and Composers (CISAC)⁴³ works for increased recognition and protection of creators' rights. It represents all artistic repertoires, including graphic and visual arts.

CISAC was founded in 1926. It is a non-governmental, non-profit organization with headquarters in Paris and regional offices in Budapest (Hungary), Santiago de Chile (Chile), Johannesburg (South Africa) and Singapore. As of June 2012, CISAC has 231 member CMOs in 121 countries, and 51 of these organizations represent visual arts, either as a specialized CMO or as a multipurpose organization. This represents 14.6 percent of its membership.

The total amount of royalties collected by CISAC members, in their national collection territories, amounted to more than € 7.5 billion in 2010. The share of non-music repertoire is approximately 14 percent of the total. CMOs representing visual art collected € 103 million in 2010, which is some 10 percent of the amount for non-music repertoire.

CISAC has a number of bodies, called International Councils of Creators, for different repertoires. The International Council of Creators of Graphic, Plastic and Photographic

⁴³ www.cisac.org

Arts (CIAGP) focuses on the special conditions in the management of the visual arts repertoire. The reproduction right, resale right, distribution of visual artists' share of reprography royalties, private copying, cable and satellite and the development of image databases are some of its priorities. Support for the creation of visual arts societies in Latin America has also been an area where CIAGP has focused its attention.

7.2 GESAC

The European Grouping of Societies of Authors and Composers (GESAC)⁴⁴ represents different CMOs in Europe, among them CMOs managing rights in visual arts and photography.

Created in 1990 in the form of a European Economic Interest Grouping (EEIG), GESAC groups together 34 of the largest CMOs in the European Union, Norway and Switzerland. GESAC is highly involved in discussions concerning regional legislation – directives, recommendations and other instruments – within the European Union.

GESAC also offers comprehensive information about authors' societies and their role as links between rights holders and users of copyrighted material. They have compiled information about European CMOs that is accessible through a website called "Authors Societies".⁴⁵ Collective rights management and its benefits are explained and examples and testimonials highlight the issues at stake.

7.3 EVA (European Visual Artists)

European Visual Artists (EVA)⁴⁶ represents the interests of authors' collective management organizations for visual arts. It groups together 25 CMOs for visual creators as members or observers.

The members collectively manage authors' rights for close to 60,000 creators of fine art, illustration, photography, design, architecture and other visual works.


EVA's members are non-profit CMOs managing rights for artists as their trustees. Most were founded by artists associations intending to provide effective legal management and defense of artists' rights.

EVA was founded in 1997 by 9 CMOs for visual arts; they were all member of CISAC. EVA represents the interests of its members towards the institutions of the European Union. Besides activities on EU level, EVA is also in contact with international bodies, such as WIPO, where it has the status of formal observer.

⁴⁴ www.gesac.org

⁴⁵ www.authorsocieties.eu

⁴⁶ www.evartists.org



EVA was actively involved in supporting efforts to adopt the resale right for the benefit of the authors of an original work of art. Another matter of concern is the EU policy on collective management, which has changed in recent years. EVA has also dealt with the issue of digital private copying and its applicability in the new media landscape.

7.4 IFRRO

The International Federation of Reproduction Rights Organizations (IFRRO)⁴⁷ represents rights holders in text and image-based industries. It has a special working body for issues relating to visual material.

The Visual Working Group (VWG) of IFRRO recommends solutions for the problems involved in reprography of still images and determines the strategy for cooperation and the closer involvement of visual authors and photographers in the field of reprography and certain digital uses.

IFRRO has published “The Art of Copying: a Guide to the Incorporation of Visual Material in Reprographic Legal Schemes and Licences”. It offers information on various ways to license visual material in conjunction with text.

As visual material is present in all types of publications, there is a need to offer comprehensive licenses to users. It is therefore usually essential to secure the necessary mandates from rights holders. Consultation of visual creators and their representatives is a key issue.

7.5 Icograda (International Council of Communication Design)

The International Council of Communication Design (ICOGRADA)⁴⁸ is the world body for professional communication design.

Icograda is a non-profit, non-partisan, member-based network of independent organizations and stakeholders working within the multidisciplinary scope of communication design and expanded media. Founded in 1963, Icograda actively promotes the value of design practice, thinking, education, research and policy, representing more than 200 organizations in 67 countries and regions globally. Its Secretariat is based in Canada.

Communication design is an intellectual, technical and creative activity concerned not only with the production of images but with the analysis, organization and methods of presentation of visual solutions to communication problems.

⁴⁷ www.ifrro.org

⁴⁸ www.icograda.org

As a partner of the International Design Alliance (IDA), Icograda members believe in interdisciplinary collaboration and the effectiveness of a collective voice to represent the design industry. Icograda has consultative status within WIPO and is an Associate Member of IFRRO.

7.6 Pyramide Europe

Pyramide Europe⁴⁹ is an organization representing groups of photographers and other visual artists in the European Union.

Pyramide's name comes from the site of its first meeting in 1989: the Louvre Pyramid in Paris. At that meeting, the founding members signed a declaration of ten items of fundamental legislative importance to photographers and artists, called the Manifesto of the Pyramide. Essentially, this encompasses the rights of creators with regard to their copyright and moral rights.

As a European Economic Interest Grouping, Pyramide Europe is an EU-wide lobbying and debating vehicle. The aim is to create an environment where artists of all mediums can continue to create in a market that is open and fair. Pyramide Europe has been involved with the issue of unfair contracts for photographers. European legislative preparation on orphan works is another important issue and the preservation of metadata in digital picture files is of paramount importance in this context.

Pyramide Europe has members in France, Spain, the Nordic countries (Finland, Norway, Denmark, Iceland and Sweden), Greece, UK & Ireland and the Netherlands. The organization's structure can also be described as a pyramid. Pyramide Europe is registered as a limited company in the United Kingdom. In 2012, its office and the presidency was at the Finnish member association FINNFOTO.

7.7 IFJ (International Federation of Journalists)

The International Federation of Journalists (IFJ)⁵⁰ is the world's largest organization of journalists. Today, the Federation represents around 600,000 members in more than 100 countries.

The IFJ was originally established in 1926, and relaunched in 1946. It has been in operation in its present form since 1952. Its Secretariat is based in Brussels, Belgium. The work and rights of employed journalists and photographers, as well as that of freelancers, is covered by its activities.

⁴⁹ <http://www.ifrro.org/members/pyramide-europe>

⁵⁰ www.ifj.org



The IFJ promotes international action to defend press freedom and social justice through strong, free and independent trade unions of journalists. It supports journalists and their unions whenever they are fighting for their industrial and professional rights.

7.8 IAF (International Authors Forum)

The International Authors Forum⁵¹ is a forum for authors' organizations to discuss various issues and to find out more about what is being done across the globe.

IAF is a forum to discuss and share knowledge and to find solutions. These may include consultations and/or research within the membership to identify ways of benefiting or advising particular regions or statements of support for various initiatives. Contractual and legislative changes are examples of the issues discussed at the forum.

Any authors' organization can join the discussions and attend meetings. The forum organizes two meetings yearly and these are usually held in conjunction with the meetings of the IFRRO (International Federation of Reproduction Rights Organisations).

7.9 EIF (European Illustrators Forum)

The European Illustrators Forum⁵² defends the rights of illustrators and promotes illustration in Europe.

The EIF was founded in 2010. It is an organization of national associations of illustrators in European countries. The office is housed at the illustrators' organization in Frankfurt am Main, Germany.

Frankfurt Book Fair and Bologna Children's Book Fair have been selected as meeting points and as the most efficient locations for its main activities. The coordinated action of member associations on a local level and a series of common initiatives on an international level are the focus of its activities.

⁵¹ www.internationalauthors.org

⁵² www.european-illustrators-forum.com

ANNEX

About the authors

Tarja Koskinen-Olsson (Mrs)

International Adviser, Olsson & Koskinen Consulting, Finland/Sweden

Current position

International Adviser at Olsson & Koskinen Consulting, 2003 –

Board positions

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

Previous positions

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

Elected positions

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

Expert positions

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



Nicholas Lowe

Copyright and Collective Administration Consultant

Previously

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

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

Experience

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

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

