

# IFRRO DETAILED PAPERS

## Distribution of Remuneration

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## 1 Introduction

A Reproduction Rights Organisation (RRO) is accountable to both the rightsholders it represents and to the users from whom it collects copying fees. It must maintain the highest standards when dealing with the funds it holds in trust. Users must be confident that the payments they make are related to the material actually copied, and rightsholders must be confident that the revenue collected is distributed according to the actual use of works. The

purpose of this paper is to describe the different methods of distribution currently being used by RROs who are members of IFRRO.

## **2 Basic Definitions**

A basic principle of collective administration is that remuneration should be distributed to rightsholders according to the actual use of the works. This general principle also applies to remuneration for reprographic reproduction.

Ideally each rightsholder would receive individual remuneration according to the actual photocopying of the individual work. However, for practical and administrative reasons, in many cases this is impossible.

Therefore, other solutions have been found. RROs often base the collection and distribution of remuneration for photocopying on some form of statistically obtained data, either through a sampling system or through statistical surveys. Data is collected from a subset of users covered by a single licensing agreement or within a defined sector (e.g. universities) over a specific period of time.

## **3 Methods of Distribution**

Generally, licensing agreements between RROs and users on photocopying include provisions, which set out the licensees' obligations to provide the RRO with data of their copying. The RRO uses this information when distributing revenues to rightsholders.

IFRRO members are currently using the following four main methods of distribution:

- *title specific* distribution based on
  - full reporting
  - sampling
  - objective availability
  
- *non title specific* distribution on the basis of surveys

### **3.1 Full reporting - distribution on the basis of actual copying of the work**

Full reporting means that users record details of every copyright work that is copied.

The advantage of this distribution method is that the collected data provides accurate information for the distribution of revenue to rightsholders on the basis of the actual use of their works. However, a full reporting system can also be perceived of as burdensome to the

user who has to record every instance of copying. For the RRO, the processing of the records obtained can result in increased administrative costs.

### **3.1.1 Examples of full reporting**

#### **USA**

Copyright Clearance Center (**CCC**) uses a variety of methods to distribute the revenue it collects. In so-called "Full transactional reporting" a licensee maintains a record of each instance of copying. CCC then invoices according to each use, and revenue is distributed to rightholders accordingly.

In the case of CCC's "Academic Permissions Service", 75% of copyright permissions for student course packs are cleared within 24 hours. This system requires powerful computer technology.

#### **BRAZIL**

Associação Brasileira de Direitos Reprográficos (**ABDR**), also collects and distributes remuneration on the basis of a full reporting system. The user has to fill in a form, which contains information on the work from which the copies have been made, the names of the publishers and authors involved, how many pages from the work that have been copied and the total number of copy sets made. The price per page is a standard price fixed in the licensing agreement. Remuneration is calculated, users invoiced and distribution made on the basis of monthly reports.

#### **UNITED KINGDOM**

In addition to clearing through the blanket licence, Copyright Licensing Agency (**CLA**) offers users an opportunity to obtain authorisation for the copying of complete or major parts of works through the CLA Rapid Clearance Service (CLARCS). Fees and conditions are set individually by rightholders. When an authorisation is granted, CLA obtains all the information needed for the calculation of fees, the invoicing of users for the actual copying of the work and for the distribution of remuneration.

### **3.2 Sampling - distribution on the basis of estimated copying of the work**

When distribution is based on sampling, a defined number of users covered by the agreement, normally some 2%-5% who are selected statistically, report their actual copying of works at agreed intervals. When distributing remuneration, each rightholder is paid according to the statistically calculated use of the works.

Samples are designed to capture a cross section of the copying. Even though not as exact as receiving a record for all instances of copying (i.e. full reporting), data obtained from samples is regarded as being sufficiently accurate to enable the distribution of revenue to individual authors and publishers.

#### **3.2.1 Examples of Sampling**

##### **DENMARK**

In Denmark, 5% of all the schools covered by the school licence have to report all of copies of

copyright material to **COPY-DAN** for a period of 12 months. Reporting is done by submitting an extra copy of all the copies made during the survey period. Collected data is registered in a database by COPY-DAN to obtain information on the names of the author and publisher, the title and type of the work copied, the number of pages copied from each work and the total number of copies made. Additional information is collected by COPY-DAN whenever needed.

### **UNITED KINGDOM**

The valid sampling period used by **CLA** is shorter than the one used in Danish schools. CLA samples 2% of educational institutions for a period of 6 weeks, while the sampling period for private and public administration is 4 weeks. During the sampling period, users must make an extra copy of all material that is photocopied.

Sampling is not carried out on an annual basis under all licensing schemes. However, additional data is collected from a limited number of users within the sector in question who are required to submit written reports on their photocopying to complete the data from the sampling. Special forms, which allow CLA to assemble the data required for distribution of remuneration, have been designed for use in this reporting.

Distribution to individual rightsholders is established on the basis of the processing of accumulated data from the sampling and the reports.

### **3.3 Objective availability - distribution on the basis of probable copying of the work**

In some countries or licensing schemes, rightsholders have decided that it would be impossible to collect data on photocopying directly from users. A distribution method has therefore been developed based on the availability of the material in the market, thus avoiding to collect data from users on the actual photocopying that takes place. This distribution method is most often used by RROs, which administer compulsory licences.

The rationale behind this distribution method is that, since all material that exists can be photocopied, it can be assumed that at some stage it probably will. The main benefit of this method is that it is a cost efficient way of obtaining distribution data. The rightsholders themselves report the publication of new works to the collective society. The information can normally be controlled through public information sources. Obviously, there is no direct correlation between the actual copying of the work and the remuneration that is received by the individual author or publisher.

#### **3.3.1 Examples of objective availability**

##### **GERMANY**

In Germany, authors and publishers report all their publications to the national RRO, **VG Wort**, which then distributes part of the collected revenue to rightsholders, based on the market availability of their works.

Independent surveys define the volume of copying in different locations (schools, libraries, copy shops, etc.) for different categories of protected works (scientific literature, journals,

fiction, etc.). Authors of scientific books and journals report their works and receive a lump sum for each reported book or article page. Publishers receive remuneration based on the number of books they have in print and/or the number of journal issues and the subscription price.

## **SWITZERLAND**

As in the case of VG Wort, **Pro Litteris** also takes as its starting point the principle that any work that is published can and probably will be photocopied sooner or later. Publications older than 25 years are not taken into consideration, unless they have been republished. Authors and publishers report the publication of new works to Pro Litteris.

Each work is treated individually and processed according to established factors such as the type of publication, its price and the number of pages. On this basis, each work ends up with a certain number of "points", according to which distribution to individual publishers and authors is made.

### **3.4 Non-title specific distribution based on the estimated copying of type of work**

In some countries rightsholders have opted for non-title specific distribution of remuneration. Surveys are designed to collect *generic*, non-title-specific information regarding the volume of copying of the type of material and categories of publications, rather than identifying the specific publication, author and publisher that have been photocopied. This distribution method often results in collective distribution of remuneration.

Data is collected from a limited number of the users covered by an agreement (approximately 5%) for a limited period of time. The period of time can vary from 8 hours to 4 weeks. Surveys are conducted less frequently than in a system based on sampling, normally not more often than every 4-5 years within each sector covered by an agreement.

This system can also provide for the individual remuneration of rightsholders, even if indirectly. The RRO distributes remuneration to the rightsholders' associations, which in turn pay individual author and publisher. However, as is the case when distribution is based on the criteria of objective availability, there is no necessary correlation between the rightsholder or work that has been photocopied and the remuneration that the individual rightsholder receives. It is generally left to the rightsholders' associations (e.g. the book publishers' association, the writers' guild, the photographers' association, etc.) to decide on the criteria for distribution.

Under this distribution method, fees are also used for collective purposes. This could for instance take the form of copyright enforcement activities or the promotion of a certain category of works or rightsholders. Using revenue for collective purposes is justified if this solution has been chosen by the rightsholders concerned, but it applies only to the national rightsholders who are represented by the organisation. The share due to foreign rightsholders can be established on the basis of survey results.

In certain countries where the domestic licensing system is title-specific, non-title specific fees collected in foreign countries are distributed to individual authors and publishers on the basis of a statistical proxy.

### **3.4.1 Examples of non-title specific distribution**

#### **NORWAY**

Surveys are conducted within each sector (schools, universities, government administration, private industry, etc.) that is covered by a licence, normally every 5 years, and carried out by a statistical bureau engaged jointly by **Kopinor** and the user. The survey identifies 15 different categories of publications (e.g. textbook, scientific journal, sheet music, newspaper etc.) and 15 different types of material (e.g. poetry, scientific text, editorial, photo, illustration, musical notes, etc.). In addition, country of origin of the publication and the author are identified.

For each sector, data is processed into a **matrix**, which is used as a basis for calculating the distribution of collected fees. A distribution matrix typically shows the volume of copies made of scientific text published in a textbook, the number of copies made of illustrations published in a newspaper, etc.

Collected fees are transferred to the rightsholders' associations, which can use all or part of the money for collective purposes if this is accepted by the membership of the association in question. However, most of the remuneration (83% in 1995) is distributed to individual rightsholders in some form. The publishers' associations normally distribute to the individual publishers according to sales data and market shares of the relevant type of publication. Authors' associations distribute to individual authors mainly in the form of grants, training courses, and the like.

#### **FINLAND**

The practice employed by **Kopioisto** in Finland does not differ greatly from the methods used in Norway. Nevertheless, in co-operation with a statistical bureau, Kopioisto has developed a method of surveying photocopying, which places much less of a burden on the user than is the case in most other countries.

The survey period can last for some months, but the actual collection of data takes place only 8 hours in each institution that is surveyed, 4 hours in the morning one day and 4 hours in the afternoon sometime later, or vice versa. During the survey period, users can choose whether to make an extra copy or to fill in a form about each copy that is made. The data is collected and processed by a neutral statistical bureau. The information obtained is somewhat similar to that collected by Kopinor, namely the country of origin, type of publication and type of material, but Kopioisto also identifies the purpose of the copying, i.e. whether it is for professional or private use.

## **4 Distribution to Rightsholders - author/publisher share**

The split of the revenue between rightsholders can be determined by

- national legislation

- the statutes of the RRO
- agreements

## **4.1 Split on the basis of national legislation**

### **BELGIUM**

**Reprobel** operates a legal licence under the Belgian Copyright Act. Article 61 states that the author/publisher split shall be 50/50 for reprographic fees collected on the basis of the law.

### **ROMANIA**

Article 109 (1) of the Romanian Copyright Act establishes that the remuneration for photocopying collected by **Fondul Literar** "shall be distributed equally through the relevant collective administration organizations, between the authors and the publishers".

## **4.2 Split decided in RRO Statutes**

### **DENMARK**

In Denmark, the statutes of **COPY-DAN** state that fees collected for photocopying shall be split 50/50 between the author and the publisher.

## **4.3 Split on the basis of agreement**

In most cases the revenue split is fixed through the RRO on the basis of agreements between rightsholders or rightsholder groups concerned.

The author/publisher split varies from one country to another. A 50/50 split is common. In some cases, factors such as the type of publication, type of material and copyright ownership are also taken into account.

When the author-publisher split is being negotiated, authors generally claim their share of the money on the basis of the exclusive right granted to authors in copyright law to authorise any form of reproduction of their works.

Publishers may in some cases claim a share of the fees on the basis of protection given in copyright legislation. Such a legal basis is found in the UK and Jamaican copyright acts, which grant a 25-years period for the protection of the typographical arrangement. Another example is the Mexican Copyright Act, which grants book publishers an exclusive right to authorise any reproduction of their works for a period of 50 years. In other cases, publishers base their claims on legislation designed to control unfair competition and/or on contractual agreements with authors.

### **4.3.1 Examples of splits decided by agreements**

## GERMANY

In Germany, remuneration for non-fiction works, both books and journals, is distributed 50/50 between authors and publishers by VG Wort. For works of fiction, the distribution is 70% to authors and 30% to publishers.

## NORWAY

The member organisations of Kopinor have negotiated a more detailed scheme for the split between authors and publishers depending on the category of publication that has been photocopied, and where the copying takes place:

Source (Publication)		Authors	Publishers
Textbooks	Universities	60%	40%
	All other areas	50%	50%
Non fiction books	Schools	75%	25%
	Universities	60%	40%
	All other areas	70%	30%
Song books	Music	60%	40%
	Song texts	50%	50%
Sheet music		50%	50%
Novels, poetry books, drama		75%	25%
Fiction anthologies, journals		60%	40%
Newspapers, trade press, weeklies, cartoons		70%	30%
Encyclopaedias, other published material		50%	50%

## SWEDEN

BONUS also distributes to authors and publishers according to the type of publication, the actual splits being somewhat similar to those in Norway. One difference is that the author/publisher split also depends on the type of material, which has been photocopied.

## UNITED KINGDOM

CLA takes copyright ownership into account when distributing remuneration to authors and publishers for photocopying of scientific journals. If a publisher can prove ownership to at least 90% of the articles in the volume that has been copied, the total fee collected is paid to the publisher, otherwise there is a 75/25 split in favour of the publisher.

For all other publications, the author/publisher split is 50/50.

## CANADA

The author-publisher split is agreed on the basis of genre and by copyright ownership. For example, revenues for trade and consumer periodicals are divided 65/35 on the presumption

that the authors and publishers share in the copyright. Revenues for scholarly and scientific journals are paid to the publishers only on the basis that rights are in the vast majority of cases held by the publishers only. In all cases, the agreement includes the option to override the agreed splits in order to meet contractual obligations between the authors and publishers:

	<b>Authors</b>	<b>Publishers</b>
Trade books	60%	40%
Textbooks	50%	50%
Out of print books	100%	0%
Trade/Consumer periodicals	65%	35%
Scholarly/scientific periodicals	0%	100%
Freelance newspaper articles	100%	0%
Other newspaper content	0%	100%
All other works	50%	50%

## **FRANCE**

The members of **CFC** have agreed to take sales figures into account when deciding the author-publisher split for certain categories of works. Whereas revenue for photocopying of for instance trade books and general fiction and non fiction books are split 50/50, and for schoolbooks and encyclopaedias the split is 70/30 in favour of the publisher, when distributing remuneration for photocopying of textbooks for universities, the following considerations apply:

If the book that has been photocopied has sold less than 500 copies, the split between authors and publishers is 90/10 in favour of the publisher. If the total volume sold is less than 5,000, the split is 60/40 in favour of the publisher, in other cases a 50/50 split is used. For periodical publications, different rules apply.

### **4.4 Disagreement on distribution**

An RRO must also establish procedures for the handling of disputes on the split of the revenue between rightsholders. Agreement on the split can, of course, be set as a condition for the paying out of remuneration. However, many RROs have developed dispute procedures to solve disagreements, which may arise over the revenue split.

In **Canada**, the **CANCOPY** Board establishes rules for distribution, to which rightsholders agree before they join CANCOPY. There is a default split of 50/50 in cases where genre or copyright ownership is unclear.

In **Norway**, The Annual General Meeting of **Kopinor** elects a separate Distribution Board, which only deals with distribution of revenues. If negotiations between the rightsholders' associations fail, the Distribution Board appoints two mediators from its members, usually one publisher and one author. Lack of success in the mediating process results in the case being sent to the Distribution Board, which eventually passes a resolution on distribution and payment. A decision may be appealed to an internal Arbitration Board, consisting of three experts on copyright, which makes the final decision.

#### **4.5 Distribution to rightsholders**

Fees can be distributed to rightsholders directly, through the rightsholder's association or via an intermediary.

##### **USA**

In some common law countries such as the USA, individual authors and publishers mostly determine the levels of remuneration for each type of work and each type of use.

##### **CANADA**

**CANCOPY** makes payments directly to authors and publishers if both are members of **CANCOPY**. If the author is not a member, the author share is paid to the publisher who, as a condition of receiving the money, undertakes to pay the author if so required by contract.

##### **AUSTRALIA**

**CAL** has a policy of distributing directly to one rightholder only. There may of course be a number of rightholders in any single work copied, for instance a writer and an illustrator. Each recipient is then required to undertake that they will split the fees they receive with other rightholders, according to contractual agreements, which exist between them.

##### **UNITED KINGDOM**

The two members of **CLA** are the Authors Licensing and Collecting Societies (ALCS) and the Publishers Licensing Society (PLS). These associations represent all author and publisher members respectively. CLA pays out remuneration to ALCS and PLS, which handle the onward distribution to individual authors and publishers.

##### **FINLAND, NORWAY and SWEDEN**

**Kopioisto** (Finland), **Kopinor** (Norway) and **BONUS** (Sweden) only have authors and publishers associations as members. All collected fees on the basis of blanket licences are paid to the member associations representing different categories of authors and publishers, for further distribution.

In cases where a licence is granted on an individual basis outside the scope of the blanket licence, fees are paid directly to authors and publishers concerned.

## **5 Foreign Rightsholders**

Fees, which have been allocated to foreign rightsholders, are distributed between RROs through the mechanism of reciprocal agreements.

There are two types of reciprocal agreements, the Type A agreement and the Type B agreement. The Type A agreement involves an exchange of repertoire between the RROs involved and an agreement on transfer of fees collected. For instance, a Type A agreement signed between CCC (USA) and CEDRO (Spain) means that whatever CCC collects for the photocopying of Spanish works in the USA will be transferred to CEDRO, and vice versa.

However, some RROs, especially at the initial stage of their work, have preferred to sign a reciprocal agreement Type B. As with Type A agreement, the Type B agreement involves an exchange of repertoire, like in a Type A agreement, but there is no actual transfer of fees. Type B agreements are based on the assumption that fees collected in country A for the photocopying of country B's publications will stay in country A as payment for the photocopying of county A's publications in country B, and vice versa. Distribution methods and the collection of distribution data vary significantly from one RRO to another. The appropriate solution on how to handle foreign distribution is best found through co-operation and negotiations between RROs within the framework of IFRRO on a country to country basis. To assist member RROs in negotiating reciprocal agreements, a Working Group of lawyers was established to work out model agreements for both Type A (cross border distribution) and the Type B (repertoire swap) bilateral agreements.

The two model agreements are intended to facilitate negotiation of a reciprocal agreement between the member RROs. Even though they form a guide, each RRO must adapt the elements of the relevant model agreement into the reciprocal agreement that is actually to be signed. The group that drafted the model agreements acknowledged that it could only be a guide to the manner in which RROs should contract with each other, since the actual form of an agreement will often depend on the mandate given by national rightsholders. In the set of principles, which accompanies the model agreements, it is stressed that they are neither mandatory nor binding on individual members.

## **6 Frequency of Distribution**

There are no particular regulations on the frequency of distribution. However, IFRRO recommends that distribution to rightholders should be made at least once a year. Existing RROs distribute revenue yearly, twice yearly, quarterly and monthly or even more frequently.

During the early stages of the existence of an RRO it may not be economically viable to distribute to individual rightholders more frequently than on an annual basis.

RROs should also be aware that undue delays in distribution may have a negative impact on relations with national and foreign rightsholders.

## **7 Concluding remarks**

The role of an RRO is to collect fees for the use of copyright works and distribute collected fees for the benefit of rightholders. There are a number of methods of attaining these objectives and these are reflected in the different systems utilised by RROs.

It is a matter for new RROs to determine which system will be the most effective in meeting these objectives, taking into account national legislation and the interests of their rightholders and users. Ultimately, a co-operative approach between rightholders, users and legislators is likely to result in benefits for all concerned.