Overview of models of operation of RROs under national exceptions and limitations regarding educational activities

The purpose of the following overview is to provide a description of the different models of operation under the national exceptions and limitations in legislation as a basis for the licensing of educational institutions by Reproduction Rights Organisations (RROs). Regarding the international and European legal framework, reference is being made to the WIPO-IFRRO publication "Collective Management in Reprography".[1]

I. Different national legal systems: "Fair use", "fair dealing" and "private use"

In accordance with Article 9.1 of the Berne Convention (BC) the copyright legislation of a country which is party to the BC has to grant an exclusive right to the author of a work to make or authorise the reproduction of the work in any manner of form. The possibility for national legislation to make exceptions and limitations to this exclusive right is offered in Article 9.2 of the BC provided the "three step test" is observed. Similar stipulations are found in the WIPO Copyright Treaty (WCT) in respect of the right to make a work available to the public and distribute it.

National copyright legislation needs to be in harmony with commonly accepted international and regional norms. It may include "free uses", i.e. no prior consent with or without remuneration, only in carefully designed special cases, when the reproduction does not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the rightholders ("three-step-test"). Common law jurisdictions often focus on "**fair use**" or "**fair dealing**" provisions. Other, in most cases civil law-based, legislations focus on "**private use**".

1. "Fair use"

Some legislations, for instance the **United States** (US), are based on the legal principle of **"fair use"**, which provides certain limitations on the exclusive rights (see Section 106 of the US Copyright Act) of copyright holders. Section 107 of the US Copyright Act sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a "fair use": (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

In addition to the four part test, a fifth criterion has been considered by a court decision in *Field v. Google*, 412 F. Supp. 2d 1106 (D. Nev. 2006). The court noted that the Copyright Act authorises courts to consider other factors than the four non-exclusive factors typically

[1] Also available on IFRRO's website, http://www.ifrro.org/show.aspx?pageid=library/publications&culture=en.

referenced, and considered a fifth, non-statutory, "fair use" factor: "whether an alleged infringer has acted in good faith".

There are also more specific guidelines: In 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, of the Authors League of America, Inc., and the Association of American Publishers, Inc. reached an agreement on US **Guidelines for Classroom Copying in Not-for-Profit Educational Institutions With Respect to Books and Periodicals** under Section 107 of H.R. 2223 and S. 22[2]. The purpose of the guidelines is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. The agreement refers only to copying from books and periodicals. The parties also agreed (i) that the conditions determining the extent of permissible copying for educational purposes may change in the future; (ii) that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely (iii) that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines. These guidelines limit the permissible use of a copyright work in education:

> "I. *Single Copying for Teachers*
> A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
> A. A chapter from a book;
> B. An article from a periodical or newspaper;
> C. A short story, short essay or short poem, whether or not from a collective work;
> D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;
> II. *Multiple Copies for Classroom Use*
> Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:
> A. The copying meets the tests of brevity and spontaneity as defined below; and,
> B. Meets the cumulative effect test as defined below; and
> C. Each copy includes a notice of copyright.
> *Definitions:*
> *Brevity*
> (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
> (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
> (Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
> (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
> (iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced. (…)
> *Cumulative Effect*

[2] Available under: http://www.ciu.edu/library/document/guidelines.pdf; see also "Circular 21" of the US Copyright Office: http://www.ciu.edu/library/document/guidelines.pdf.

(i) The copying of the material is for only one course in the school in which the copies are made.
(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
(iii) There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals."

Furthermore, the Consortium of College and University Media Centers (CCUMC) produced widely adaptable voluntary guidelines, drafted and endorsed by major players in the user and content provider communities. These US **Fair Use Guidelines for Educational Multimedia** of 1996[3] provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for noncommercial educational uses. While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent a consensus of conditions under which fair use should generally apply and examples of when permission is required. As regards text material (4.2.2 of the guidelines):

"Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used."

However, according to Section 6.7 of the Multimedia Guidelines,

"Educators and students should determine whether specific copyrighted works, or other data or information are subject to a licence or contract. Fair use and these guidelines shall not preempt or supersede licences and contractual obligations."

Consequently, due to the narrow scope of the guidelines, authorisation under licences with rightholders or their representatives is necessary.

Also, the US Copyright Office released in May 1999 a study on distance education, stressing that licensing should continue to be the rule for educational uses, also in respect to Digital Distance Education, and that digital transmission in at least some distance education settings should be treated just like face-to-face teaching and receive the same exceptions from copyright coverage.[4]

Countries which apply exceptions and limitations to the exclusive rights based on fair use normally refer explicitly to – or *de facto* base – interpretations of it on the specific US guidelines or case laws.

[3] http://www.utsystem.edu/OGC/IntellectualProperty/ccmcguid.htm; http://www.ccumc.org/system/files/MMFUGuides.pdf.
[4] www.loc.gov/copyright/disted/

2. "Fair dealing"

Section 29 of the **UK** Copyright, Designs and Patent Act (CDPA) provides an example of the concept of "**fair dealing**" in relation to education. It stipulates that fair dealing with a library, dramatic, musical or artistic work for the purposes of "research" or "private study" does not infringe copyright. In both cases the copying must be done "for non-commercial purposes":

> "(1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.
> (2) Fair dealing with the typographical arrangement of a published edition for the purposes mentioned in subsection (1) does not infringe any copyright in the arrangement.
> (3) Copying by a person other than the researcher or student himself is not fair dealing if—
> (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 40 would not permit to be done under section 38 or 39 (articles or parts of published works: restriction on multiple copies of same material), or
> (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose."

Obligation to take up a licence

As regards reprographic copying by educational establishments of passages from published works, Section 36(3) of the CDPA limits the copying of copyright works in educational institutions under fair dealing provisions to cases when a licence is not available. The whole section reads:

> "(1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, or in the typographical arrangement.
> (2) Not more than one per cent. of any work may be copied by or on behalf of an establishment by virtue of this section in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.
> (3) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.
> (4) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published literary, dramatic or musical works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this section.
> (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.
> For this purpose "dealt with" means sold or let for hire or offered or exposed for sale or hire."

The licence can be available from the rightholder (author or publisher) directly or offered by an RRO. Similar stipulations are found in the legislation of several countries in Africa, Asia, the Caribbean and Europe, where copyright legislation is inspired by the UK copyright laws (see Chapter III and Annex to this Memorandum).

The "fair dealing" tests have been built up by case law and look at the scale, purpose, and character of the copying.

3. "Private use"

The concept that allows reproduction for **private use** varies from one country to the other. An example of a national legislation that defines it is the **Spanish** copyright law. Article 25 of the Spanish Copyright Act states:

> "(1) Reproduction carried out exclusively for private use by means of non-typographical technical apparatus or instruments, of works publicly exploited in the form of books or publications assimilated thereto by regulation for those purposes, and also in the form of phonograms, videograms or other sound, visual or audiovisual media, shall give rise to a single equitable remuneration for each of the three forms of reproduction mentioned, payable to the persons specified in subparagraph (b) of paragraph (4) of this Article and intended to compensate for the intellectual property royalties that are not received on account of the said reproduction. This entitlement shall be unrenounceable for authors and performers."

The rightholder's consent is not needed to make a copy for private use if it is made by a natural person for his/her own private use from works which have been legally accessed, and in case the copy is not to be used collectively or for profit (Article 31, item 2). The Copyright Act specifies, however, that the following are not private copies:

- copies made in establishments that provide the public with copying services ('copy shops'),
- copies made in places where copiers and copying materials are made publicly available (e.g. libraries), and
- copies made for collective use or for circulation at a price.

This means that, for all practical purposes, multiple copying for classroom use is generally not considered private use and requires the authorisation from the rightholders concerned, for example through a collective licence signed with an RRO.

II. Different models of operation of RROs: "Voluntary collective licensing", "voluntary collective licensing with legal back-up", "legal licence"

IFRRO, for instance in the publication *Collective Management in Reprography*[5], classifies the RRO models of operation into three main categories: (i) voluntary collective licensing; (ii) voluntary collective licensing with back-up in legislation; and (iii) legal licence. There are different sub-models, and even mixed models of operations are possible. In the following section, the main legislative options, serving as a basis for the operation of RROs, will be highlighted[6]:

1. Voluntary collective licensing

In voluntary collective licensing, the RRO issues licences to copy protected material on behalf of those rightholders who have given it a mandate to act on their behalf on the basis of the exclusive rights granted to rightholders to reproduce or authorise a reproduction of the work, observing limitations to the exclusive rights such as fair use, fair dealing or private use provisions. There are no stipulations in the law to grant a portfolio to the RRO or provide a basis for licensing.

RROs obtain licensing authority from mandates given by national rightholders, and the international repertoire through bilateral agreements with RROs in other countries. These bilateral agreements are based on the principle of reciprocal representation.

A voluntary licence based exclusively on the mandates from authors and publishers may be combined with an indemnity clause. This would normally indemnify the educational institution that has reproduced the work of a non-mandating rightholder financially but not legally.

Obligation to take up a licence

In many countries where the RRO operates under a voluntary collective licensing model, educational institutions cannot copy under an exception to the exclusive right if a licence is made available to them, or if they should know that such a licence could be obtained from the rightholders directly or from the RRO (see page 4). This is for instance the case in Hong Kong, Ireland, Jamaica, Mauritius and the UK. A list of countries where copying under fair dealing is replaced by a licence, when available, is annexed to this Memorandum, whereas examples of the wording of such stipulations in national legislation are given for each of the regions in Chapter III.

2. Voluntary collective licensing with back-up in legislation

Voluntary licensing is, in a number of countries, supported by legislation. Since no collective management organisation can represent all rightholders in its own country, let alone all

[5] http://www.ifrro.org/show.aspx?pageid=library/publications&culture=en.
[6] A list of RROs/countries operating under the different models is attached to this Memorandum (Annex).

countries of the world, legislative support covers the situation of non-represented rightholders. The underlying idea is to provide the user, for instance an educational institution, with legal certainty when reproducing the work of a non-mandating rightholder, while at the same time treating mandating and non-mandating rightholders equally, in order not to discriminate against the non-mandating rightholder. Mandating and non-mandating rightholders must also be treated equally in respect of the distribution of the proceeds.

RROs operate under three legislative support mechanisms: **extended collective licence**, **compulsory collective management** and **legal presumption**. Also, some RROs operate under a **mixed regime**, combining for instance a private copy levy scheme with voluntary licensing.

A list of countries which provide a legal back-up to voluntary licensing is annexed to this Memorandum, whereas examples of the wording of such stipulations in national legislation are given for each of the regions in Chapter III.

a. Extended collective licence

The legal technique called **extended collective licence (ECL)** is a support mechanism for freely negotiated non-exclusive licensing agreements between an organisation representing rightholders and users in certain sectors for specific uses. Once the voluntary agreement is achieved and comes into force, it is extended to cover the works of other rightholders that are not members of or have not mandated the organisation. These may have the option to opt out of the agreement, or the Collective Management Organisation (for instance the RRO) issues the licence based on mandates granted on a non exclusive basis.

The elements of an extended licence system are the following[7] :

1. The organisation and the user conclude an agreement on the basis of free negotiations.
2. The organisation has to be representative in its field.
3. The agreement is by law made binding on non-represented rightholders.
4. The user may legally use all materials without needing to meet individual claims.
5. Non-represented rightholders have a right to individual remuneration.
6. Non-represented rightholders have in many cases a right to prohibit the use of their works.

Licensing of educational institutions on the basis of an ECL is, for instance, in use in the Nordic countries.

b. Compulsory collective management

In 1995, the legislation in France introduced, for the first time, the concept of compulsory collective management in the area of reprographic reproduction rights. Even though the management of rights is voluntary, rightholders are legally obliged to authorise the use of their works in education and make claims only through a collective management organisation,

[7] J. Liedes, H. Wager, T. Koskinen and S. Lahtinen, *Extended Collective Licence,* leaflet prepared by the Ministry of Education, Finland (June 2001)

an RRO, approved by the Ministry of Culture. This safeguards the position of and provides legal certainty to users, as a non-mandating rightholder cannot make claims against them.

The legislation in **France** is based on the concept of compulsory collective management in the area of reprographic reproduction rights. The relevant articles of the French Copyright Act read as follows:

> "**Art. L. 122-5**. Once a work has been disclosed, the author may not prohibit:
>
> l. private and gratuitous performances carried out exclusively within the family circle;
>
> 2. copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created and copies of software other than backup copies made in accordance with paragraph II of Article L. 122-6-1;
>
> 3. on condition that the name of the author and the source are clearly stated:
>
> *(a)* analyses and short quotations justified by the critical, polemic, educational, scientific or informatory nature of the work in which they are incorporated;
>
> *(b)* press reviews;
>
> *(c)* dissemination, even in their entirety, through the press or by telediffusion, as current news, of speeches intended for the public made in political, administrative, judicial or academic gatherings, as also in public meetings of a political nature and at official ceremonies;
>
> *(d)* complete or partial reproductions of works of graphic or three-dimensional art intended to appear in the catalogue of a sale by public auction held in France by a public or ministerial officer, in the form of the copies of the said catalogue that he makes available to the public prior to the sale for the sole purpose of describing the works of art on sale. A Decree in Council of State shall determine the characteristics of the documents and the conditions governing their distribution.
>
> 4. parody, pastiche and caricature, observing the rules of the genre."
>
> "**Art. L. 122-10**: The publication of a work shall imply assignment of the right of reprographic reproduction to a society governed by Title II of Book III and approved to such end by the Minister responsible for culture. Only approved societies may conclude an agreement with users for the purpose of administering the right thus assigned, subject, for the stipulations authorizing copies for the purposes of sale, rental, publicity or promotion, to the agreement of the author or his successors in title. Failing such designation by the author or his successor in title on the date of publication of the work, one of the approved societies shall be deemed the assignee of the right.
>
> Reprography shall mean reproduction in the form of a copy on paper or an assimilated medium by means of a photographic process or one having equivalent effect permitting direct reading.
>
> The provisions of the first paragraph shall not affect the right of the author or his successors in title to make copies for the purposes of sale, rental, publicity or promotion.

Notwithstanding any stipulation to the contrary, the provisions of this Article shall apply to all protected works whatever the date of their publication."

3. Legal licence

In a legal licence system, the licence to photocopy is given by law, and consequently, no consent from rightholders is required. They have, however, a right to remuneration, which is collected by an RRO. Furthermore, also RROs operating under a legal licence collect mandates from the rightholders, *inter alia* to document representativity and to establish a basis for the entering into bilateral arrangements with other RROs.

If the royalty rate is determined by statute, the system is referred to as "a **statutory licence**". If rightholders can negotiate the royalty rate with the users, although they are not able to refuse authorisation, the term "**compulsory licence**" is used. Both statutory and compulsory licences fall under the broader term of legal licences, and the management of rights is non-voluntary. In Switzerland, RROs and federations of users are negotiating the tariffs, while the Arbitration Board is approving these tariffs after successful negotiations. On the other hand, if the parties do not reach an agreement on the tariffs, the Arbitration Board will set the tariffs.

In many countries' legislations, reproduction for **private use** is compensated through **levies on equipment**. There can, in addition, be a levy on the underlying material, e.g. photocopying paper. The levy system is in many countries complemented by an **operator levy**, reflecting the high copying volumes by some user groups to provide equitable remuneration to rightholders for the use of their works, for instance for the multiple copying of copyright material in educational establishments.

A list of RROs/countries with a legal licence regime is annexed to this Memorandum, whereas examples of the wording of such stipulations in national legislation are given for each of the regions in Chapter III.

a. Non-voluntary system with a legal licence

In a non-voluntary system with a legal licence, the permission to photocopy is given by law. Rightholders have a right to receive equitable remuneration or fair compensation. The remuneration is collected by an RRO and distributed to rightholders. In respect of education, this model applies for instance in Australia, Singapore, the Netherlands, Switzerland and, partly, Italy.

b. Private copying remuneration with a levy system

Under a levy system, a copyright fee is added to the price of copying equipment such as a photocopying machine, multifunctional machine, printer, etc. Producers and importers of equipment are liable for paying the fees (levies) to the RRO (generally reclaimed from the user/buyer of the device), which then distributes the collected revenues to rightholders. The levy system is often composed of **two elements**:

1. **Equipment levy** on hardware, such as copy-machines, fax machines, reader printers, scanners, multifunctional devices and CD and DVD burners;

2. **Operator levy** (a "user fee"), payable by heavy photocopiers such as schools, colleges, universities, libraries, and government and research institutions.

This is the case, for instance, in Austria, Belgium, the Czech Republic and Germany.

In some countries only an equipment levy is payable (for instance in Ecuador, Burkina Faso, Cameroon, Nigeria, Spain; Greece and Romania also on underlying material, such as paper). Multiple copying in education has to be authorised by the rightholders, for instance, through a collective licence.

III. Models reflected in Europe and North America – Legislation

1. North America

Voluntary collective licensing

RROs in Canada and the US operate under a voluntary collective licensing regime. Authors and publishers determine which works are to be included in different licensing schemes. Fees and other conditions can be set by the rightholders individually for each work and usage or established by the RRO on the basis of default price/conditions. However, in Canada, section 38.2 of the Canadian Copyright Act provides that rightsholders that exclude themselves from a collective licence for reprographic reproduction can only claim limited liability from educational institutions equal to what they would have received had they participated in the collective licence.

Fair use

In the **US**, the "fair use" in education applies according to Section 107 of the Copyright Act:

> "(1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work."

A set of guidelines have been worked out to specify how this applies to education (see pages 1-4 of this Memorandum).

Fair dealing

The Copyright Act of Canada includes exceptions to the exclusive right of copyright holders, including provisions concerning fair dealing in sections 29, 29.1 and 29.2, and other exceptions that specifically apply to educational institutions.

Sections 29 to 29.2 provide that a fair dealing may only be for one of the specifically allowable purposes of private study, research, criticism or review, or news reporting, as follows:

> "**29** Fair dealing for the purpose of research or private study does not infringe copyright.
>
> 29.1 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:
>
> (a) the source; and
>
> (b) if given in the source, the name of the
>
> i. author, in the case of a work,
>
> ii. performer, in the case of a performer's performance,

iii. maker, in the case of a sound recording, or

iv. broadcaster, in the case of a communications signal."

The fairness of the dealing itself must be examined by considering six factors set out by the Supreme Court of Canada in *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339:

1. the purpose of the dealing
2. character of the dealing
3. amount of the dealing
4. alternatives to the dealing
5. nature of the work; and
6. effect of the dealing on the work.

In a recent decision (dated 26 June 2009)[8] from a proposed tariff that applies to the reproduction of literary works for use in primary and secondary level educational institutions in Canada outside Quebec, the Copyright Board of Canada found that copies made on a teacher's initiative for his/her class were not fair. Therefore, users could not avail themselves of the fair dealing defence and the reproduction of these works were compensable.

Another exception to copyright infringement for educational institutions is for handwritten manual reproductions on material on dry-erase boards and flip charts [s. 29.4 (1)(a)]. The making a copy of a work to be used on an overhead projector or similar device [s. 29.4 (1)(b)] and reproducing a work as required for a test or examination [s. 29.4 (2)] are also exceptions to infringement, unless the work is commercially available [s. 29.4 (3)].

Certain exceptions to infringement that exist for libraries in the Act also apply to the libraries of educational institutions, and include reprographic reproduction by photocopiers on the premises of the institution, provided that the institution has entered into an agreement with the RRO or a tariff has been proposed or is in place or if the institution has an agreement with a specific copyright owner [s. 30.3]. Other library exceptions include mechanical reproduction, archiving, and the maintenance of collections.

Many of the exceptions may only be relied on so long as the action carried out is not with the motive of gain (but a motive of gain does not include the recovery of costs) [s.29.3].

Part VII of the Act contains the provisions that govern the collective administration of copyright in Canada. The Canadian RRO Access Copyright (Canadian territory outside Quebec) operates subject to this legislation. The Act permits Access Copyright to enter into agreements with users that set out the royalties and terms and conditions of the reproduction of works, or to file a proposed tariff application with the Copyright Board of Canada, which, once approved, fixes the royalties and related terms and conditions of reproduction.

[8] Copyright Board decision, 26 June 2009, Reprographic Reproduction (2005-2009), Access Copyright Tariff for Educational Institutions. The decision is public and can be downloaded, either under http://www.cb-cda.gc.ca/decisions/2009/20090626-nr-e.pdf or under http://www.cb-cda.gc.ca/decisions/2009/20090626-b.pdf. The decision has been appealed by the Council of Ministers of Education, Canada.

2. Europe

Voluntary collective licensing

Obligation to take up a licence when available

In **Ireland** and the **UK**, copying in education under fair dealing is replaced by a licence when it is offered by the rightholders or the RRO or the educational institution should know that it could take up one. For the UK, see pages 4-5 of this Memorandum. The relevant sections of the Irish law read:

> "**171.**-(1) The Minister may appoint a person to inquire whether other provisions are required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of literary, dramatic, musical or artistic works, original databases, or of the typographical arrangement of published editions, which-
>
> *(a)* have been lawfully made available to the public, and
>
> *(b)* are of a description which appears to the Minister-
>
> (i) not to be regulated by an existing licensing scheme or general licence, and
>
> (ii) not to be within the power conferred by section 168.
>
> **172.**-(1) The Minister may, within one year of the making of a recommendation under section 171, by order provide, that where the provision to which subsection (2) applies has not been made pursuant to the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates, shall be deemed to be licenced by the owners of the copyright in the works.
>
> (2) For the purposes of subsection (1), provision shall be regarded as having been made pursuant to the recommendation where-
>
> *(a)* a certified licensing scheme has been established under which a licence is available to the establishment concerned, or
>
> *(b)* a general licence has been-
>
> (i) granted to or for the benefit of that establishment,
>
> (ii) referred by or on behalf of that establishment to the Controller under section 158, or
>
> (iii) offered to or for the benefit of that establishment and refused without such a reference,
>
> and the terms of the scheme or licence accord with the recommendation.
>
> (3) An existing licence authorising the making of the copies referred to in subsection (1) (not being a licence granted under a certified licensing scheme or a general licence) shall cease to

have effect to the extent that it is more restrictive or more onerous than the licence provided for by an order made under subsection (1).

(4) An order made under subsection (1) shall provide that the licence be free of any charge and, in relation to other matters, shall be subject to any terms specified in the recommendation and to such other terms as the Minister may think fit.

(5) Where a copy which would otherwise be an infringing copy is made pursuant to a licence provided for by an order made under subsection (1) and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes."

The RROs in Ireland and the UK offering licensing are **CLA** and **ICLA**.

Voluntary collective licensing with a back-up in the legislation

Extended Collective Licence

Norway's Copyright Act includes provisions for an extended collective licence in Section 36. This system is applied also to the field of reprography and certain digital uses and to copies of audiovisual material made by educational establishments (Section 13):

"§ 13: The use of works in educational activities
Teachers and pupils may make fixations of their own performances of works for educational use. Such fixations shall not be used for other purposes.
The King may decide that schools and other educational institutions may make fixations of broadcasts for time-deferred use free of charge.
§ 13a: Compulsory licence for the use of works in educational use
Copies of a published work may be made for use in a public examination. The originator of the work shall be entitled to remuneration.
§ 13b: Extended collective licence for the use of works in educational activities
Copies of a published work can be made for use in own educational activities if the conditions for an extended collective licence pursuant to section 36 first paragraph are fulfilled. Fixations of broadcasts can be made on the same conditions. This does however not apply if the broadcast consists of a cinematographic work which must be perceived as also intended for uses other than presentation via television, unless only minor parts of the work are used in the broadcast.
Fixation centres which are approved by the Ministry may, for use in educational activities, make fixations as specified in the first paragraph, if the centre fulfils the conditions for an extended collective licence pursuant to section 36, first paragraph.
Copies made pursuant to the first and second paragraphs may only be used in educational activities covered by the agreement under section 36.
The King will issue regulations concerning the storage and use of fixations pursuant to the first and second paragraphs."

"§ 36: When there is an agreement with an organization referred to in section 38 a which allows such use of a work as is specified in sections 13b, 14, 16a, 17b, 30, 32 and 34, a user who is covered by the agreement shall, in respect of rightholders who are not so covered, have the right to use in the same field and in the same manner works of the same kind as those to which the agreement (extended collective licence) applies. The provision shall only apply to use in accordance with the terms of the agreement. The provision shall not apply in relation to the rights that broadcasting organizations hold in their own broadcasts.

> As regards the retransmission of works pursuant to section 34, where negotiations on an agreement as referred to in the first and second sentences of the first paragraph, or negotiations with a broadcasting organization concerning an agreement, are refused or no agreement has been entered into within six months after the commencement of negotiations, each of the parties may demand that permission and conditions for retransmission be determined in a binding manner by a commission pursuant to section 35, second paragraph. The provisions of the first paragraph shall apply correspondingly in such cases."

The laws in Denmark, Finland, Iceland and Sweden are worded in similar ways, but there are also national differences. The **Swedish** Copyright Act, for instance, reads in Section 42 a:

> "An extended collective license as referred to in Articles 42 b-42 f applies to the exploitation of works in a specific manner, when an agreement has been concluded concerning such exploitation of works with an organization representing a substantial number of Swedish authors in the field concerned. The extended collective license confers to the user the right to exploit works of the kind referred to in the agreement despite the fact that the authors of those works are not represented by the organization.
>
> In order for a work to be exploited pursuant to Article 42 c, the agreement must have been concluded with someone who carries out educational activities in organised forms.
>
> When a work is being exploited pursuant to the provisions in Article 42 e, the author has a right to remuneration.
>
> When a work is being exploited pursuant to Articles 42 b – 42 d, or 42 f, the following applies. The conditions concerning the exploitation of the work that follow from the agreement and in respect of other benefits from the organization that are essentially paid for out of the remuneration, the author shall be treated in the same way as those authors who are represented by the organization. Without prejudice to what has been said now, the author has, however, always a right to remuneration for the exploitation, provided he forwards his claims within three years from the year in which the work was exploited. Claims for remuneration may be directed towards the organization.
>
> As against the user exploiting a work pursuant to Article 42 f claims for remuneration may be forwarded only by the contracting organizations. All such claims shall be forwarded at the same time."

Compulsory Collective Management

The legislation in **France** is based on the concept of compulsory collective management in the area of reprographic reproduction rights. For the relevant articles of the French Copyright Act please see page 7-9 of this Memorandum. Licences are, however, signed on a purely voluntary basis.

Legal Licence

Non-voluntary system with a legal licence

In **Switzerland,** a legal licence covers educational institutions as well as public administration, libraries, copy-shops, services, industry and trade. Article 20.2 establishes that "any use of a work by a teacher for teaching in class" (Article 19.1b), "reproduction of copies of a work in enterprises, public administration, institutes, commissions and similar bodies for

internal information documentation" (Article 19.1c) for personal use, as well as others that reproduce works in any form (Article 19.2), "shall be required to pay equitable remuneration". Article 20.1 specifies, however, that the "use of a work in a private circle […] shall not give rise to a right of remuneration". The tariffs established by the collecting society under negotiations with federations of users must be approved by an Arbitration Board (Art. 59). The Arbitration Board decides on the level of the tariff if the negotiations between the RRO, **ProLitteris**, and the federations of users fail to come to a result (see page 9).

Levy systems with equipment and operator levies

Two examples of legislation that allow educational institutions to copy fragments of work against the payment of levies on equipment, combined with a levy payable by the operator of the equipment in function of the number of copies made:

In **Belgium**, the Copyright Act of 30 June 1994 allows the reproduction of works fixed on a graphic or similar medium for purposes of illustration for teaching or for scientific research (Art. 22, §1, item 4°bis and 22bis, item 2°). An equipment levy and an operator levy (Art. 59-61) remunerate, among others, these uses.

The Belgian Copyright Act states in this respect[9]:

> "**Art. 22**.—§1. Once a work has been lawfully published, its author may not prohibit:
>
> (…)
>
> 4°. reproduction in part or in whole of articles or works of fine art or reproduction of short fragments of other works fixed on a graphic or similar medium where such reproduction is made for a strictly private purpose and does not prejudice the normal exploitation of the work;
>
> 4°bis Reproduction in part or in whole of articles or works of fine art or of short excerpts of other works fixed on a graphic or similar medium when such reproduction is intended for purposes of illustration of the teaching or for scientific research purposes to the degree as justified by their non-for-profit purposes and does not prejudice the normal exploitation of the work;
>
> **Art. 22bis. —** By way of derogation from article 22, when the database has lawfully been published, the author may not prohibit:
>
> 1°. The reproduction in whole or in part on paper or on a similar medium, by means of any photographic technique or any other method that produces a similar result, of databases fixed on paper or on a similar medium, when this reproduction is made for strictly private purposes and does not prejudice the normal exploitation of the work;
>
> 2°. The reproduction in whole or in part on paper or on a similar medium, by means of any photographic technique or any other method that produces a similar result, when this reproduction is made for didactic purposes or to assist scientific research to the extent as justified by the non-gainful character of such pursuits, and provided that it not be prejudicial to the normal publication of the work;
>
> (…)

[9] It is noteworthy to say that an Act of 22 May 2005 has modified these provisions, but the modified provisions have not yet come into force. The provisions quoted here are the ones that were in force at the time of the drafting of this Memorandum.

"**Art. 59**. The authors and publishers of works fixed on a graphic or similar medium shall be entitled to remuneration with respect to the reproduction of such works, included therein those comprised under the conditions laid down in Articles 22, §1, items 4° and 4°bis, and 22bis, § 1, items 1° and 2°.

The remuneration shall be paid by the manufacturer, importer or intracommunity acquirer of appliances permitting the copying of protected works at the time such appliances enter into circulation on the national territory.

Art. 60. Furthermore, a proportional remuneration, determined as a function of the number of copies made, shall be payable by natural or legal persons who make copies of works or, as appropriate and in lieu of such persons, by those who make available to others for a charge or free of charge a reproduction appliance.

Art. 61. The King shall lay down the amounts of the remuneration referred to in Articles 59 and 60 by Decree deliberated on in the Council of Ministers. The remuneration referred to in Article 60 may be adjusted as required by the sectors concerned.

He shall lay down the detailed rules for collecting, distributing and verifying such remuneration as also the time at which it shall be due.

Subject to the international conventions, the remuneration laid down in Articles 59 and 60 shall be allocated, in equal parts, to authors and publishers.

Subject to the conditions and detailed rules He lays down, the King shall entrust a society that is representative of all the copyright administration societies to carry out the collection and distribution of such remuneration."

Further to this, the Copyright Act of 30 June 1994 also allows the electronic storage and the public communication carried out by means of a closed transmission network for the purposes of illustration for teaching or for scientific research (Art. 22, §1, items 4°ter and 4°quater and 22bis, items 3° and 4° and 46, 3bis and 3ter). An operator levy remunerates these uses (Art. 61bis-61quater).

The Belgian Copyright Act states in this respect:

"**Art. 22**.—§1. Once a work has been lawfully published, its author may not prohibit:
(…)
4°ter reproduction in part or in whole of articles or works of fine art or of short excerpts of other works on any medium other than on paper or similar medium, with the help of any photographic technique, or any other method producing a similar result, intended for purposes of illustration of the teaching or for scientific research purposes to the degree as justified by their non-for-profit purposes, and does not prejudice the normal exploitation of the work, and provided that such reproduction not be prejudicial to the normal exploitation of the work, provided, unless such should prove not feasible, that the source, including the name of the author, be acknowledged;

4°quater The communication of works, when this communication is intended to serve an educational purpose or assist scientific research conducted by officially recognised institutions or institutions organised particularly for such a purpose by the public authorities, and in so far as this communication can be justified by its non-gainful character, falls within the framework of the institution's regular activities, or is conducted solely by means of the institution's closed transmission networks and not prejudicial to the normal exploitation of the work, and

provided, unless this should prove not feasible, that the source, including the name of the author, be duly acknowledged;

Art. 22bis. — By way of derogation from article 22, when the database has lawfully been published, the author may not prohibit: (…)

3° the reproduction in part or in whole on a medium other than paper or a similar medium, when this reproduction is made for didactic purposes or to assist scientific research, to the extent as justified by the non-gainful character of such pursuits, and provided that it not be prejudicial to the normal publication of the work;

4° the communication of databases when this communication is carried out for didactic purposes or to assist scientific research by officially recognised institutions or institutions officially established for that purpose by the public authorities, in so far as this communication is justified by the non-gainful character of such pursuits, falls within the framework of the institution's normal activities, or is conducted solely by means of the institution's closed transmission networks and is not prejudicial to the normal publication of the work;

(…)

Art. 46. —Articles 35, 39, 42 and 44 shall not apply where the acts referred to in those provisions are carried out for the following purposes:

3°bis The reproduction of short quotations of a performance when this reproduction is made on any medium whatsoever, for the purpose of illustration of the teaching or of scientific research, to the extent justified by its non-for-profit purpose and does not prejudice the normal exploitation of the performance;

3°ter The communication of performances when this communication is made for the purpose of illustration of the teaching or of scientific research by officially recognized institutions or institutions officially organised to that end by the public authorities, and in so far as this communication is justified by its non-for-profit purpose, falls within the framework of the institution's normal activities, is carried out solely by means of the institution's closed transmission networks, and does not prejudice the normal exploitation of the performance;

(…)

Art. 61bis. —The authors and publishers of works shall be entitled to remuneration with respect to the reproduction and communication of these works under the conditions set forth in articles 22, § 1, items 4ter and 4quater and 22bis, § 1, item 3°.

The authors of databases shall be entitled to remuneration with respect to their communication under the conditions set forth in article 22bis, § 1, item 4.

The artist-interpreters or performers, the producers of phonograms, and the producers of first fixations of films shall be entitled to remuneration with respect to the reproduction and communication of their performances under the conditions set forth in article 46, 3bis and 3ter.

Art. 61ter. —The proportional remuneration, which is determined in function of the exploitation of the works and the performances, shall be payable by physical or legal persons that are responsible for such exploitation or, case pertaining and in lieu of the former, by the teaching or scientific research institutions that make available to others such works and performances at no charge or for a valuable consideration.

> **Art. 61quater.** —The remuneration referred to in article 61bis is laid down by Royal Decree, deliberated on in the Council of Ministers.
>
> The King shall lay down the modalities for collection, distribution, and verification of the remuneration, as well as the time when it shall be due.
>
> In keeping with the conditions and modalities as He may determine, the King shall entrust one or several societies that, individually or collectively, are representative of all of the copyright administration societies, with the collection and the distribution of the remuneration.
>
> The King may likewise determine the mode of allocation of the remuneration, on the one hand, amongst the categories of recipients that are entitled to receive them and, on the other, amongst the categories of the works in question.

Sections 54a to 54h of the **German** Copyright Act, on the other hand, set out the basic rules of the German levy system to remunerate rightholders for uses permitted under Section 53. 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 (i.e. the operator levy). Section 54h(1) 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.

While the operator fee is negotiable, according to the criteria of Section 54c(2), Section 52a of the Copyright Act refers to Intranet use for education and research, which is a legal licence and not part of the levy system.

Section 53 specifies that it shall be permissible to make (*inter alia*) single copies of a work "for private use" (53(1)), single copies "for personal, scientific use" (53(2).1) and "for other personal uses" (53(2).4), and, according to Article 53(3):

> **"**(3) It shall be permissible to make or to cause to be made copies of small parts of a printed work or of individual contributions published in newspapers or periodicals for personal use, 1. in teaching, in non-commercial institutions of education and further education or in institutions of vocational education in a quantity required for one school class or 2. for State examinations and examinations in schools, universities, non-commercial institutions of education and further education and in vocational education in the required quantity, if and to the extent that such reproduction is necessary for this purpose. The reproduction of a work which is destined for educational use is only possible with the authorisation of the rightholder."

<u>Levy system with levy on devices for private use only</u>

In **Spain** the law provides for an equipment levy only, regarding devices for private use. Section 25 of the Copyright Act provides for compulsory remuneration to the rightholders in order to compensate copies for private use. As mentioned above (see page 5), multiple copying for classroom use is not considered private use and requires a licence from the RRO.

There is an exception for illustration for teaching under Spanish law, in Section 32 (2) of the Copyright Act, namely:

> "2. No autorisation by the rightholder is needed for teaching staff in order to reproduce, distribute or communicate to the public small fragments of works or parts of artworks or photographic material, with the exception of text books and university manuals, when such acts are made only for the illustration of their educational activities in the classrooms, as long as these are made within the limits of non-commercial use, and as long as these works are already shared, and, except for cases when it is impossible, this includes the name of the author and the source.
>
> The previous paragraph does not include the reproduction, distribution and communication to the public of compilations or aggregations of fragments or parts of artworks or photographic material."

Copying for "illustration for teaching" does normally not include teaching material: IFRRO sees the exception in Article 5.3(a) of the EU Directive 2001/29[10] as a narrow limitation to the exclusive rights, aimed at enabling exactly what it reads: to illustrate, which is not the same as producing teaching material. Teaching material in whatever format, including multiple copying for classroom use, is not destined to be made under this exception, as it would undermine the normal exploitation of these works.

[10] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society; Article 5.3(a) reads: "Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved".

IV. Licensing of access to content by RROs

Access to content is provided by authors and publishers through various channels, including book stores; subscriptions; direct sales of books/journals/access/downloads from publishers and other rightholders or their representatives; and libraries. Authorisation to make multiple copies of fragments of multiple works for internal use, especially requested in education, is frequently granted through licences with the RROs.

RROs also act in some respect as agents for publishers and authors in their functions as intermediaries between rightholders and consumers. E.g. they may, on a transactional basis, licence the reproduction of major portions or even complete works, and also enable through their licensing arrangements with educational institutions the making of course-packs and copying of works which are (temporarily) out of print.

Usually, the main characteristics of the typical RRO licence are that the copy (i) represents a portion of the work; (ii) is strictly for internal use; and (iii) shall not replace the purchase of the work when this would be the normal way of getting access to it.

In brief, the basic conditions (apart from the term and the tariff) in a licensing agreement for educational institutions – whether schools, universities or other educational institutions – are the following:

- **Who?** Included are usually employees (members of the teaching staff, members of the administrative staff, etc.) of the institution and students.

- **What?** Copyright-protected text and imaged based material, i.e. literary, scientific and artistic works, photographic works etc., from published publications (both national and foreign).

- **How much?** The permitted use is usually limited by a certain portion, e.g. 5%-15% of the total number of pages; an entire chapter or similar unit, an entire short story, an entire scene of a play from one and the same publication etc.

- **Where copied?** If carried out by means of equipment that the institution owns or leases, otherwise by contract which the institution has at its disposal.

- **Purpose of use?** The purpose of the use contains clauses like e.g. “not to be carried out in order to substitute copies by a publisher or copies available by purchase”; “only for the purpose to be used in the institution and for internal use in research and administration in the institution”; etc.

- **Digital uses?** Digitisation, such as scanning of analogue material for the printing out of a hard copy or for the posting to secure networks is often included in licences offered by RROs. Several RROs also license copying from digital originals for internal use; downloads from the Internet and similar sources, including for the making of further hard copies or for posting to internal networks; downloads and re-use of paid-for digital content; downloads and re-use of free-to-view web pages; projection of material to whiteboards, the inclusion of copyright material in power point presentations, etc.

- **Virtual Learning Environments (VLE)?** Licensing of education frequently includes Virtual Learning Environments (VLE), also for digital uses.

1. North America

Voluntary collective licensing

In the **US**, Universities and other Higher Education Institutions (HEI) as well as Further Education (FE) take up RRO licences with **Copyright Clearance Center** (CCC). The licences include Virtual Learning Environments. In **Canada**, **Access Copyright** (to institutions in all provinces, excluding the province of Quebec) and **COPIBEC** (to institutions only in the province of Quebec) also offer licences to primary, secondary and post-secondary educational institutions. Licensing is on the basis of a voluntary collective licensing model and mandates are granted by rightholders.

Licences offered by **CCC** and **COPIBEC** to universities are annexed as examples of RRO licences signed with tertiary educational institutions in North America. Also attached is an example of a licence agreement for preschool, primary and secondary educational institutions as offered by **COPIBEC**.

2. Europe

Voluntary collective licensing

As an example, **Copyright Licensing Agency** (CLA) provides full licensing coverage to the **UK** education sector, permitting also scanning and copying from material in electronic format. The Higher Education Institutions (HEI) are licensed for the use of copyright material on their Virtual Learning Environments (VLE), and the sources of the material may be either analogue or digital. Rightholders opt into the licensing scheme. Permission to store materials on the VLE is granted to authorised persons under the licence. Access to VLEs is by password, and is available to registered students of the HEI inside and outside the UK. The form of licence is a repertoire (blanket) licence, such that HEIs do not need to seek permission for individual acts of copying, but must report in full on their usage at specific intervals.

This relates to the CLA HEI licence only, covering original digital material, where rightholders need to opt-in. For photocopying and scanning, the process is opt-out. Also, full reporting of usage only applies to scanning and digital use, not to photocopying, which is sampled.

Voluntary collective licensing with back-up in legislation

Extended collective licence

In all **Nordic** countries, education at all levels is offered through licences by RROs under the Extended Collective Licence model.

Compulsory collective management

The legislation in **France** is based on the concept of compulsory collective management in the area of reprographic reproduction rights. Against this background, the **Centre Français d'exploitation du droit de Copie (CFC)** signed in 2006 an agreement with the Ministry of Education, which included digital uses of copyright material in the French schools, colleges, universities, etc., which also covers distance education, but excludes textbooks. Educational establishments are allowed to digitise portions of material for the posting on closed password protected internal networks and the printing out of a hard-copy. This licence follows largely the photocopy licence which it complements.

Legal Licence

Non voluntary system with a legal licence

In **Switzerland,** Section 50 of the Swiss Copyright Act includes an obligation of the national RRO, **ProLitteris**, to offer licences for educational institutions at all levels. Tariffs are negotiated between ProLitteris and associations representing the educational institutions. Thus, tariffs are not fixed by statute. They are, however, subject to ratification by the Federal Arbitration Board in case the parties do not agree.

The Swiss Copyright Act includes, under "reproduction", copies on paper as well as digital copies. According to e.g. the common tariff GT 9/III[11] for schools in Switzerland, Section 2.3, "reproduction" means the downloading in the form of a digital copy of copyright-protected works and services for the personal use in the office and the use of internal information and documentation in office-internal networks. This includes, in particular, the downloading and use of data on terminals via scanners and similar equipment, from the Internet, attachments of e-mails etc. and existing data storage mediums.

ProLitteris, the Swiss RRO, entered into a contract with the association of all Swiss public schools and universities concerning the collection of reprographic and digital use remunerations. The association collects the remunerations based on a statistic from the government for the individual cantonal school principals and the universities. The remuneration covers a lump sum per scholar. The content of the contract with the union is briefly as follows:

- The following uses are allowed in schools: photocopies of teachers and pupils for use in schools, digital and paper reproductions. In the lump sum, copies made by the administration in educational institutions are also included (based on the common tariffs GT 9/I-VI[12]).

- The association collects the remuneration owed for the copying of copyrighted and published works in accordance with the common tariffs, in direct representation in the name of and commissioned by ProLitteris from the public schools controlled by the cantonal director of education and the municipalities and the publically subsidised private schools, including the tertiary level.

- The remuneration is forwarded once a year to the ProLitteris.

[11] Available under http://www.prolitteris.ch/set.asp?go=/wis/inf/inf.asp
[12] Available under http://www.prolitteris.ch/set.asp?go=/wis/inf/inf.asp

- The permission refers only to the production of the copies within Switzerland.

- The use, production and distribution of copies from Switzerland to foreign countries, and the working, production and distribution of copies in foreign countries, particularly via the internet or other electronic or digital media is not covered by the permission.

- The association will provide the federal department for statistics with the necessary data concerning the figures, for purposes of determination of the annual overall payments, and will make these statistics available to the ProLitteris at the beginning of April of each year.

- The association will levy, annually and in the name of and commissioned by ProLitteris, the payments from the users responsible for the payment (cantonal directors of education, universities).

Educational Institutions in the **Netherlands** and **Italy** can copy under similar provisions.

Levy systems with equipment and operator levies

As an example, in **Belgium**, producers, importers and (EU) intra-community purchaser pay a fixed amount (equipment levy) for all photocopying devices that come onto the Belgian market, which they normally reclaim form the user upon the selling of the device. In addition, there is an **operator levy** which functions as follows: All natural and legal persons copying copyright works on a machine under their charge, supervision or control, have to pay remuneration proportional to the number of copies made of copyright works. This includes and compensates rightholders for the copying of their works in schools, universities and other educational establishments, copy shops, etc.

The Royal Decree of 15th October 1997 entrusted **Reprobel** with collecting and distributing the remuneration for reprography in Belgium. Section 22 of the Belgian Copyright Act of 2005 allows the use of Intranet in schools for purposes of illustration: A legal licence authorises both the electronic storage and the public communication carried out by means of a closed transmission network for the purposes of illustrating the teaching or of scientific research (academic permission).

Section 53 of the **German** Copyright Act includes several different exceptions to the exclusive tights of reproduction, *inter alia* for educational purposes.

Section 53 does not cover material intended for school use (school text books). These are therefore subject to a voluntary licensing scheme. In late 2008, a contract was concluded between the German federal states and **VG Wort**, **VG Bild-Kunst** and **VG Musikedition**, which covers both copying of school text books and copying of other material. Under the contract, the following may be copied in schools without prior authorisation:

1. Up to 12% of a copyright-protected text book, maximum 20 pages,
2. Other material, maximum 25 pages, but 6 pages in case of sheet music, and including pictures, photos, etc.

Under the agreement, the same work may only be copied once per class and school year. Only analogue copying is permitted. Digital storage and distribution of copies, for example by mail, is not permitted. Schools should contact the publisher for permission to copy outside these limits, including digital copying and distribution. In such cases, any licence fees are paid by the schools. Apart from that, the fees are paid by the federal state governments.

Section 52a of the Copyright Act refers to Intranet use for education and research. So far, VG Wort only administers such use by schools.

Levy system with levy on devices for private use only

The levy on the basis of the **Spanish** system only compensates for copies made for private use. It does not compensate the rightholders for copies made in relation to illustration for teaching.

Under Spanish law, licences are offered to educational institutions for copies that cannot be considered to be copies for private use or copies for illustration for teaching (see pages 5 and 19/20), by **CEDRO**, the Spanish RRO, on the basis of mandates from authors and publishers and a voluntary collective licence model. These licences permit scanning and copying from material in electronic format. Rightholders opt into the licensing scheme. Permission to make a fragment of a work available on the Intranet is granted only to authorised persons who can enter by an electronic access password or other electronic authentication and validation means. The e-mailing of fragments to students and the teaching staff, and the inclusion of fragments from documents produced by the educational institution for internal use is also permitted. The form of the licence is a repertoire (blanket) licence, so the educational institution does not need to seek permission for individual acts of copying, but must report in full on their usage at specific intervals.

Other European countries offering access to copyright works to educational institutions under the same or similar models are listed in the Annex.

As examples of RRO licensing agreement offered to education at different levels in Europe under voluntary collective licensing and Extended Collective Licensing models, **CLA**'s and **Kopinor**'s licence for higher educational institutions, as well as CLA's licence for schools and further education, are annexed. The above-mentioned presentations of the **ProLitteris** licensing agreements and **VG Wort**'s licences serve as examples of agreements with educational institutions under a statutory licence and equipment with operator levies.

Annex

List of RROs in Europe and North America, sorted by model of operation, in respect to educational activities

EUROPE

1. Voluntary licensing

Country	RRO
Ireland[13]	ICLA, NLI
Luxembourg	Luxorr
Russia	CopyRus
United Kingdom[13]	CLA, NLA

2. Voluntary licensing with legal back-up

    a) Extended collective licence

Country	RRO
Denmark	CopyDan
Faroe Islands	Fjölrit
Finland	Kopiosto
Iceland	Fjölís
Norway	Kopinor
Sweden	Bonus Presskopia
Sápmi	Sámikopiija[14]

    b) Obligatory collective management

Country	RRO
France	CFC

3. Legal licence

    a) Non-voluntary licence with a legal licence

Country	RRO
Netherlands	Stichting Reprorecht, IPRO
Switzerland	ProLitteris

[13] Copying under "fair dealing" replaced by a licence when offered or the institution should know that it can be offered

[14] Representing Sámi rightholders in Norway, Sweden, Finland and Russia

b) Private copying remuneration with a levy system

Country	**RRO**
Austria[15]	LiterarMechana
Belgium[15]	Reprobel
Czech Republic[15]	DILIA
Germany[15]	VG Wort, VG Bild-Kunst
Hungary[15]	HARR
Poland[16]	KOPIPOL, Polska Książka
Portugal[17]	AGECOP

4. Mixed

Country	**RRO**
Bulgaria[18]	BULREPO&COPY
Greece[19]	OSDEL
Italy[20]	AIDRO, SIAE
Lithuania[21]	LATG-A
Romania[19]	CopyRo
Slovak Republic[18]	LITA
Slovenia[22]	SAZOR
Spain[23]	CEDRO

[15] Both equipment and operator levy
[16] Both equipment and operator levy; also levy on underlying material
[17] Both equipment and operator levy, equipment levy only on analogue equipment
[18] Private copy levy in relation to reprography (equipment levy only), combined with voluntary licensing
[19] Private copy levy in relation to reprography (equipment levy only), combined with voluntary licensing; levy on underlying material
[20] Legal licence limited to 15%, offered by SIAE, combined with voluntary licensing beyond 15%, offered by AIDRO
[21] Operator levy only
[22] Private copy levy in relation to reprography and operator levy, combined with licensing
[23] Voluntary licensing, combined with levy for private copying

NORTH AMERICA

1. Voluntary licensing

Country	**RRO**
Canada (except Quebec)	Access Copyright
Canada (Quebec)	COPIBEC
US	CCC

2. Voluntary licensing with legal back-up

Country	**RRO**
-	-

3. Legal licence

Country	**RRO**
-	-

Brussels, 31 July 2009

- END -