

IFRRO GENERAL PAPERS

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Collective Administration

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1 History

The birth of copyright law was a response to the political, economic and social changes brought about by the advent of the printing press in the European monarchies of the 1400s and 1500s. Well-trusted and identifiable printers were given exclusive printing monopolies. In 1557, the Stationers Company in England was given the exclusive power to supervise and control printing. This was a way to prevent the printing of seditious material or other material that would bring the Crown into a bad light.

In 1710, Queen Anne issued a statute that broke the monopoly of the Stationers Company and recognised, for the first time, the rights of authors to grant permission to publish their unpublished works for a limited period of time.

Collective administration of authors' rights started as early as in the late 1700s with dramatic and literary rights. In 1777 the predecessor of SACD (Société des auteurs et compositeurs dramatiques) was founded in France. Also, SGDL (Société des gens de lettres) was established in France in 1837 in the field of literature.

However, a fully-developed collective administration started only in 1850, when a collecting agency for non-dramatic musical rights was founded in France. This agency was soon replaced by SACEM (Société des auteurs, compositeurs et éditeurs de musique). At the end of

the last century and during the first decades of this century, similar organizations - performing rights societies - were founded in nearly all European countries.

Later on, new types of collective administration organizations were founded to cope with new technologies which from time to time emerged and challenged the notion of copyright and its exercise.

This paper deals with general issues concerning collective administration and is applicable to all types of rights in the field of copyright.

2 Basic Definitions

Copyright is based on the exclusive right of the author to control the use of his work. The rights of authors can be of two kinds: 1) moral rights and 2) economic rights. Moral rights are normally retained and exercised by individual authors. The exclusive economic rights of authors can be exercised:

- by the author or his heirs
- by the publisher or other assignee
- through an agency
- through a collecting society.

The first two modes involve the individual exercise of rights, the last two involve the collective administration of rights.

Collective administration can be defined as follows:

*"In a collective administration system owners of rights authorise collective administration organizations to administer the rights." **

*: WIPO publication "Collective Administration of Copyright and Neighboring Rights", the main author of which is Dr Mihály Ficsor.

Collective administration of rights is a feasible solution when individual exercise of rights is impracticable or impossible, for instance for the following reasons:

- a large number of works
- a large number of users
- joint works involving several owners of rights.

A fully-developed collective administration system includes the following aspects:

- monitoring the use of works
- negotiating with users
- granting licences
 - against appropriate fees
 - under appropriate conditions
- collecting fees

- distributing fees among rightholders

The rights which are typically administered collectively are the following:

- musical rights: performing and mechanical
- rights in dramatic works
- reprographic reproduction rights
- the right to retransmit broadcasts by cable
- resale right (droit de suite)
- remuneration for private copying

3 Legal Basis of Collective Administration

Collective administration should be based on voluntary licensing whenever possible. The owners of the exclusive rights should be able to decide whether, in what circumstances, and on what terms the use of their works will be authorised. When it is impossible or impracticable for them to exercise their exclusive rights individually, they can do so collectively.

Non-voluntary licensing systems can be stipulated in national legislation when this is permitted by the international conventions. In such cases the consent of rightholders is not required, but they have a right to remuneration. Collective administration is needed to collect and distribute this remuneration.

In free-use situations works can be used without the rightholders' consent and without remuneration. The "fair use" and "fair dealing" concepts in the Anglo-American legislations are examples of free-uses.

Reproduction for private and personal use is a special case. So far, voluntary licensing systems have not proved workable. Many countries have therefore introduced non-voluntary licensing systems, permitting reproduction for private use within defined limits, but providing for "equitable remuneration" to be paid to rightholders. Equitable remuneration through levies on recording media and equipment is the solution adopted in such cases.

In the future, with digital or digitised works and sufficient technical protection systems, even private and personal use may be subject to voluntary licensing.

4 Transfer of Rights and the Representation Question

A copyright organization can represent those rightholders who have, in person or through another organization, given a mandate to act on their behalf.

An authorisation from a rightholder to a copyright organization can be:

- a transfer of the right itself, or

- a transfer of the administration of the right.

Sometimes mandates are transferred via an affiliate organization. This is often the case in joint copyright organizations which act on behalf of different groups of rightholders. The affiliate organizations in such "coalitions" obtain mandates from their own members and transfer these further to the joint organization.

Prima facie, a collective administration organization can only administer the rights of those who mandate it. However, it is impossible for an organization to obtain mandates from all national and international rightholders whose works are used in its operational territory. There are different contractual and legal techniques which support collective administration and make it possible that licences issued by a copyright organization also cover the rights of non-represented rightholders.

These contractual or legal techniques are:

- contracts with indemnity clauses
- extended collective licence
- legal presumption

Contracts with Indemnity Clauses

In its contract with the user, the copyright organization assumes the liability for payment of remuneration to non-represented rightholders. This does not, however, make the use as such permissible, but only eliminates financial liability under civil law. Since an agreement cannot transfer liability under criminal law, the user remains responsible for any infringement he has committed.

Extended Collective Licence

In the Nordic countries the answer to the problem of non-represented rightholders ("outsiders") has been the so-called "Extended Collective Licence".

The characteristics of an extended collective licence are:

- the copyright organization and the user conclude an agreement on the basis of free negotiations
- the copyright organization must be nationally representative
- by law, the agreement is made binding on non-represented rightholders
- the user may legally use all materials, without needing to meet individual claims by outsiders or having to face criminal sanctions
- non-represented rightholders have a right to individual remuneration
- in most cases, non-represented rightholders have a right to prohibit the use of their works

Legal Presumption

The law contains provisions by which the copyright organization is given a general authorisation to represent the rightholders, or it is presumed that the organization has such a right.

The practical effects differ little from those of the extended collective licence. However, legal presumption gives the copyright organization a general right to represent the rightholders, while the extended collective licence does not.

5 Concluding remarks

Collective administration organizations normally operate with uniform tariffs and conditions ("blanket licensing").

In areas of massive use such as reprography, for example, collective administration has been an appropriate and very successful response. Some copyright organizations however function more as "rights clearance centres".

The difference between these two types of administration is essentially the degree to which individual rightholders are involved. In rights clearance centres, prices for copying are set by the rightholders individually. In the digital environment, both types of administration have a role to play, but rights will increasingly be managed through rights clearance centres.