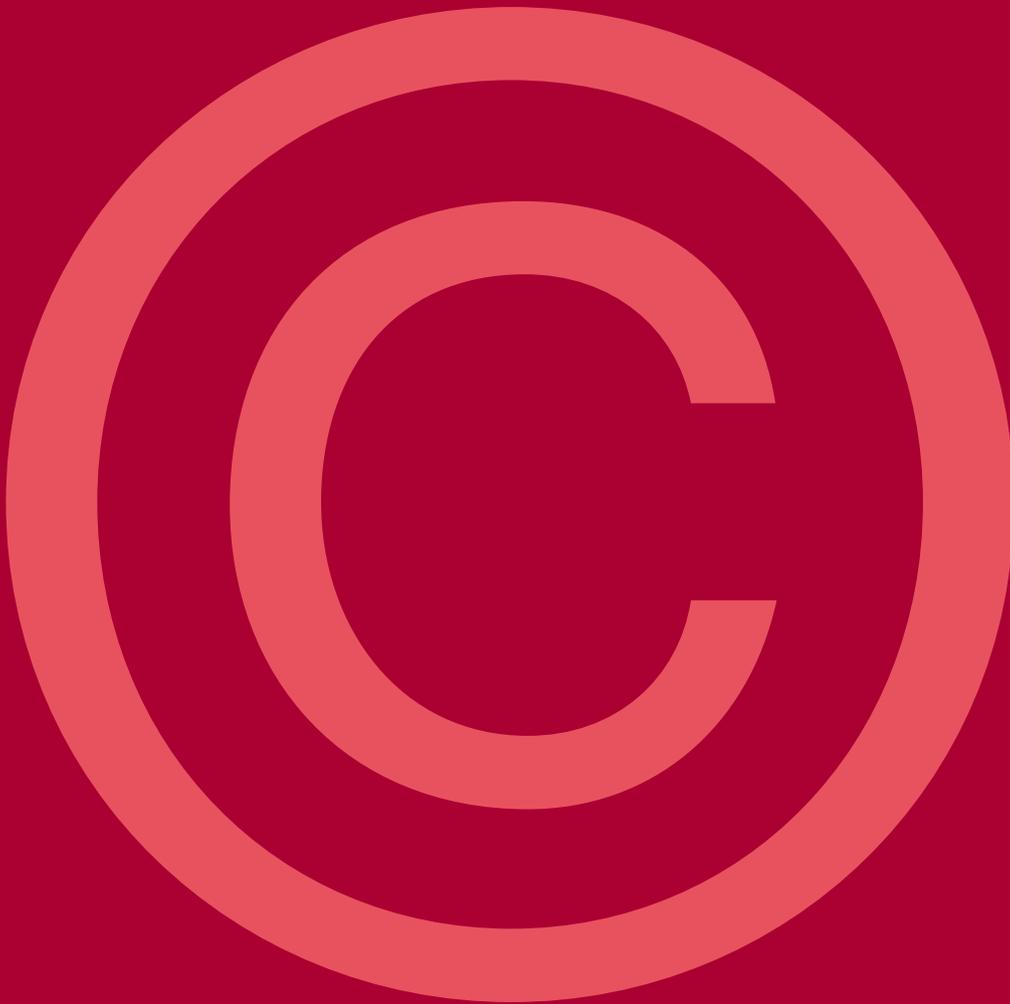


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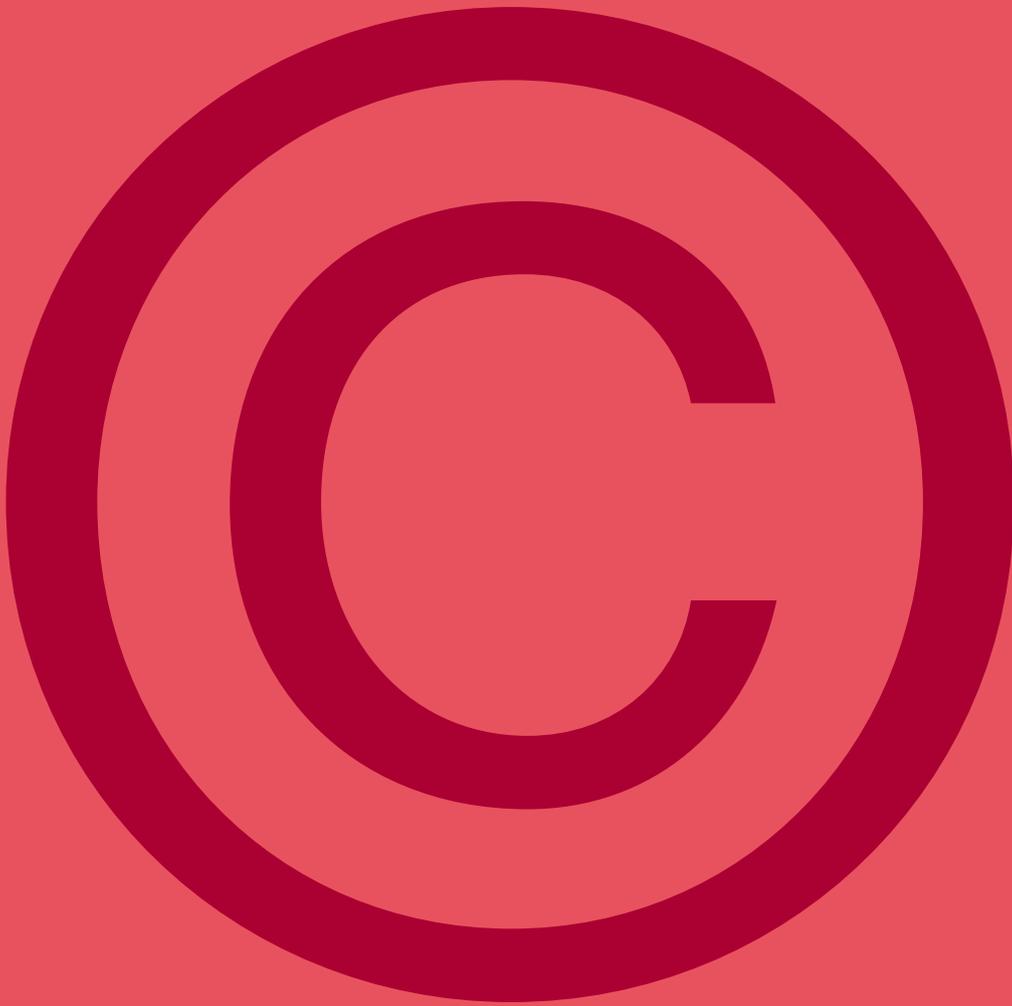
Copyright levies and Reprography





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Introduction

This IFRRO publication sets out to clarify the levy system in the context of reproduction of text and images. It outlines the legal background to the levy system, and explains how it is administered according to local circumstances to provide rightsholders (authors, publishers, illustrators, other visual creators and composers) with a financial reward that they are entitled to for the reproduction of the copyright works they have originated.

What is IFRRO?

The International Federation of Reproduction Rights Organisations (IFRRO) is an independent, non-profit umbrella association representing the interests of over 100 members worldwide that operate in the field of print media¹. National collective management organisations called Reproduction Rights Organisations (RROs), as well as national and international associations of writers, creators and publishers make up IFRRO's membership.

RROs are non-governmental, private, not-for-profit bodies, which are usually approved and supervised by national governments. They complement publishers' and creators' own direct licensing through the administration and licensing of the reproduction of printed and published material (typically small parts of books or journal articles). Set up and governed by publishers and authors (writers, as well as visual artists and composers), whose works may be incorporated into print media, RROs administer rights according to the laws and circumstances of their respective countries.

Visit www.ifrro.org for full details on individual IFRRO members and their operating models.

¹ The IFRRO membership counted 114 members in April 2008.

The Rationale of Copyright and Licensing

Copyright law encourages and stimulates the creation of intellectual works by protecting the original output of creators and the efforts of publishers in bringing works to market. Driving the implementation and enforcement of copyright law is the appreciation that the welfare of society and the cultural, social and economic development of nations benefit from the ongoing creative efforts of authors, artists and publishers².

It is only fair that rightsholders also need to be able to obtain remuneration when their published works are copied (as opposed to sold) typically in the form of multiple copies for classroom use. This may be done through licensing activities such as photocopying of portions of books (a chapter, for instance) and journals (typically an article) for use in schools, universities, private companies, and public and government sector institutions. As rightsholders would find it impractical to administer certain licensing operations themselves, national collective management organisations, such as RROs, do the work for them. Acting in accordance with local legislation and regulations, these intermediaries collect and distribute to rightsholders remuneration derived from these uses.

One among several ways³ to compensate rightsholders for the reprographic reproduction of their works including for educational and professional use is through copyright levies, currently applied in a majority of the EU Member States. For copying by individuals for strictly private and personal use, individual licensing schemes are not always practical. Thus, where payment for copying for purely personal and private use by natural persons is required, the levy system is widely considered to be a fair and practicable remuneration mechanism for rightsholders.

Copyright Legislation and Levies

A relationship exists between the operation of levies and an area of copyright legislation known as 'exceptions and limitations'. The Berne Convention⁴ and national copyright laws grant an exclusive right to the author to make or authorise the reproduction of his/her work "in any manner or form". However, Article 9.2 of the Berne Convention and the TRIPS Agreement also allow national legislation to introduce some exceptions and limitations to this right. Among the most frequent ones is reproduction for personal and private use by natural persons, fair dealing, etc. These exceptions and limitations may allow private individuals to use (including photocopy) copyright protected works without the permission of rightsholders, so in effect the rightsholders' exclusive rights are not applied and limitations are placed on the extent to which rightsholders can economically exploit their works.

Exceptions and limitations (often shortened to the word 'exceptions') must comply with the following international standards:

- Berne Convention
- WIPO Copyright Treaty (WCT)
- Universal Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- European Union Copyright Directives (in particular the so-called Information Society Directive)⁵

Of particular significance is the cumulative effect of the so-called 'Three Step Test'⁶ of the Berne Convention. In order to be permissible, exceptions and limitations must meet all the following criteria of the Test:

- they must be limited to certain special cases (which are specific, not generalised);
- they cannot conflict with the normal exploitation of works. For instance, there must not be any

² Copyright industries contribute about 5% to the national GDP according to a number of studies, including 'The Contribution of Copyright and Related Rights to the European Economy, 2003' by the Turku School of Economics for the European Commission.

³ On different models of operation by RROs, see the publication *Collective Management in Reprography* http://www.ifro.org/upload/documents/wipo_ifro_collective_management.pdf, pages 15-25.

⁴ Article 9.1

⁵ Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (2001/29/EC).

⁶ Berne Convention, Article 9(2). The Three Step Test is only applicable to the reproduction right, and has been extended to apply to other rights in WCT Article 10(2) and TRIPS Article 13. The Information Society Directive expressly includes it in Article 5(5).

competition between exceptions and limitations and the publication and sale of rightsholders' works and;

- they cannot unreasonably prejudice the legitimate interests of the rightsholder.

The Information Society Directive

With regard to Europe, the EU Information Society Directive provides an exhaustive list of exceptions to the exclusive rights of reproduction, communication to the public and making available to the public which EU Member States can include in their national laws. Articles 5.2.(a) and 5.2.(b) state that exceptions and limitations for reprography (5.2(a)) and copying for private purposes (5.2.(b)) may be introduced "*provided that the rightsholders receive fair compensation*". Thus the alternatives are normally either no exception for such uses or an exception with a fair compensation⁷, which is often a levy.

So, in EU Member States and other countries which have an obligation through agreements with EU to implement EU Directives⁸ two specific exceptions with relevance to reprography require fair compensation to be provided to rightsholders if they are incorporated into national law. In the case of the other exceptions, which are not subject to the fair compensation requirement under the Directive, Member States nevertheless have the option of providing for fair compensation for rightsholders

At this juncture, it is worth noting that the levy mechanism is not a tax. It provides payments to remunerate rightsholders for certain uses permitted by law under exceptions and limitations, and it does not pay the state. Piracy, the copying of whole books or journal issues, or other large scale copying is not legitimised by an exception.

The Levy Systems

Equipment levy

The law stipulates that a copyright royalty (which may be characterised in various ways, of which the most common is "equitable remuneration") is payable to the rightsholders via authorised collecting societies on equipment that can be used for copying permitted under specified exceptions. The manufacturers or importers then have the option to pass on this fee in whole or part so that ultimately it is borne by the end-user.

Operator levy

Providers of facilities used for reproduction of copyright protected material, such as copy shops, educational institutions, libraries and businesses where photocopiers are provided for employees' use, are liable for payment of a fee which is in proportion to the extent to which the facilities are used to copy protected works.

Complementary Equipment and Operator Levies

Many countries apply both equipment and operator levies to remunerate rightsholders. For instance, in Austria, under agreements concluded with representatives of the Austrian Chamber of Commerce, equipment importers and distributors pay an equipment levy based on the equipment type and its copying capacity.

Equipment operated for copying in return for payment or operated in educational, training and research institutions and public libraries attracts the operators levy, which consists of two components: a fee set according to the machine's location (e.g. copy shops near universities make more copies of copyrighted works than those elsewhere) and its reproduction capacity (i.e. the number of copies made per minute).

Levies in Europe

In 1965, Germany was the first country to introduce a levy, applied on audio equipment. This was extended to photocopiers (for reprographic reproduction) in

⁷ This is without prejudice to Recital 35 of the Directive 2001/29 which states that "In certain situations where the prejudice is minimal, no obligation for payment may arise.

⁸ For instance the European Economic Area (EEA) countries Iceland, Lichtenstein and Norway.

1985. Government legislators considered levies to be a practical way of remunerating rightsholders for private and personal copying without invading end users' privacy. At present levy schemes are in operation in 24 European countries⁹.

Levies outside Europe

Levy systems to remunerate rightsholders for text and image based works or provisions for them exist in law also in a number of countries outside Europe.

Implementation of a Levy system

Usually, basic levy principles are set out in the country's Copyright Act, while details on practical issues and dispute resolution systems are included in regulations. In the Czech Republic, for instance, The Copyright Act (as amended in 2006) is supported by an Ordinance from the Ministry of Culture, which specifies the types of devices and blank media for making printed reproductions and the amount of the lump fees.

Levy Systems Administration

Agreeing the levies

Generally the law stipulates that the levy system has to be administered by a collective management organization, such as a Reproduction Rights Organisation (RRO), representing rightsholders which are entitled to payment for the specific uses covered by the levy in question. Following implementation of relevant national legislation, the RRO enters into negotiations with appropriate representatives of the main manufacturers, importers or operators of photocopying equipment or with their trade associations.

These discussions aim to conclude a framework agreement for the operation of the levy scheme, under which manufacturers and importers and operators provide RROs with payment from individual users.

In Austria, every calendar quarter, distributors of equipment attracting levies submit a list of the machines that have come onto the domestic market for the first time and they transfer the relevant levies to Literar-Mechana, the national RRO that administers

the levy system in Austria. Once a year photocopier operators provide details of their equipment and usage to Literar-Mechana for the calculation of rates and quarterly invoicing.

What is Subject to the Levy?

This is a question of the interpretation of national law. There are two approaches: either the law specifies the criteria governing whether devices or media are subject to the levy, or it may specify specific types of devices or media. With either approach, disputes may arise because of the introduction of new types of devices or media the status of which under the existing law is disputed. Any such disputes are determined by the national courts but in some countries, for example Germany, cases must first be referred to arbitration.

Legislation at national level currently applies levies to the following types of equipment and media. These range from one type to all types listed below:

- Photocopiers
- Scanners
- Faxes
- Printers
- Multifunctional machines (i.e. those combining functions of any of the above)
- DVD or CD burners
- Personal computers

- Paper used for photocopying copyright protected works
- DVD-R
- CD-R

As new copying technology and devices are brought to market, they could possibly be covered by the levy system too.

Setting Tariffs

Tariffs are determined in each country by:

- 1) National law or regulation
- 2) Negotiation between interested parties
- 3) Arbitration tribunals or courts
- 4) A combination of all three of the above, depending on the type of equipment or media.

⁹ 19th revision of ThuisKopie International Survey on Private Copying Law & Practice www.thuisKopie.nl.

Where negotiations fail, tariffs are decided by some independent body such as tribunals, courts or by government ministries.

Tariff setting may take into consideration the type of machine, its capacity to make copies and its location.

For reprographic equipment, in Greece, Poland, Romania, Slovakia, Hungary and Bulgaria, the tariff is a percentage of the sales and/or import price of the device or medium. Elsewhere, the tariff is set as a lump sum, for example in Austria, Belgium, the Czech Republic, Germany and Spain.

In the European Union, the Information Society Directive requires the application or non-application of technical protection measures (TPM) that limit the use of copyright materials (see Recital 35¹⁰) to be taken into account when setting the tariff (Article 5(2)(b) and 5(2)(a) respectively).

Collection and Distribution of Remuneration

National legislation identifies which manufacturers, importers, handlers or operators of equipment are obliged to pay rightsholders remuneration and usually expressly states that an authorised RRO collects and distributes it to rightsholders minus costs and other deductions as appropriate. Administrative costs are typically around 10% of collected fees¹¹.

Where a country's cultural policy stipulates in law that contributions for cultural and social purposes should come from these monies, the RRO makes a deduction usually of 10% or less¹². However in some countries by law the deduction for these kinds of purposes may be higher.

Distribution planning is commonly undertaken by rightsholders within RROs as stipulated in national laws, for instance by distribution commissions or Boards elected by the RRO's General Assembly. Often RRO decisions on distribution have to be approved by a government body and, where disputes arise, adjudicated by the relevant government office.

Since the late 1970's RROs have been distributing remuneration using a range of methodologies.

'Objective availability' is an often-used method which is based on independent research into the availability of copyright protected materials in the marketplace¹². From these findings an assessment is made of the likelihood of the materials being copied. Statistically, certain types of materials, such as non-fiction, are more likely to be copied than others and remuneration is distributed according to this statistical probability. To ensure the accuracy of distribution data, RROs commission new market research at frequent intervals.

For current national collection and distribution figures, visit www.ifrro.org

Digital Technology and levies

Nowadays, digital technology is in practically every device used for reproduction: personal computers, photocopiers, faxes and scanners. It has created new ways of copying via scanning, downloading, storing, printing and modification of electronic file formats. It has enhanced the efficiency of devices, via the combination of several functions (e.g. photocopying, faxing and printing) into one multifunctional machine, enabling faster and higher volume copying.

Used in association with digital technology, we see the advent of Technical Protection Measures (TPM) to restrict use of copyright materials. They may also be part of a Digital Rights Management (DRM) system, which covers a range of electronic methods for the administration of copyright including trust based systems. DRMs are computer-readable language that rightsholders can use to electronically administer their rights and indicate for instance the terms and conditions of use applicable to their intellectual property. They may or may not include a TPM.

Regardless of whether the use of copyright material is analogue or digital, exceptions have to comply with the Three Step Test of the Berne Convention. If the exception is for private purposes or results in a reprographic copy, rightsholders for instance in the EU Member States have a right to be fairly compensated in accordance with the Directive 2001/29.

¹⁰ Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (2001/29/EC).

¹¹ In 2006, RROs operating levy systems deducted an average 13% to cover administrative costs. See IFRRO website www.ifrro.org for detailed information

¹² IFRRO Study 'RROs in European Countries', 22 June 2005

Levies can be used in a complementary way to DRMs and/or TPMs to provide remuneration to rightsholders from the reproduction of their works by both analogue and digital means. The differentiation between analogue and digital is made according to the output of these copying processes: the outcome of analogue reproduction is a paper copy, whereas digital reproduction results in an intangible electronic copy in a computer memory or a tangible electronic copy, such as a CD or CD ROM.

Examples of reprographic levies

Paper originals

1. Using a photocopier or multifunctional machine, an individual copies a newspaper article or a few pages from a book.
2. The user uploads a document containing information or text or images to their computer memory via a scanner. They then either print it out or store it in their computer

This will increasingly include the production of intermediate digital copies (as foreseen in Article 5.1. of the EU Directive). Such intermediate copies must not be used in activities that infringe copyright, for example, electronic transmission to a third party or posting on the internet

TPM and DRM are not relevant to this scenario as they exist only in the digital world and in the above example copies are made from an analogue original. In this context, provision therefore needs to be made for remunerating rightsholders for the copying of their materials.

Digital originals

1. The user prints out information, text or images from the internet (where it is formatted into a printable version). The end result is a paper copy. In a number of licence schemes (which provide fair compensation to rightsholders), this is regarded as reprography;
2. the user copies a newspaper article or book extract into his computer memory, then later into the memory of his ebook device. The process produces both intermediate digital copies (see Article 5.1 of the EU Directive) and permanent ones (see

Article 2 of the EU Directive). This is an example of digital copying subject to authorisation by the rightsholder or the user will need to demonstrate that the final copies are for private (non-commercial) use to lawfully copy under an exception.

TPM and DRM might and should ideally play a role in remunerating rightsholders for the copying of their materials. However, as remuneration is for the benefit of rightsholders, it is up to them to decide whether or not to use DRM and TPM in the collective or individual management of their rights, and their decisions may differ from one rightsholder to another. In print media, so far, few electronic publications are equipped with DRMs managing private copying (many DRMs used by publishers only permit authentication of the user), so currently little overlap exists with remuneration systems for exceptions.

Levies and the market

Questions often arise as to whether equipment levies distort competition between equipment manufacturers, for example in the European Union's internal market. The EU Directive assessed this issue (see Recital 37) and concluded that levy systems do not create major barriers to the internal market. There is neither evidence that levies inhibit market development in countries where they operate compared with non-levy countries, nor a correlation between the retail price of a device and the existence or non-existence of a levy on it. No evidence has been put forward to show that this situation has changed. Rather there are other factors such as the general price level in a country and what the market is willing to pay for the device that could play the decisive role on the pricing also of reprographic equipment.

The digital future

Authors and publishers will continue to respond to users' needs by developing new business models, and the scope of publishing (across books, newspapers, scientific journals etc) demands a variety of them depending among other things on types of content and uses of copyright material. The pub-

lishing industry will always have the choice between individual and collective management, and whether or not to use DRM. They are more likely to apply DRM to primary uses (such as subscriptions to on-line databases) than to secondary uses, many of which cannot be controlled by DRM. By considering levies and DRM as complementary rather than substitutes for each other, it is possible to give authors and publishers the freedom to choose which to apply according to the target market, or sub-market depending on the wishes of their rightsholders.

Conclusion

Levies are the only practical way of compensating rightsholders for uncontrolled private copying. They also serve to remunerate creators and publishers for other types of uses under exceptions in the copyright legislation.

It is recognized that there is variation in the way they are applied but this is due to the fact that the EU Directive only lays down the principle and leaves the implementation to the member states in accordance with the principle of subsidiarity. So long as national remuneration schemes follow certain basic principles then differences between them are not significant.

Levies are complementary to TPMs, which may protect digital source material being copied but cannot prevent for instance copying of analogue source material. IFRRO and RROs collaborate to ensure that levy systems operate efficiently in parallel with voluntary and other licensing systems.

Now operated to varying degrees in a majority of European countries and a large number of countries worldwide, the various levy systems are inexpensive and easy to administer. When levies are limited in their application to specific exceptions and limitations, they are fully supported by both author and publisher groups in the countries where they exist. The levy systems are designed to benefit all categories of rightsholders in the creative industries.

RROs work in collaboration with rightsholders and users to find and develop solutions which offer legal access to copyright protected works in the digital

world. IFRRO considers levies to be now, and into the foreseeable future, a viable and effective method of providing fair compensation to rightsholders for the secondary uses of their works.

Annex – Examples of Countries Operating the Levy Scheme

1) Spain

Exceptions under Spanish Copyright Law

Exceptions in Spanish copyright law, allow an individual (not an organisation or institution) to reproduce for private uses an original work to which he has legal access for private use, as long as the copy will not be used for collective or commercial purposes.

Levy

Amended in summer 2006, Spanish copyright law distinguishes between copying done using analogue and digital devices and media. The difference between analogue and digital devices is determined by the technology they employ. The law sets tariffs for analogue devices and media and anticipates that those for digital ones will be negotiated on a bi-annual basis as a minimum. However, any agreement reached between collective management organisations and industry associations is not binding for the Government, and if no consensus is reached on the tariff level and the type of digital devices it should be applied to, then the Spanish Ministries of Culture and Industry make the final decisions.

The RRO - CEDRO

CEDRO was set up in 1987 and represents publishers and authors. Under an agreement with the visual creators' society VEGAP, it also shares monies collected with visual creators and artists whose works are included in copied texts or books.

CEDRO administers an equipment levy covering use of printed materials by private individuals. It has also been mandated by its publisher and author members to issue licences for uses beyond private copying and now licences digital uses too.

In 2007 CEDRO collected €43.90m from equipment levy and €1.88m from voluntary licensing.

Distribution

CEDRO distributes funds collected to authors (including visual creators via VEGAP) and publishers in Spain, to foreign rightsholders (often via RROs elsewhere in the world). Administration and operational costs are covered by deductions from the monies collected (in 2007, 8.52% from the total collection).

CEDRO allocates for social purposes 20% of the amount collected from the private copying levies (according to the Spanish law). In addition to that CEDRO allocates 10% of the amount collected from licenses for promotional purposes according to its statutes.

CEDRO's members have decided that rightsholders eligible to receive monies from a distribution will be those who have published a book in the three years prior to the distribution or a periodical in the two years beforehand.

CEDRO uses the objective availability methodology as a basis for a distribution plan agreed by its rightsholder members. It undertakes extensive surveys of copying in Spain in seven subject areas to determine the likelihood of a particular work being copied and uses the results to allocate monies to individual rightsholders according to the price and subject matter of works copied.

2) Germany

Exceptions under German Copyright Law

Section 53 of the German Copyright Act 2007(GCA) includes several different exceptions to the exclusive rights of reproduction.

These exceptions do not apply to sheet music, databases and complete copies of books or periodicals (unless they are out of print). Under Section 53 (1) of the Act, a natural person can make single copies of a work for private use in both analogue and digital formats, Under section 53 (2) a natural or legal person can copy single works for own scientific or archival uses, and out of print works or small parts of current works for other own use. S 53 (3) permits the copying of small parts of works, other than school text books, or individual articles, for teaching or examination purposes.

Sections 54a to 54h GCA set out the basic rules of the German levy system to remunerate rightsholders for uses permitted under Section 53 as described above. Section 54a covers the payment of equitable remuneration by manufacturers or importers of devices or media (i.e. the equipment levy) and specified operators of such devices (operator levy).

Levies

Currently, the equipment levy applies to photocopiers, fax machines, readerprinters, scanners and CD and DVD burners. There are ongoing legal disputes as to whether printers and PCs are subject to the levy, and as to the tariff which should apply to multifunction machines.

Under the law applicable until the end of 2007 tariffs were set according to the capacity of the copying device and whether it produces black and white or colour copies. Some tariffs are stipulated in the German copyright law (see Article 54d and Annex), while tariffs for more recent devices have been negotiated or determined by the courts when tariff discussions have failed. The new Copyright Law provides for all tariffs to be negotiated, although the previous tariffs continue to apply for an interim period. When a device or medium is re-exported, the levy is reimbursed.

The RROs – VG Bild-Kunst and VG Wort

Section 54h (1) GCA stipulates that remuneration is collected and disbursed by one or more collecting societies which are regulated by a separate law. Overall supervision of these bodies is undertaken by the German Patent Office.

Collecting societies enter into collection agreements with the organisations (or their representative bodies) which according to the law should pay remuneration to rightsholders

In Germany two RRO members of IFRRO co-operate on administering equipment levies: Verwertungsgesellschaft (VG) Bild-Kunst for images and Verwertungsgesellschaft Wort for scientific and literary works. Levies for reprographic reproduction have been collected by the latter since their introduction in 1985. In 2007, VG Wort collected €37.09 million under the equipment levy and € 9.32 million via the operator levy.

Distribution

VG Wort's distribution function is organised according to categories of works and rights, and each department has a distribution plan tailored to the characteristics applicable to that sector, for example, how remuneration is split between authors and publishers and deductions for social and cultural purposes.

Independent surveys record the volume of works copied according to literary genre and location. This data is then matched up with the details of publications that authors and publishers registered with VG Wort submit to the organisation. Payment is distributed to these rightsholders depending on which genre their publications belong to. For instance, in 2007, authors whose articles appeared in scientific journals received €2.20 per page and authors of scientific books received €350 per book.

German law requires VG Wort to deduct money from collections for social and cultural causes. Its statutes require the overall level of deductions to be less than 10% of the total, but the exact level varies from one distribution department and year to another, as determined by rightsholders.

A proportion of the monies collected is passed to VG Bild-Kunst for onward distribution to visual creators for the copying of pictures, graphics, and maps. The remainder is distributed by VG WORT to individual authors and publishers, as well as foreign RROs.

From 2008 onwards, distributions to rightsholders will include payment for the copying of online works, with the money coming from the equipment levy on CD and DVD burners.

3) Hungary

Exceptions under Hungarian Copyright Law

Under Article 35(1)-(3) of the Hungarian Copyright Act an individual may make a copy of a copyright work for private purposes, as long as he does not intend to use it directly or even indirectly to earn income or increase his income. A number of types of works, including sheet music, are excluded from this exception.

Levies

Article 21 of the Copyright Act (1) enables authors and publishers to obtain remuneration for the photocopying (or similar) of their print material onto paper (or a similar medium). Under the Act, the manufacturers or importers of devices and first distributors to the domestic market (as opposed to re-exporters) are jointly liable to pay an equipment levy.

Educational, cultural and other institutions, retail and copy shops which allow and charge for photocopying, must pay an operators' levy, on any copying machine owned, rented or leased by them.

The types of machines for which reprographic remuneration is due (currently photocopiers, multi-functionals and printers) are determined by a Government Decree.

The RRO

The Hungarian Alliance of Reprographic Rights (HARR) was approved by government to determine and collect remuneration for authors and publishers from the photocopying or similar reproduction of their works. These rightsholders mandate the Alliance to administer their reprographic reproduction rights via their representative organisations which are HARR members. Each year HARR must obtain approval for its proposed tariffs from the Minister of Education and Culture. In 2005 HARR collected €1.47 million from the equipment and operator levy. HARR was established in 2000 and started collection in 2001.

Distribution

HARR makes yearly distributions to its member organisations, which make onward payments to individual authors and publishers. How collected monies are shared between the members is determined by law, with distribution details agreed annually.

4) Belgium

Exceptions under Belgian Copyright law

The Belgian legal license for reprography authorises the reproduction (1) by photocopying or a process having similar effects (excluding digital copying or storage unless for the sole purpose of making a paper copy) (2) of entire or fragments of articles and

plastic works or of short fragments of other works (3) published on a graphic or similar medium this, (4) for private purposes (including internal use), didactic purposes or scientific research (art. 22, §1, 4 and 4bis of the Copyright Act).

The Copyright Act was last amended in May 2005 in order to implement the European Directive (2001/29/EC) on the information society into Belgian law. The scope of the existing exception for reprography was extended in order to comply with article 5.2 (a) of the Directive. It now includes all reproductions “on paper or any similar medium”, i.e. photocopying and printing and excludes sheet music for private purposes. The coming into force of the broadened exception will be set by a future Royal Decree.

The equipment levy

Articles 59 through 61 of the Copyright Act set the basic rules of the equipment and operator levies system that is meant to remunerate the right holders. The Royal Decree of 30 October 1997 implements them. On the one hand it sets the tariffs of the equitable remuneration (i.e. operators’ levy or proportional remuneration) to be paid by the users concerned. On the other hand it describes the equipment that is subjected to an equitable remuneration to be paid by the manufacturer or the importer (i.e. equipment levy or fixed remuneration) and sets the applicable tariffs according to their respective capacity or resolution.

Devices/Media subject to the levy

Article 59 of the Copyright Act presently states that a device that “permits the reproduction of copyright protected works” shall be subjected to a levy. As a result, the Royal Decree of 30 October 1997 has defined the following devices as being subjected to a fixed remuneration: copiers, MFP’s, faxes and scanners,

When the broadened exceptions will come into force, the list of devices will need to be adapted in order to take into account printing processes. Furthermore, for a device to be added to the list the said device will need to be “obviously used for the reproduction of copyright protected works”. As a result, printers should in principle be added while scanners be removed from the present list.

The tariffs are determined according to the capacity (copier or fax) or resolution (scanner) of the device. When both capacity and resolution can be applied to a device (MFP) the fixed remuneration is the highest one.

When a device is re-exported, the levy is reimbursed.

The RRO

In accordance with the law (art. 61), a Royal Decree of 15 October 1997 appointed Repobel to collect and distribute the equitable remuneration for reprography insofar as it represents all the collecting societies involved.

Collection started on 1 January 1998. The first distribution of remuneration to its members took place in 2001.

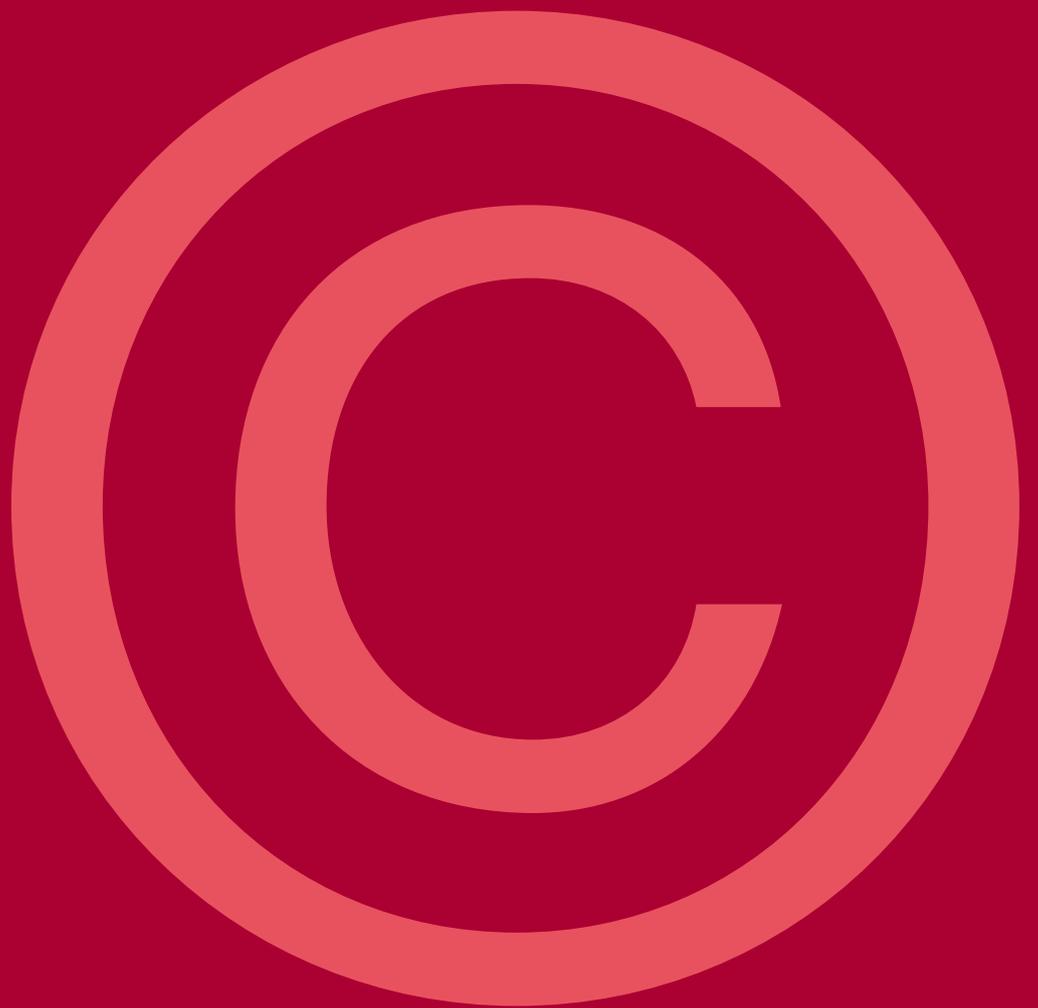
In 2005, Repobel collected EUR 9.3m under the equipment levy and EUR 10.9m under the operators’ levy and deducted 11% for management expenses.

Distribution

The Copyright Act (art. 60) provides for a statutory distribution. It states that 50% of the reprographic remuneration is intended for authors and 50% for publishers.

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