Collective Management

How Reproduction Rights Organisations (RROs) Function of Copyright

IFRRO Manual
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IFRRO Manual - How RROs function 1
The purpose of the IFRRO Manual is to describe the foundation and operating models of Reproduction Rights Organisations (RROs) as collective management organisations, licensing reprography and digital copying on behalf of authors and publishers in cases where it is impracticable for them to act individually.

RROs function in close to 50 countries. They offer solutions to wide-scale copying by giving users easy access to a great variety of materials protected by copyright and by securing remuneration to rightsholders. RROs are an excellent example of successful collective action – on the part of authors and publishers – to the challenges posed by technology.

Having found solutions to issues relating to old technology (reprography), rightsholders and RROs are now exploring effective answers to the challenges posed by new technologies (digitisation and dissemination in the network environment).

Exchange of information is a high priority within the International Federation of Reproduction Rights Organisations (IFRRO). Existing RROs want to share their experiences. New RROs are free to choose the best parts of current practices and to adapt them to national circumstances. It is important to realise that each national RRO has been established within a particular legal, cultural and economic context. There is no single best solution; all solutions lead to a better environment for rightsholders, users and society at large.

This Manual is designed primarily for emerging and newly established RROs, as well as for authors and publishers considering establishing an RRO. The first two chapters of the Manual (Establishment of a New RRO and Newly Established RROs) give an overview of the critical first steps in the formation of an RRO. More information is provided in subsequent chapters, where the information is based on the experiences and practices of already functioning RROs. The Manual is also designed for those who want a closer look into the practical operations of an RRO.

While we took a lot of effort to write a Manual that we hope will be useful for you, it does not constitute legal advice or substitute obtaining expert advice on the law and other requirements of your country. IFRRO can therefore not be liable for any damage caused by reliance on this text.

About IFRRO

The International Federation of Reproduction Rights Organisations (IFRRO) is an independent organisation established to foster the fundamental international copyright principles embodied in the Berne and Universal Copyright Conventions. Its purpose is to facilitate, on an international basis, the collective management of reproduction and other rights relevant to copyrighted works through the cooperation of national Reproduction Rights Organisations (RROs). Collective or centralised rights management is preferable where individual exercise of rights is impractical.

IFRRO works to develop and increase public awareness of the need for effective RROs and to support joint attempts by publishers, authors and other rightsholders to create and develop rights management systems world-wide. To accomplish its mission, IFRRO fosters the development of studies and information-exchange systems; relationships between, among and on behalf of members; and effective methods for conveyance of rights and fees among rightsholders and users, consistent with the principle of national treatment.
Establishment of a new RRO

RROs in a Nutshell: Rationale, Objectives, Tasks and Principles

Reproduction Rights Organisations (RROs) build a link between rightsholders and users. As collective management organisations representing authors and publishers, they serve rightsholders, users and society at large.

The success of an RRO depends on the confidence of different stakeholders – rightsholders, users and government. Consequently, when forming an RRO, it is important to focus on creating, building and maintaining confidence in the RRO and in the collective management of copyright.

Rationale of RRO activity

Copying takes place everywhere and represents a massive use of published materials. If it is left unremunerated and without the consent of authors and publishers, it represents a threat to all involved in print and publishing. It is thus in the interest of authors and publishers to consider action that turns the ‘necessary evil’ into a legal activity.

For legislation to function and to bear tangible fruit, both enforcement and rights management are needed. In the event that individual management of copyright is either impracticable or impossible, rightsholders can establish a reproduction rights organisation to manage their rights. As professional organisations, RROs can concentrate on their core activity – rights management. By mandating RROs to manage their copyrights, authors can in turn concentrate on their creative activity and be remunerated for the use of their works. The same applies to publishers; remuneration for reprography is part of their return on investment that enables them to bring new books and other publications to the market.

General objectives

As representatives of authors and publishers, RROs are instrumental in:

• Creating a compliance culture: It is easy for users to acquire the necessary copyright permissions from one source – the RRO – for large-scale copying, be it by analogue or digital copying.
• Securing a healthy print and publishing market: Licensing and enforcement supplement each other, both striving for the same goal through different means. Copying of whole publications for commercial purposes is a clear infringement and requires rapid enforcement measures. Anti-piracy actions are a necessary complement to licensing.
• Encouraging and protecting creativity: Remuneration to authors encourages creativity and to publishers investment in new products and services. Cultural values and advancements in the field of culture, knowledge and education are important values in any society.
• Promoting national culture and cultural diversity: Unauthorised copying and pirated publications always hurt the national market most severely. In many smaller language areas, the domestic market is the only provider of a livelihood to national creators and a return on investment for publishers. Securing a healthy market is a prerequisite for a flourishing national culture and the sustainability of cultural diversity.

Primary tasks

In the knowledge-based society in which we live today, legal access to material protected by copyright is crucial. The main task of an RRO is to license reprography on behalf of rightsholders. With technological development, digital copying and other digital uses are included into the activities of RROs – subject to rightsholders’ wishes and market needs.

The following is a general summary of the tasks of an RRO as a collective management organisation (CMO):

• Monitoring where, when and by whom copyrighted works are used.
are being copied;
• Negotiating with users or their representatives;
• Granting licences including the payment of appropriate remuneration for the use of copyrighted material;
• Collecting remuneration; and
• Distributing it to the rightsholders.

By providing a link between rightsholders and users of copyrighted material, RROs serve their constituencies – authors and publishers – and secure legal access to users.

General principles

Mandates from participating rightsholders form the basis of an RRO’s work. An RRO can license such uses as they are mandated to grant, be it reprographic or digital uses. As third parties trusted by their constituencies and other stakeholders, RROs must manage rights with integrity, honesty and transparency.

Huge numbers of copies are made every year in educational institutions, by governments and other public bodies, within industries and associations as well as by private individuals. An RRO licence typically grants authorisation to copy a portion of a publication, in a limited number of copies, for the internal use of institutional users. By managing such mass uses collectively, cost-effectiveness can be achieved.

Legislation Forms the Ground for RRO Operations

*It is of paramount importance that legislation is sufficiently clear and provides a basis for RRO operations. Since licensing reprography cannot function effectively on an individual basis, collective management is a feasible solution for both rightsholders and users.*

In copyright terms, licensing of reprography is based on the right of reproduction that national copyright laws provide. This right of reproduction is in principle an exclusive right which allows rightsholders to authorise or prohibit copying of their works in any manner or form. Limitations or exceptions to this exclusive right of reproduction can be allowed in national legislation, subject to conditions in international treaties. An exception or limitation may be a completely free use or may be coupled with remuneration or compensation.

In the best cases, national legislation supports the activities of an RRO and makes it clear to users that they have to get permission for making the copies that they might have been making for a long time without any copyright clearances. The RRO needs to convince the users to seek a licence and/or to pay remuneration to rightsholders.

Exceptions or limitations may be in the form of ‘fair use’ or ‘fair dealing’ or may be written as specific exceptions and there may be no room for licensing or remuneration. In the worst of cases the legislation includes extensive or unclear definitions of free copying. In such a case it is important to lobby for adequate changes in legislation. Chapter 3 explains the legislative framework in greater detail.
Establishing a Preparatory Working Body

Preparation includes the setting-up of a forum for discussions and decisions. A preparatory working body, a Committee or a Working Group, should be established as soon as deliberations on reprographic licensing start. This body normally functions until the RRO has been established.

A few publishers and authors normally get together and take the first steps towards the establishment of an RRO. These rightsholders have come to the conclusion that they want to establish an RRO in their country in order to stop the unauthorised copying which may have been taking place for a long time. Something needs to be done in order to stop this negative spiral and create better compliance with copyright law and respect for intellectual property.

Awareness Raising among Rightsholders

Groups of potential rightsholders may be organised differently and some may be organised very poorly if at all. There is a need to make rightsholders aware of their rights.

Often those individuals who have been working on the establishment of an RRO are well aware of the benefits and main aspects of and reasons for the collective management of reprography. They need to convey this information to other groups of rightsholder, less familiar with the concepts.

Special considerations may be necessary in respect of some rightsholder groups. A scientific author, in the broadest sense, has an academic background and writes on scientific or scholarly subjects. Most are devoted to their disciplines and have a variety of motives for publication. Hence all are involved in some form of copyright. However, unlike professional authors of fiction or popular works, they may not know and, in some cases, care about their rights. RROs should be persistent in their efforts to motivate scientific authors to participate in the activities of an RRO. Scientific associations or learned societies may be good platforms through which to reach scientific writers.

Journalists are another group of writers who are sometimes difficult to convince about the necessity of participation in the activities of an RRO. The legal and/or contractual status of employed and freelance journalists may vary from country to country, which should be borne in mind. Journalists are normally well organised in trade unions.

Authors of musical works, and music publishers, have established collective management organisations – performing and mechanical rights organisations – in many countries and these organisations can be instrumental in bringing the representation of the musical sector to an RRO. The same may apply to visual artists and photographers with their own collective management organisations.

Even with rightsholders who are well organised in associations and trade unions much sensitising needs to be done and much information shared.

Involving Rightsholders

The work normally starts with the building of relations with other authors and publishers and their associations. Sufficient representation is a prerequisite for an effective RRO operation.

It is important to plan for wide participation of rightsholders from the outset and to incorporate as many groups of rightsholders as possible into the work of an RRO. In many cases, authors and publishers of literary works start the discussions and invite other groups of rightsholders to join them.

A list of potential rightsholders:

Authors
• Non-fiction authors, including authors of teaching materials
• Fiction and drama writers
• Journalists
• Translators
• Visual artists: painters, sculptors, graphic designers and illustrators
• Photographers
• Composers and songwriters.

Publishers of:
• Books, journals, periodicals, magazines, newspapers and sheet music.

There are many different ways to make contact with authors: through publishing houses and literary agents, or through authors’ associations and professional associations. Publishers are normally well represented in their associations.
The Role of Authors and Publishers and their Associations

The success of an RRO depends on broad based support of rightholders and their associations. It is, after all, an organisation that manages rights on a collective basis.

It is important to direct early activities towards educating rightholders, both in groups and as individuals, about the benefits flowing from the formation of an RRO and the importance of their active involvement in its establishment.

As well as the support of individual authors and publishers, it is important to obtain the support of local author and publisher associations. Support from these groups gives the RRO credibility in its early dealings with the government, with potential licensees, with potential members and with IFRRO.

Authors

The involvement of local authors is strategically important in convincing others of the importance of an RRO. High profile authors can be useful in gaining the attention of government, in the event that legislative reform is required.

For instance, in Australia CAL was in its early years greatly assisted by the involvement of the prominent poet, Judith Wright. Although aware that she was unlikely personally to benefit greatly from CAL’s establishment, owing to copying patterns in education, she was convinced of the importance of an RRO to the livelihood of other educational authors and publishers and to the future Australian publishing industry. As part of her contribution, Judith Wright wrote a personal letter to all school principals in Australia urging them to take licences from CAL and to support CAL as an emergent RRO.

As indicated above, some groups of rightholders may be represented through a separate collective management organisation, mainly in the field of music and visual arts. It is important for these CMOs to support the emergent RRO on behalf of their rightholders.

Publishers

The publishers’ role is to make works available to the public and to meet the demand in the market, and publishers are deeply concerned about the impact of piracy and unauthorised copying on the demand of their works.

It is important to emphasise that the RRO represents a means of capturing lost revenues and a new revenue stream. Publishers need to be reassured that the purpose of an RRO is not to legitimise piracy and therefore substitute for sales. Rather, the purpose of an RRO is to authorise the making of copies of parts of works for specific purposes, to complement sales and to provide a counterpoint to unauthorised copying.

In encouraging publishers to join an RRO, the following reasons can be used:

- RROs are formed in the interest of authors and publishers;
- The individual exercise of reprographic rights and some digital uses is impossible or impracticable to manage effectively;
- Collective management is therefore the only feasible option available;
- It is better to have a piece of a pie, than no pie at all.
- Copies made under a licence agreement are well identified and controlled copies.

Fighting Piracy

- Awareness
- Enforcement
- Access through licensing

Difference between authors and publishers

Involving both authors and publishers may highlight differences between the two groups in respect of such matters as the distribution of revenue, ownership of digital rights and entitlement to payments. Nevertheless it is necessary to put those differences to one side if the RRO is to succeed. The success of many RROs around the world is based on a smooth relationship between authors and publishers, both groups being aware of the importance of joint action – collective management of reprography – and the need to deal with other matters and possible disagreements around another table, not with the RRO.

As the international representative, IFRRO will facilitate the development of ‘any joint attempt by authors and publishers in any nation to create and develop an RRO’. One requirement for full IFRRO membership and organisational support is that the RRO represents both authors and publishers. This broad representation is also necessary in gaining credibility with government and with potential licensees, and in acquiring repertoire.
International Links: Contacts with IFRRO

Contacts with IFRRO and with other RROs are of vital importance from the very beginning. Contacting IFRRO before the formal establishment of an RRO may provide you with valuable tools to make the task more manageable.

Today’s emergent RROs may suffer from major disadvantages compared with those already well-established. They are being set up in countries where there are fewer resources and many political, economic and social problems, all of which require urgent action. On the other hand today’s emergent RROs have the advantage that they can draw on the experience and support of established RROs, through IFRRO.

It is therefore important that the emergent RRO liaises with IFRRO at an early stage. National authors’ and publishers’ associations can become Associate Members of IFRRO. Once an RRO has been established, it will be able to become an RRO Member of IFRRO.¹

Once this is done, the founding national authors’ and publishers’ organisations may wish to continue their Associate Membership in IFRRO, or may choose to be represented through their RRO. Whichever way is chosen, it is important that the RRO keeps its constituencies well informed about international developments and the activities of IFRRO.

Governance Issues

As with any type of activity, an RRO needs to identify its core activities and to structure them efficiently, according to the local market and infrastructure.

The scope and the organisational form of an RRO are major issues to tackle at the outset, followed by registration and the approval of government authorities if that is required by your legislation.

Some general considerations and options are listed here. You can find examples of existing RROs in Chapter 5 (Examples of Existing Organisational Structures).

Market analysis is central to the formation and early days of an RRO. Chapter 2 (Newly established RROs) concentrates on various aspects of market analysis as necessary elements of the business plan of the organisation.

Mentor Relationship and IFRRO’s Development Fund

A mentor relationship between an emergent or new RRO and an existing RRO has proven to be an effective way of cooperation. Such a relationship may offer long-lasting assistance which is very much needed in the early days of an RRO. IFRRO’s funding can be available both for the emerging RRO and the mentor RRO who normally work closely together and prepare applications together.

For instance, Access Copyright (Canada) has assisted in the development of JAMCOPY in Jamaica through a mentor relationship. This has meant assisting in seminars provided for local creator and user groups, model licence agreements and the training and services of senior staff. IFRRO’s Development Fund has played a vital role in this development and in that of RROs in other Caribbean countries.

Chapter 7 is devoted to the activities of IFRRO and the various ways that the international organisation may be instrumental in the development of your RRO.

Defining the Scope of the Organisation

When defining the scope of activity, the views of rightsholders and the needs of users form a point of departure. It is important to find answers to real market needs and to offer viable solutions to users.

Licensing reprography is the core activity of an RRO. Many users also wish to exploit copyrighted material in digital format. It is therefore important at the formation stage to initiate discussions on digital uses with the stakeholders, and nowadays when a new RRO is starting up digital uses are normally included in discussions with potential users from the beginning.

¹ For more information on IFRRO membership please refer to chapter 7.2
Additional areas of activity, whether other types of uses or other rights, may be included. The most common, especially in Europe, is the management of public lending rights. Reproduction rights may also be well suited to the activities of an RRO, since they involve many of the same users.

Luxor in Luxembourg is a good example of a new European RRO which manages reprography and public lending rights. Information about the various options and current practices of existing RROs is included in Chapter 5.1.1 (Scope of Activities of an RRO).

**Determining the Organisational Form**

The most suitable organisational form for an RRO depends on the legislation and options in your country. Irrespective of their legal form, RROs are normally not-for-profit organisations.

The RRO may, inter alia, be formed as an:

- Association
- Limited liability company
- Partnership.

Legal incorporation and registration is subject to the organisational form and your country’s legislation. Provisions in general law apply in this respect.

At the time of its incorporation, the organisation needs to consider matters such as:

- Whether it is to be not-for-profit (as indicated above, RROs are normally not-for-profit organisations).
- How the administrative expenses are to be met (usually, costs are deducted from collected revenue before allocation and distribution to rightsholders).
- Cost of membership, if any.

**Requirements for Official Authorisation or Approval**

Many countries’ legislation presupposes authorisation or approval from the relevant government authority before activities can start.

Preparation of an application is one of the early tasks to think about. The government authority usually wishes to verify that the RRO is duly mandated by a sufficient number of rightsholders. The statutes of the organisation need to be based on equal treatment of rightsholders and must indicate how the participation of rightsholders in the decision making process takes place. Guarantees for good governance and transparency are key elements, not only in respect of rightsholders but also towards users and the government.

When preparing an application for such authorisation/approval it may be feasible to initiate discussions with the representatives of the relevant body at an early stage, informing them about your plans and getting some insight into what, in their judgement, is important.

Later on, the authorities may also require longer term supervision of, for instance, annual reports and tariffs. The aim is to verify licensing, tariffs and the position of users.²

**Drafting the Statutes**

The statutes of an RRO define the governance structure and the objectives of the organisation.

Any set of statutes should include the following:

- Name, address and legal form of the organisation;
- Definition of the governing bodies: their roles, rights and obligations;
- Composition of governing bodies: elections and eligibility;
- Members’ rights and duties.

The main task of an RRO is to grant reprography licences on behalf of its constituencies. As indicated above, some digital uses are included in the activities of many RROs.

Apart from licensing, many organisations have additional tasks, such as lobbying for the enabling legislative environment which is a prerequisite for licensing. Awareness of and information about copyright is necessary for compliance, and information sharing may thus be among the tasks listed in the statutes.

The Statutes of HARR and ProLitteris are annexed as ex-

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² Please refer to Chapter 5.4.2 for more information on supervision of RRO activities
samples.

The statutes of Access Copyright (business name CANCO-PY), incorporated under the Canada Corporations Act, serve as a good example of the objectives of the organisation:

The objectives of the Corporation are:

1. To protect and advance the interests of authors and publishers who have legal rights in copyright works which are subjected to copying by photocopying, database storage and retrieval and other forms of reprography, non-dramatic performance, dramatic performance for educational purposes, and analogous forms of reproduction;

2. On behalf of authors and publishers, to facilitate authorized access to copyright works by licensing reproduction and by collecting and distributing royalties;

3. To study copyright questions relating to reprography and similar copying, and to educate and provide information to authors, publishers and users in respect to copyright issues;

4. To increase public awareness and understanding of copyright including collective administration of copyright, and to promote compliance with copyright laws;

5. In carrying out the above purposes, to co-operate with Canadian, foreign and international reproduction rights organisations, societies which represent authors and publishers, and others interested in copyright; and

6. For the further attainment of the above objectives, to accept grants, donations and bequests, to receive and maintain funds, and to use, apply, give, devote or distribute from time to time some or all of the funds of the Corporation and then income therefrom.

Governing Bodies

An RRO functions as a trustee or an agent of rightsholders. Internal control is in the hands of the constituencies: authors, publishers and their representatives.

A General Meeting

The highest decision making power in an RRO is normally vested in its rightsholders. Through participation in the General Meeting, rightsholders make strategic decisions and elect the Executive Organ and the Chair of the RRO.

The Executive Organ

The Executive Organ, for instance a Board of Directors, is in charge of the general direction and policy decisions of an RRO. In many RROs, the dual representation of authors and publishers is reflected by an equal number of representations in the Executive Organ for each constituency. In some RROs, the Chair represents authors or publishers on a rotating basis.

The Executive Organ normally appoints the Chief Executive Officer, who has overall responsibility for operations.

Chief Executive Officer

Recruitment of the Chief Executive Officer is an important step which affects the running of day-to-day business and its success. While there are no formal qualification criteria for such a post, understanding and experience in legal and economic affairs and an interest in creative work or publishing are valuable assets.
Rights Acquisition

An RRO may only license what it has received through mandates authorising it to act on rightsholders’ behalf. Mandates from national rightsholders are obtained either directly or through associations while foreign mandates are acquired through bilateral agreements with RROs in other countries.

Sometimes there is a need to ensure that rightsholders are aware of their rights before rights acquisition can effectively start. Awareness campaigns may be required to educate rightsholders on the scope of their rights as provided by national copyright legislation.

National Mandates

There are various ways of acquiring mandates from rightsholders. Rightsholders determine the scope of the mandate. The decision on the mandate structure has a significant influence over the practical work of an RRO.

Authors, publishers and their associations

The basic alternatives for acquiring mandates are:

- Individual mandates from authors and publishers;
- Mandates from rightsholders’ associations.

In the latter case, the associations need to have proper mandates from their members in order to be able to transfer them to the RRO. There are also combinations of these two basic models. Examples of both cases in existing RROs are listed in Chapter 5.2 (Mandates).

A rightsholder generally gives the RRO a proxy or the authority to manage his or her rights for a given period of time on an exclusive or non-exclusive basis. Existing RROs work both on the basis of exclusive and non-exclusive mandates, the latter being most common with digital rights.

Normally the authority also specifies whether the RRO is entitled to initiate legal action in its own name on the basis of the mandate. If it is not, a special proxy is needed for the possibility of legal action.

Scope of the mandate

The scope of the authority varies, ranging from reprography to certain digital rights and other types of rights. For a new RRO, study of the market and usage patterns offers valuable information.

Most existing RROs started with reprographic licensing, and therefore their mandates from rightsholders have been limited to this. The definition of reprography varies, and in some countries it includes some forms of electronic reprography, i.e. digital copying that is equivalent to photocopying. Print-outs from the internet are, in many cases, included in reprography licences.

Owing to their roles as central focus points in rights clearance, many RROs find that users lodge numerous requests for a means of dealing with digital uses. Digital rights have been added to the repertoire of many RROs after careful consideration and evaluation of the situation. In cases where individual management of rights is not possible or feasible, the services of an RRO have proven to be beneficial.

An example is annexed.

Representation of Foreign Rightsholders

International mandates are acquired by way of bilateral agreements with RROs in other countries. Bilateral agreements are based on the principles of reciprocal representation and national treatment.

In the first stages of operation, it may be feasible to acquire tentative indications of mandates in the form of a Letter of Intent or Power of Attorney, before proper bilateral agreements have been negotiated.

Such instruments indicate the will of foreign RROs to enter into bilateral agreements once operations have started. They may be instrumental in the approval process, in countries where government authorisation is required. These instruments have also proven to be useful in negotiations with users, wide repertoire being an asset.

Model Agreements

IFRRO has two types of Model Agreements for reciprocal representation, which can be used as the basis for bilateral negotiations. They are framework agreements, and the particular circumstances in each case need to be taken into account. They are neither mandatory nor binding on individual members of IFRRO. The incorporation or use of the Model Agreements or the accompanying Principles is also subject...
to conditions of national law.

A key element is the careful definition of the repertoire which forms the scope of the agreement. Since RROs differ in their national representation, the repertoires of two contracting RROs need not necessarily be the same but will, rather, reflect the national circumstances of each.

The Model Agreement Type A

This model involves an exchange of repertoire between the RROs and the transfer of collected fees. For instance, the agreement between CCC in the United States and CEDRO in Spain means that whatever CCC collects for the copying of Spanish works in the United States will be transferred to CEDRO for distribution to Spanish rightsholders, and vice versa.

Model Agreement Type B

Some RROs, especially in the initial stage, prefer to sign a Type B Agreement. As with the Type A Agreement, the Type B Agreement involves an exchange of repertoire, but there is no actual transfer of fees. This means that whatever Kopiosto in Finland collects for the copying of Icelandic works in Finland, is kept in Finland as an equivalent of remuneration collected in Iceland for the copying of Finnish works.

Main principles of bilateral agreements

The following principles might be useful in drafting Bilateral Agreements:

- National treatment: foreign rightsholders must be treated at least as well as national rightsholders. This is the central premise of any inter-RRO agreement. The principle also applies to the deduction of costs.
- Territory of application: the territory of the agreement will normally be the territory of operation of the RRO concerned – usually a country, although it may be extended beyond the borders.
- Rights and works transferred: each RRO must specify the kind of rights and the categories of works which it is transferring to the other RRO.
- Indemnification: each contracting RRO assumes responsibility for its repertoire. Each RRO agrees to hold the other RRO harmless against any individual claims from rightsholders in the other RRO’s territory.
- Non-Assignability: the assignment of rights or obligations must in principle have the consent of the other partner.
- Exercise and enforcement of rights: each RRO agrees to be active in exercising and enforcing the rights of the rightsholders of the other RRO, to the same extent as the rights of its own rightsholders.
- Deduction for social and/or cultural purposes: such deductions are allowable within reasonable limits, according to the national legal, cultural and political environment, and by negotiation between the two RROs involved.
- Exchange of information: general informational materials would be sent to the contracting partner and, on request, any other documents, subject to issues of confidentiality.
- Account on distribution: distribution should not be less frequently than once a year, supplemented with all relevant information for the distribution of remuneration.

Digital rights

The current model agreements of IFRRO are applicable only to reprography. As it is often important to acquire foreign repertoire for digital uses, these negotiations take place on a case by case basis between two RROs. IFRRO is developing solutions for contractual arrangements.

A current example of authorisations for digital uses is the set of principles for international document delivery. Cross-border document delivery poses special copyright questions. Library privileges exist in many countries’ legislation, but they have in principle territorial application. IFRRO has prepared principles for international document delivery. According to these principles, international document delivery should be conducted at prices approved by the rightsholders in the works concerned, rather than at national tariffs.

An example of expanding the scope of the RRO model agreement to cover digital reproduction is the amendment to the Type A bilateral recently signed by Access Copyright and Copibec in Canada. The amendment allows the collectives to license and collect fees for digital reproduction of the available repertoire in each respective jurisdiction.
RROs as Intermediaries

RROs are businesses like any others, despite their not-for-profit nature. An RRO needs to know the market in which it aims to function.

RROs are intermediaries and function between two markets: that of its constituencies (authors and publishers), and that of users as licensees. Proper knowledge of both markets is a precondition for success.

Involving rightsholders has already meant close contacts with the ‘rightsholder market’. In the early days of operation, follow-up and recruitment of new members will continue.

The ‘user market’, should be properly studied in order to decide which sector will bring the maximum return in the shortest time. The actual choice of the first licensing sector will depend on the conditions in the country concerned and on the provisions of its copyright law.

Knowledge of the home market is essential. In estimating potential revenue in different licence sectors, experience from other countries can be very beneficial. Estimates based on the number of students and an average number of copies per student can be made.

The use of figures from other countries needs of course to be supplemented with local insight. For example, in Australia schools in states with a book purchasing policy constantly copy 20% less than in states without such a policy.

In countries with an equipment levy system, it is essential to study the relevant equipment and the parties trading in that market, i.e. local manufacturers and importers. This is the market of those who provide the users with the technical means to copy.

In drafting the business plan it is wise to expect that things take time. Users may not be all that happy about the establishment of an RRO, for it means they will have to pay for something they have been doing for a long time without permission and remuneration. A considerable amount of persistence and persuasion is often needed.

Business Plan

A business plan defines your business, sets out your strategy to develop it and your medium- and long-term goals.

A business plan is useful for yourself, to focus on the essential elements of your organisation – and it is indispensable to fundraising.

At the outset there are the following questions:

- What do you want to do?
- Why do you want to do it?
- How do you want to do it?
- What do you need for it?
- Whom do you need for it?
- How are you going to get them involved?

These lead you to the business description and the further elements of a business plan, such as:

- Market analysis: products and services and market strategy;
- Operational and financial requirements;
- Potential risks and critical success factors;
- Identification of competitive products and services.
You should also set milestones, i.e. the medium-term goals you plan to achieve, and set a time frame for each milestone. This will allow you to measure your success and will make the business plan useful for the entire period of its validity.

Market Analysis

An RRO typically sells a derivative product: secondary rights, whether reprography or digital uses. The primary market is the print media market in your country, and you should have a thorough look at this market.

How is the publishing industry set up, what are its core products and how could it get an added value from your services?

Most countries have statistical bureaux or a Chamber of Commerce to gather information on different industry sectors and produce publications. Some international bodies also gather relevant information and produce studies. This type of information is the very basis of intelligence for an individual market analysis.

Private companies and, in some countries, governmental agencies, provide consultancy services for new companies; they might offer to research the market with you and guide you through the start-up process.

Part of the initial market research can be a so-called omnibus survey which researches the amount, type and reasons for copying. These types of surveys have recently helped the organisations in Argentina, the Slovak Republic, Chile and Nigeria to identify the size of the market and possible strategies.

Although you will, in most cases, be the first entity to license reproduction rights in the field of print media, it is still worthwhile to think about potential competitors. How is the market covered at the moment? How do users get permission to reproduce the information contained in print media products?

It is equally important to analyse the market for copying devices such as photocopiers, scanners and carriers. This is vital in countries with an equipment levy, but it is important for all RROs to be aware of the technical facilities used in copying.

Hubert Mono Ndjana of SOCILADRA:
"SOCILADRA is still a very young society and has received no financial or material assistance before going operational. We need to carry the message to many more rights holders, so that they will join us. We are confident that we will reach our goals despite the serious challenges we face and we are committed to ensuring that rights holders in Cameroon receive remuneration to enable them to create more works.

Now we are looking forward, as a golden opportunity for salvation, to sound cooperation with very experienced bodies like IFFRO."

Products and Services

The market analysis and the development of your products and services go hand in hand. RROs typically provide two types of services: rights management services to rightsholders and licences to users.

The ways they have tackled sub-markets vary significantly. Sub-markets are:

- Which rightsholders;
- Which services;
- Which rights;
- Which uses; and
- Which users.

Some RROs offer licences only to certain groups of users such as corporate entities or educational establishments, while other RROs only license particular uses. While part of this decision is pre-determined by your law, a large part remains a corporate judgment, the result of a thorough market analysis of potential demand and possible marketing strategies.

While there is a long list of potential licensing areas, resources are normally limited. Most RROs started by licensing the education sector because schools and universities are heavy copiers of copyrighted material. As education is usually centrally directed, it is easy to locate the decision-maker with whom to negotiate.

In the same way, in national and local government departments and in public bodies, it is generally possible to locate the person with the responsibility for making sure that copyright legislation is complied with.
The licensing of business and commerce produces both the greatest difficulties and the greatest rewards. When starting to license manufacturing industry, a start could be made with research and development-driven sectors such as pharmaceuticals, chemicals, electronics and energy. In commerce, banking, financial services and insurance are the first to be approached. In trade, document suppliers, press-cutting agencies and copyshops may be the first targets. In the professions, lawyers and accountants are heavy users of copyright material. For corporations, risk management may be a reason to take a licence.

There are also industry and professional associations that would be contacts for licensing a specific group. For an RRO, negotiating with an industry representative may greatly facilitate the process. In most cases, though, industry associations can only negotiate framework agreements.

In countries with an equipment levy system, it is important to identify heavy importers and manufacturers and initiate negotiations with them.

More information on potential licensing areas and how existing RROs have chosen to target them can be found in Chapter 6.4.1 (Licensing Areas).

Examples of licences are annexed.

Market Strategy

The market analysis will tell you the structure of the market and help you to identify potential demand and the reasons for it. This puts you in a position to develop a strategy: how to convince rightsholders to mandate you and how to convince users to purchase the licences. A start-up strategy might include targeting certain users first because of their national importance. For example, if you convince the Supreme Court, a large national library, a number of political parties or major corporations to purchase a licence and pay the dues, you will have a very convincing argument.

Existing RROs have employed a mixture of different strategies: awareness campaigns (of copyright generally and their services in particular) and litigation. Whichever strategies you choose, you deliver a message which creates an image of your organisation and its activities. This image is very valuable because it determines what your target audiences think about you.

Operational and Financial Requirements

Part of the business plan is to think about the people, equipment and facilities necessary to generate your services. In other words, what do you need to start up and run the business? How much does it cost and how do you secure financing?

Operational requirements

To run your RRO you need some organisational structure. The organisation of your RRO needs to cater for the following tasks, irrespective of the number of employees working on them:

- Licensing and collection;
- Membership and documentation;
- Distribution;
- Legal advice, accountancy and IT services.

You do not necessarily have to hire staff to obtain these, but you need a general manager supervising and structuring the work processes. In the beginning the manager will usually have to do all the tasks himself, possibly with the help of one assistant. It is wise to establish the relationships between these functions in writing (in an organisational chart for example) and to decide on a chain of command and an ultimate responsibility.

You will also need some office space, and equipment such as PCs and telephones.

Financial Management

There should be a budget and such other financial documentation as your national law requires. This might be a forecast balance sheet, or profit and loss account. Regular financial reporting is also important to provide information to supporters and stakeholders.

There are two sides to your budget: in and out. The ‘in’ determines the ‘out’: you can spend only as much as you are able to get in. On the other hand, what you are able to obtain from potential sponsors depends very much on your business plan. The clearer view you have of your real needs, the better your chances of convincing stakeholders and potential sponsors to provide you with the requisite funds.

The core budget items would usually be:

- Costs to set up your corporate entity: documentation, legal expenses, government office fees and so on;
- Office rent and equipment: office space, telephone, PC,
Potential Risks and Critical Success Factors

A thorough market analysis and a sound marketing plan, tailored to the facts and circumstances, are absolutely essential. Most start-up companies fail due to insufficient market analysis and planning, as well as inefficient management.

Another common pitfall is over-optimistic projection of how many licences the RRO will be able to sell and how much it will be in a position to collect. Do not underestimate the costs of setting up the information management systems necessary for collective management, and do not overspend on salaries and other benefits.

Ensure that you have the requisite backing from those individuals and bodies in your country which can give you credibility and standing. In your presentation of the organisation be realistic about what it can and cannot do, and how much it will be able to distribute to its stakeholders.

Be realistic and patient, but do not lose your enthusiasm. An RRO is not set up overnight, and the more thoroughly you prepare the ground for it, the more long-lasting will be its success – to the benefit of all stakeholders.

Funding

Funding is an essential element in the establishment of a new RRO and during the first years of operation. Like any other business, an RRO needs start-up capital.

You can obtain financial support from several sources, such as:

- Stakeholders can contribute either directly or with non-pecuniary support: a room in their premises as an office for a nominal rent (or rent-free); manpower, such as part-time use of a secretary or other staff. Stakeholders can also contribute by donating part of the distributions that would otherwise be due to them, or turning them into a long-term loan.
- Banks can provide start-up loans which are in many countries subsidised by the government to encourage more businesses.
- International organisations such as IFRRO can provide you with practical assistance, know-how and, sometimes, also funding by way of loans or grants.
- Sister organisations can provide you with know-how and practical assistance – for example, on how to build up a database. JAMCOPY in Jamaica, for instance, has cooperated with Access Copyright over a period of years.

Most existing RROs have borrowed seed money and/or the necessary manpower from the people who will eventually benefit most from its creation – authors and publishers themselves. CEDER in Colombia has benefited, for instance, from rightsholders’ investment in this manner.

If an RRO is established properly, the loans required are relatively small and short-term, while benefits may be considerable and long-lasting. Once an RRO begins to issue licenses and starts to collect fees, it is on the way to become self-financing. In the case of legal licences and levy systems, collection of revenue is a key issue.

IFRRO can help an RRO to obtain money under requirements set up by the Federation. More information on IFRRO and its Development Fund is in chapter 7.3.1 (Fostering the Creations of New RROs).

An excellent example of joint funding, combined with persistent and well-planned local action, is CLASS in Singapore. In
August 2000, CLASS executed a loan agreement with IFRRO through IFRRO’s Development Fund. CLASS repaid its loan in October 2003, at the Annual General Meeting of IFRRO.

**Paul Wee of CLASS reports:**

“Despite Singapore’s having achieved new-found status as a developed nation, with adequate laws on intellectual property protection, licensing of reprographic reproduction, being unprecedented, proved difficult to get under way. This explained why CLASS had to endure more than three years of protracted negotiations before a worthwhile licence could be concluded in mid 2003. Until then, it had been an excruciatingly trying period for CLASS, which had exhausted the funds received from its founding publisher members. It was so harrowing a time that CLASS had to operate from rent-free premises provided by one of its members. IFRRO and several CLASS publisher members chipped in to help with another round of loans, and this funding was able to sustain CLASS for several more months, proving to be the dramatic turnaround as the extended ‘lease of life’ was to lead to the successful conclusion of unprecedented licence agreements with government schools and educational institutes.”

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**Litigation and Compliance**

_In countries where reproduction rights were not licensed at all before an RRO was established, the society may have become used to the idea that copying should be free in all circumstances. It is sometimes difficult to convince users of the contrary through awareness campaigns alone._

There is a wealth of experience in this field within the IFRRO membership. A number of RROs have benefited greatly from a landmark victory in court which showed that certain individuals were infringing copyright. This allowed them to sell licences and collect revenues more easily. For example, COC in the United States benefited greatly from the Texaco case in which publishers took the oil company to court on account of their photocopying.

The advantages of litigation are that such cases can raise awareness and render more force to your arguments to purchase a licence and pay the dues. Assisting rightsholders in court actions can also provide them with an additional service they find very valuable, and convince more rightsholders to mandate you.

The disadvantages can be the cost, time and effort involved in obtaining a judgment. It is wise to be careful with public perceptions of legal proceedings. While on the one hand they serve to show that the RRO has to be taken seriously, there is also a danger of being perceived as aggressive. This might not always be a good thing, especially when the defendants are well-regarded members of the community like universities and schools.

In the beginning, particularly, it is crucial that you consider your role very carefully when it comes to legal action. It may be of fundamental importance to have a mentor RRO with experience of the same kind of legal system as in your country.

Copyright infringements can be civil and criminal offences, the pursuance of which can take up considerable of time and resources. While litigation plays some type of role in the life of most RROs, you have to identify your priorities and establish routines for legal proceedings.

It is important to clarify whether you will actually have the standing to sue or whether you will only coordinate rightsholders’ trials, i.e. collect evidence, prepare it for counsel and possibly act as a witness in court. This may – in the absence of specific provisions in your law – depend on whether, for the administration of rights, the rightsholders transfer the pertinent rights to you or whether they mandate you by contract only and retain all rights. You also have to decide on how and by whom legal proceedings are to be funded.

While litigation may be necessary to facilitate compliance, sometimes other forms of pressure may be useful too. Pressure from lobby groups such as representatives of local and international publishers and authors, may be helpful. Getting the press to highlight the importance of IP protection and compliance may be another good tool subtly to demonstrate political correctness, as litigation may otherwise cast rightsholders in an aggressive light.
Chapter 2: Newly established RROs

Awareness Activities

There is a general lack of knowledge about copyright, and most certainly about reprography. If that was not the case in your country it would most certainly be an exception.

Awareness activities can take several forms:

• Traditional advertisements in selected publications;
• Producing informational material and publishing it as a supplement in daily or weekly newspapers or on its own;
• Organising or participating in seminars, conferences, trade shows and other events;
• Producing regular newsletters.

As one of the first signs of existence, it is important to create a website for the RRO. Interested persons need to find information on the services an RRO can provide, and a website enables wide dissemination at reasonable cost. You can find examples of IFRRO members’ websites by following the links at: www.ifrro.org (members).

Awareness activities must be targeted at a particular audience. In the beginning it is particularly useful to address decision makers in government and the public sector as well as potential rightsholders and potential users that have been identified in the market analysis. You can address them jointly or individually.

Awareness campaigns are important for all RROs, newly established and older RROs alike. In the early days it may be beneficial to review some campaigns that your colleagues have undertaken in their countries.

If you take a look at the history and follow the awareness raising of your fellow RROs, you may find certain changes in attitude over time. In the early days of established RROs, the focus in information campaigns was on prohibitions – “as a user you are not allowed to copy more than 15% of the publication and never more than 15 pages”.

But it is difficult to market prohibitions and get positive reactions, which is why many RROs have changed their orientation and nowadays focus on the positive side of an RRO licence.

• “Access to a wide variety of works vital to the research and development activities of your company”.
• “It is easy to be legal, if you have an agreement with your RRO.”
• “The RRO is a bridge between users and rightsholders.”

Fairness towards copyright owners is another viewpoint frequently used in awareness campaigns and as slogans:

• “It is only fair to pay for what you use.”
• “Finally! Fair compensation for authors and writers for their photocopied works!”

In the IFRRO Newsletter, there is a series of examples from successful awareness campaigns under the heading ‘Learning from each other’.

Credibility and Authority in the Marketplace

It is important to establish credibility and authority in the marketplace – irrespective of the legal framework.

Your image, and public perception of the RRO, are crucial to your success. You have to bear it in mind, in all your activities. How will this reflect on your reputation?

Clean business practices and acting with integrity and honesty in all instances, but in particular when it comes to the financial parts of your operation, are key elements to building up trust and confidence in your organisation. Particularly in the beginning the RRO, must act in a way so as to be beyond doubt. Treating all stakeholders fairly and avoiding favouritism towards particular individuals or groups is very important. The more transparent and the easier to understand your organisation and its activities are, the easier it will be to gain the confidence of other stakeholders, the government and society at large. Credibility is something you owe to your stakeholders – not the other way around. IFRRO is currently developing a Code of Conduct for RROs to assist you in ensuring transparent and proper business practices. An important part of your image is who supports you and who does not. Ensure that as many key decision makers in

3 Please follow this link to the latest IFRRO newsletters http://www.ifrro.org/show.aspx?pageid=library/newsletter/latest&culture=en
Chapter 2: Newly established RROs

your country as possible support – or at least do not object to – the idea of an RRO.

In the initial phase, the emphasis is on the relationships with individual rightsholders and their organisations. Legislation may require authorisation from the relevant government body, such as the Ministry of Justice or Culture, and the evaluation of sufficient representation would be a valid consideration in the approval procedure. However, although Government approval gives the RRO authority, it is only the necessary beginning.

In the expansion phase, the emphasis is normally towards the users. It is not unusual for some form of legal action to be necessary at some stage of the development process.

It is important to define clearly for users what your core product is: a licence. ‘Product development’ takes place in an RRO as it does in any other business. You may not always be in a position to offer users all the rights they are asking for, so it is vital for your credibility that you define the scope of the licence clearly, and that you are ready to defend the limits of the licence if needed.

Once your business is up and running and the revenue flows in, distribution of collected revenue becomes a major challenge. An RRO needs to show in practice that it is not only collecting remuneration, but also passing it through to rightsholders. Transparency and accountability in all your operations – and distributions in particular – are crucial. That is the demand from all stakeholders – legislators, users, the general public and, last but not least, rightsholders.
Chapter 3
The legislative framework

National Copyright is based on International Norms

National copyright legislation needs to be in harmony with commonly accepted international and regional norms. Without good legislation, there is little room for an RRO to operate. A thorough analysis of your national law is therefore of utmost importance.

The first source for you to turn to, in all your questions on copyright, is your national law. Nothing replaces the thorough analysis of your national legislation and case law. Your national law always applies directly and only it can contain detailed rules for your situation. International treaties may or may not apply directly depending on your country’s public international law.

Owing to their common legal heritage, some countries have developed similar copyright frameworks.

For example, Common Law countries whose legal systems originate in the UK share a similar basis for copyright protection and this is reflected in how copyright is defined in their domestic laws. The philosophy behind Common Law copyright protection is premised on the right of the creator to receive an economic reward for his or her works, and for copyright to act as an incentive for the creation of new works.

Most Civil Law countries’ copyright frameworks share a philosophy for copyright protection based on works of the mind being an extension of the creator. Therefore, creative works are considered emanations of the creator’s personality and are protected under natural law.

The most notable difference between these two systems is in relation to the Civil Law’s recognition of moral rights pertaining to the creator of works, unlike the Common Law. However, various Common Law countries, such as the UK, Australia, Canada and New Zealand, have either instituted moral rights into their domestic law or are considering it.

Despite differences in the original bases for copyright protection in jurisdictions, copyright laws are becoming increasingly harmonised as countries accede to international treaties which set minimum protection standards for signatory countries.

The following sections outline the most important elements contained in international and national instruments. Consideration of these elements will be crucial to bodies charged with drafting copyright legislation in your jurisdiction, as they cover some of the main concerns of authors and publishers in relation to copyright protection.

* The Convention for the Protection of Literary and Artistic Works (the Berne Convention) is administered by the World Intellectual Property Organisation (WIPO)
International Legislation

The foundation of modern copyright law is the Berne Convention. The right of reproduction is said to be the cornerstone of copyright.

According to Article 9 of the Berne Convention, the author of a literary or artistic work has the exclusive right of authorising or prohibiting the reproduction of his work “in any manner or form”. Reproduction, or copying, takes place in many different forms, such as:

- Printing
- Reprographic copying
- Scanning
- Digital copying (for instance on CDs and DVDs)
- Electronic storage in databases.

The exclusive right to authorise or prohibit the reproduction of a work may be subject to limitations or exceptions under the Berne Convention. According to Article 9 (2) of the Berne Convention “it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

The same principle is manifested in Article 13 of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) and in Article 10 of the 1996 WIPO Copyright Treaty (WCT).

In the light of these regulations, limitations or exceptions are only allowed if three conditions are fulfilled (the so called three-step-test), namely:

- Limitations or exceptions may concern only ‘special cases’, and must not be generalised;
- They cannot conflict with the normal exploitation of the work;
- They cannot unreasonably prejudice the legitimate interests of the rightsholder.

The above criteria for restricting exclusive rights are cumulative; they must all be met in order for limitations or exceptions to be permissible. When developing limitations or exceptions to copyright in national legislation, legislators must be conscious of the three-step-test, and ensure that any such limitation or exception complies with the test.

Widespread photocopying that takes place without the consent of, and remuneration to, rightsholders, may conflict with the normal exploitation of works. In cases of mass use, at least prejudice to the legitimate interests of rightsholders is obvious.

The effects of photocopying may be different from those of digital copying. Consequently, an appropriate legislative solution may be different for each.

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2 The TRIPS Agreements is administered by the World Trade Organisation.
4 The Convention for the Protection of Literary and Artistic Works (the Berne Convention) is administered by the World Intellectual Property Organisation (WIPO)
Regional Legislation

European Union Legislation

The Directive on the harmonisation of certain aspects of copyright and related rights in the information society deals with the reproduction right and possible exceptions and limitations. The new concept of fair compensation merits some explanation.

Article 5 of the Directive includes a list of possible exceptions or limitations that member states may include in national legislation. Except for one, they are all optional and it is left for the member states to consider whether, and in which form, to include them in national legislation.

As to the right of reproduction and reprography the relevant paragraph reads:

“In respect of reproduction on paper or any similar medium, effected by the use of any kind of photographic technique or some other process having similar effects, with the exception of sheet music, provided that rightholders receive fair compensation.”

The Directive introduces a new concept, fair compensation, which is a prerequisite in the following three cases of exceptions and limitations:

• Reprography (Article 5.2 (a))
• Private copying (Article 5.2 (b))
• Reproductions of broadcasts made by social institutions (Article 5.2 (e)).

The first two of these are relevant for reprographic reproduction.

Preamble 35 of the Directive offers guidelines for national legislators by stating: “In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their works (emphasis added).”

The Directive leaves the determination of the form, detailed arrangements and the level of such fair compensation to the member states. This is a minimum requirement, and national legislation may provide for an exclusive right of reproduction and/or stipulations concerning the management of rights. But what is important is that legislation must as a minimum secure fair compensation to rightholders for reprography and private copying.

Andean Community

The Andean Community is a sub-regional organisation founded by the Cartagena Agreement, with an international legal status and its own bodies and institutions. Its member states are Bolivia, Colombia, Ecuador, Peru and Venezuela. Its decision 351 of 1993 sets out the basic rules on intellectual property rights to which the member states must adhere.

Decision 351 of 1993 provides for an exclusive right of reproduction. It also contains a number of exceptions to this exclusive right, in Article 22 under which neither permission nor payment are required. This is the case for reprographic reproduction of original articles lawfully acquired for teaching purposes or examinations, provided the use is justified by the aim pursued and according to honest use, and provided the copy is not sold and does not have any other commercial use.

There is also an exception for individual copies made by a not-for-profit library or archive, of works in their collections, provided the copy is made to preserve the collection or remedy destruction. Another exception applies to administrative or judicial procedures.

The Decision also deals with collective management, subjecting collective management organisations (CMOs) in all member states to the supervision of the respective national copyright offices (Art. 43) and, while making affiliation to them in principle voluntary, it also gives member states the option of providing otherwise in their national laws (Art. 44). It further contains a set of mandatory rules for member states to impose on their national collective management organisations (art. 45), non-compliance with which could lead to the revocation of the authorisation to operate as a CMO (Art. 46) and such further sanctions as Art. 47 lists. The Decision further obliges CMOs to register with national bodies (Art. 50). The CMO must set its tariffs according to actual use (Art. 48). In Article 49 the decision lends CMOs – once properly established – more weight in that it allows them to represent in court and in front of administrative bodies those rightholders who have chosen to give it a mandate and for the rights for which they have given this mandate. The mandate it not extended to non-represented rightholders or rights.

7 Article 5 (1) on certain temporary acts of reproduction. 8 Article 5.2 (a); emphasis added. 9 www.comunidadandina.org
How to Influence Legislation

On international, regional and national levels it is important that rightsholders have good representatives who speak on their behalf and present their views. IFRRO plays a major role as a representative of its members, internationally and regionally.

The preceding chapter sets out the basic elements of copyright legislation, giving an overview of relevant international law and explaining the impact of international law on national legislation.

The draftsmen of such laws and their amendments seek to produce legislation that is as useful as possible for their countries, and would usually assess the effect of the law on the country, its economy and the specific sectors concerned. For this assessment, the opinions, experiences and views of the stakeholders can be very valuable.

You have first-hand knowledge of the situation in your country and the effect a law would have on your business as RRO or as rightsholder. Share this information with your government.

If you cannot foresee how a particular project might affect you, a look across the border – or even to the international stage – might help. Institutions such as IFRRO are there to assist you to find out how other countries’ legislations work and explain possible ramifications.

Where the law contains excessive free uses, either in the form of fair use/fair dealing or by an exception or limitation on the right of reprographic reproduction, no management is possible. Copying is, in such instances, permitted by law without the consent of rightsholders and without remuneration. Vast and vaguely defined free usages can be a real obstacle for the collective management of reproduction rights and to the development of a local publishing industry.
How does Legislation Determine Forms of Management?

The existing legal framework on how remuneration for the use of protected works by reproduction can be obtained determines the forms of rights management available to the RRO.

The exclusive right of reproduction is the starting point. The law grants the creator of a work a right to decide whether to authorise or prohibit its use by reproduction. This right may be transferred or assigned. The rightsholder may want to exercise the right himself in each and every circumstance, or he could decide to authorise another, such as an RRO, to exercise this right on his behalf in certain or all cases.

This is the essence of a voluntary system: the activities of RROs are based on voluntary mandates from participating rightsholders. In these voluntary systems RROs are able to negotiate and offer licences only on behalf of the rightsholders they represent. Consequently, to obtain complete coverage users may also need to obtain licences from non-represented rightsholders.

This may be unattractive to users and reduces the benefits of collective licensing. Consequently, if an RRO in a voluntary system represents a significant number of rightsholders it may consider to offer an indemnity clause against financial claims from non-represented rightsholders although such an indemnity clause may present a considerable financial risk and a newly established entity would have to consider the situation carefully.

In some countries the legislation includes special stipulations that support collective management and deal with the problem of non-represented rightsholders. Licences are negotiated freely and rightsholders can authorise or prohibit photocopying. In cases where an agreement is concluded, it covers the works of represented and non-represented rightsholders, the latter based on the law. Two such support mechanisms are extended collective licences and compulsory collective management.

In some other countries the legislator took a different route and provided the permission to reproduce works in the law, i.e. a legal licence. In these systems the rightsholder cannot prohibit the use of his material although he does have the right to be remunerated for such use even though he cannot authorise or prohibit it. The management of remuneration rights is thus based on a non-voluntary scheme.

There are different ways to generate remuneration based on legal licences. Remuneration may be a usage fee which rightsholders and users can negotiate, or it may be fixed by law. In some cases, the legislation includes an indirect way of generating remuneration by stipulating a levy on copying equipment – private copying remuneration through a levy system.

All these operational systems are described in more detail below.
Voluntary Collective Licensing

Under voluntary collective licensing, the RRO issues licences to copy protected material on behalf of those rightsholders who have mandated it to act on their behalf.

RROs obtain licensing authority from mandates given by national rightsholders, and the international repertoire through bilateral agreements with RROs in other countries. Many RROs, especially in countries following the Common Law tradition, generally base their activities on voluntary contracts.

Even in the case of voluntary licensing, copyright legislation may include stipulations that govern the activities of the RRO. This is the case in many countries, as the following case studies indicate.

Case study 1: CCC in the United States

Copyright Clearance Center, Inc. (CCC) was founded in 1978 at the suggestion of the US Congress that an efficient mechanism for the exchange of rights and royalties be created to facilitate compliance with the then newly revised copyright law. Creators, publishers and users came together to form CCC. There is no direct legislative authority but, rather, CCC obtains authorisations to license various uses of copyrighted material through voluntary contracts with individual rightsholders.

Thus, voluntary collective licensing through CCC is based solely on non-exclusive contracts. Authors and publishers determine which works are to be included in different licensing programmes. In most programmes they can set the prices individually for each work.

Case study 2: CLA in the United Kingdom

The Copyright Licensing Agency (CLA) was incorporated as a non-profit-making company limited by guarantee in 1983. Authors’ Licensing and Collecting Society (ALCS), Publishers’ Licensing Society (PLS) and CLA reached a tripartite agreement in which the societies appointed CLA as their agent to administer their members’ rights, and agreed how licence fee income should be distributed between authors and publishers.

In 1984, the Publishers Association won a test case against Manchester City Council for the unauthorised copying of textbooks, and Local Education Authorities were galvanised to take out licences or risk prosecution; 116 LEAs agreed to pay CLA a token fee to run an 18-month pilot scheme to establish the volume of copying in schools and colleges upon which a permanent licensing scheme could be based. The initial blanket licences for state schools and colleges formed the basis for licences negotiated with independent schools, polytechnics and universities.

Case study 3: JRRRC in Japan

The Copyright Act provides for author’s right of reproduction, with certain limitations on this right. Since its establishment in 1991, JRRRC has concentrated on licensing business and professions. The Special Law on Management Business of Copyright and Neighbouring Rights has been in effect since October 2001. Under this law, Japan Reprographic Rights Center (JRRRC) was registered in 2002 and designated as a management business operator.

Case study 4: CEDER in Colombia

The Centro Colombiano de Derechos Reprográficos (CEDER) obtained governmental recognition as a collective management organisation in 2000, and the necessary authorisation for operation was granted in 2002 by the relevant government authority (Dirección Nacional de Derecho de Autor). Thus, CEDER was allowed to act as an RRO in Colombia. In 2003, it started to license universities, libraries and copyshops.

Case study 5: JAMCOPY in Jamaica

There are countries where legislation clearly encourages rightsholders to establish RROs. For instance, the Jamaica Copyright Act of 1993 allows for certain limitations and exceptions to the right of reproduction in cases where voluntary licensing is not readily available. After the establishment of the Jamaican Copyright Licensing Agency (JAMCOPY) such photocopying became subject to a license.
Voluntary Licensing with Legislative Support

Voluntary licensing is in some countries supported by legislation. The underlying idea is to guarantee users a fully covering licence.

Since no collective management organisation can represent all rightsholders in its own country, let alone all countries of the world, legislative support covers the situation of non-represented rightsholders.

RROs operate under two legislative support mechanisms:

Extended Collective Licence

An extended collective licence extends the effects of a copyright licence to also cover non-represented rightsholders. The RRO issuing the licence must also distribute remuneration to non-represented rightsholders.

It is important that licensing negotiations take place on a voluntary basis, and it is possible to authorise or prohibit the use of works—this is the very nature of exclusive rights. However, users may have a legitimate interest in securing their situation vis-à-vis rightsholders who are not represented by the organisation.

During the 1970s, the Nordic countries adopted a legislative solution called the extended collective licence. Under these laws, agreements between users and organisations representing a substantial number of rightsholders in a given category of works will be extended by virtue of the law to cover all rightsholders in that category (extension effect). The system is best suited for countries where rightsholders are well organised, as is the case in the Nordic countries.

The characteristics of an extended collective licence are:

- The RRO and the user conclude an agreement on the basis of free negotiations.
- The RRO must be nationally representative.
- The agreement is, by law, made binding on non-represented rightsholders.
- The user may legally use all materials, without the possibility of receiving individual claims from outsiders or having to face criminal sanctions.
- Non-represented rightsholders have a right to individual remuneration on the basis of the law.
- In most cases, non-represented rightsholders may prohibit the use of their works (opt-out).

Starting originally in the Nordic countries, this legal technique is now in force, or under consideration, in a number of other countries. The extended collective licence has also been extended to cover, inter alia, digital copying in education and libraries.

Case Study: COPY-DAN in Denmark

Collective management organisations in Denmark must be approved by the Danish Ministry of Culture. To qualify as an organisation under the extended collective licence system, Copy-Dan has to represent a substantial number of rightsholders of certain types of works used in Denmark. An agreement concluded between users and Copy-Dan gives the user the right to exploit the works of represented and non-represented rightsholders.

Copy-Dan started licensing educational activities in 1980. In 1995, the extended collective licence was extended to cover photocopying by businesses and enterprises, both in the public and private sectors. The 1998 revision extended the collective licence to digital copying for educational activities, and in 2002 it was extended to digital copying by research libraries.

Compulsory Collective Management

Management of the right of reproduction as an exclusive right is a voluntary act, but in case of compulsory collective management rightsholders do not have the choice of granting permission on an individual basis. All claims must be through a collective management organisation.

Case Study: CFC in France

In 1995, the legislation in France introduced the concept of compulsory collective management in the area of reproductive reproduction rights. The law transfers the author’s exclusive right to license reproduction rights to a collective management organisation, which has to be approved by the Ministry of Culture. The terms and conditions of the licences are not determined by the law but are agreed by rightsholders, and negotiated with users through the approved CMO.

The Ministry of Culture has approved two organisations: CFC for books and periodicals and SEAM for music sheets. CFC and SEAM represent all rightsholders by virtue of law and are alone entitled to grant licences to reproduce to users for all published works. This safeguards the position of users, as an individual rightsholder cannot make claims against them.
Legal Licences

The licence to copy is given by law and consequently no consent from rightsholders is required. They have, however, a right to remuneration, which is collected by an RRO.

The royalty rate is in some countries determined by statute. In some other countries rightsholders can negotiate the royalty rate with users although they are not able to refuse authorisation. In both instances it is question of a legal licence and the management of rights is thus non-voluntary.

Reproduction for private use is a special case. Traditional licensing systems would not be workable, since it is impossible to control the doings of private individuals. In many countries’ legislation, copying for private use is free. However, reproduction for private use can be compensated indirectly, and should be compensated in cases of high copying volumes. Equitable remuneration, or fair compensation through levies on equipment, is a feasible solution. There can, in addition, be a levy on the underlying material – photocopying paper.

Such indirect remuneration through levies on carriers and equipment is widely used in the field of private audio and audiovisual copying. For reprography, it has been applied since 1985 when it was introduced in Germany. The levy system can be complemented by an operator levy, reflecting the high copying volumes by some user groups.

Legal licences and their applications in the RRO environment are:

Non-voluntary System with Legal Licences

The permission to copy is given by law. The consent of rightsholders is thus not needed, but according to the law they have a right to receive equitable remuneration or fair compensation. The remuneration is collected by an RRO and distributed to the rightsholders.

In some countries, a legal licence is only introduced for education and for government copying. In others, a legal licence covers all copying. In some countries, statutory provisions also cover some digital uses.

Case study 1: CAL in Australia

An educational statutory licence and government copying provisions are part of the Australian Copyright Act of 1968. The Copyright Agency Limited (CAL) has been approved by the government to administer the educational statutory licence and the government copying provisions. The statutory licence for educational institutions extends to the sale of books of readings (course packs) to students, provided there is no intent to make a profit. The provisions allow electronic reproductions and/or communications of works to users. The appropriate licence fees are to be negotiated, and only if agreement cannot be reached are they determined by the Copyright Tribunal. For other sectors, such as businesses, voluntary licences are offered.

Case Study 2: Stichting REPRORECHT in the Netherlands

Educational institutions, libraries, government agencies and other institutions working in the public interest have been able to issue photocopies for internal use to students, and mutual lending between libraries and to civil servants, provided that fair compensation is paid to the national RRO, Stichting REPRORECHT. The reproduction right fee is set by statute. An amendment of the Dutch Copyright Act of 1912, accepted in March 2002, extended the effect of the legal licence. After a legislative process lasting some years, it now covers the public sector and the business sector.

Case Study 3: ProLitteris in Switzerland

In Switzerland, a legal licence covers schools, public administration, libraries, copyshops, services, industry and trade. Private use is free of charge. The provisions are technology-neutral and also cover electronic copying. Tariffs are not fixed by statute, but negotiated between the national RRO, ProLitteris, and users’ associations based on a set of rules contained in the copyright law. They are also subject to approval by the Federal Arbitration Commission.
Private Copying Remuneration through a Levy System

A small copyright fee is added to the price of copying equipment such as a photocopying machine. Producers, importers and retailers of equipment are liable for paying the fees (levies) to the RRO, which then distributes the collected revenue to rightsholders.

Significant photocopying takes place by private individuals, and private copying remuneration through a levy system guarantees payment to rightsholders. The levy system is often composed of two elements:

1. An equipment levy on hardware such as photocopy machines, fax machines, reader printers, scanners, multifunctional devices and CD and DVD burners.

2. An operator levy (a ‘user fee’), payable by schools, colleges, universities, libraries and government and research institutions making a large volume of photocopies.

In most countries with levy systems, there is a combination of an equipment and operator levy although in a few countries only an equipment levy is payable. There are also some countries where the legislation provides for a levy on the underlying material – photocopy paper.

Legal licences with levy systems also cover a range of equipment that can be referred as ‘digital reprography’ equipment: scanners, multifunctional devises, printers, CD/DVD burners and PCs. The applicability of the levy systems to the digital environment has been widely discussed, owing to emerging business models including digital rights management systems. Whereas rightsholders and RROs as their representatives fully support new business models in the digital environment, and are in favour of DRM systems and their further development, they are at present only a partial solution. In the print and publishing sector, especially, most material is still in paper form, and thus outside the applicability of DRM systems. These materials can easily be digitised, for instance by scanning, and used further in the electronic chain.

Thus, for some years to come the digital levy systems and evolving DRM systems will need to work side by side, in a complementary manner.

Case study 1: REPROBEL in Belgium

The equipment levy functions as follows: producers, importers and (EU) intracommunity purchasers (contribution debtors) have to pay a fixed amount for all photocopying devices – copying and fax machines, duplicators, office offset machines and scanners – that come into the Belgian market.

The operators’ levy 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. The law considers them ‘remuneration debtors’. They are mostly enterprises, copyshops, government institutions, schools, associations, independent workers, professionals and individuals.

The revenue collected by REPROBEL is interesting, as some 60% comes from the operator levy and 40% from the equipment levy. This is due to the inclusive coverage of the operator fee.

Case study 2: CEDRO in Spain

The law provides only for an equipment levy. Article 31 of the Spanish Copyright Act states: “The reproduction of the work may be carried out with no specific and prior permission of the right holder when it is made for the private use of the copier and these copies are made neither for profit nor for collective use.” Article 25 provides for compulsory remuneration to the rightsholders as compensation for private use of these copies (emphasis added). The Royal Decree (1434/1992) states that copies cannot be considered private copies if they are made in establishments offering reprography services to the public, or if they are made in establishments that have copying machines available to the public. The fee is established by law and covers photocopyers, multifunctional devices and scanners (September 2004).

Since no operators’ levy is included in the Spanish legislation, the Centro Español de Derechos Reprográficos (CEDRO) operates a voluntary licensing system outside private copying. CEDRO thus operates a mixed system that runs in parallel: an equipment levy to compensate rightsholders for private copies, and voluntary licenses for users who need to obtain non-private copies.
All Models can be Successful

As a new RRO, you can dwell on the experiences of existing organisations, combine the positive aspects of different systems, and avoid the hurdles as far as possible.

Experience has shown that all operational models can bring in substantial revenue to the benefit of authors and publishers. During the year 2004\textsuperscript{10} the total domestic collection for reprography and certain digital uses by RROs around the world amounted to more than 500 million US Dollar.

\textsuperscript{10} Figures refer to the year 2003/2004 or 2004/2005 depending on the financial year
Examples of existing organisational structures

Tasks and Organisational Structures of RROs

As in any other type of activity, an RRO has to examine the market, identify its core activities and find a way to structure them efficiently.

As set out in Chapter 2, when you write your business plan, you have to undertake a thorough market analysis to assess the needs of rightsholders and users. On the rightsholder side, the size and structure of the publishing industry is important. On the user side, the number of potential licensees is important.

It may be feasible to examine how other collective management organisations function and what rights they manage. CMOs exist in 110 countries, so that there is a good chance of there being one, or several, in your country. Many CMOs work in the field of music, managing the rights of composers, lyricists and music publishers or of performers and phonogram producers. The experiences of existing CMOs may provide you with useful information, although there are differences regarding the type of activities, rightsholders and licensees.

Scope of Activities of an RRO

As an RRO you might manage only one right or a bundle of rights; the bundle of rights might pertain to only one industry/cultural sector or several of them (text-based industries, the audio-visual sector, visual art and so forth). Your territory may be only your own country, but it may be also a region.

In short, you have to identify your market by product and by region. Will the management of one right produce enough revenue to sustain your business? Which geographical dimension should your market have? There is no single solution to this decision. Different RROs have chosen different business models for a number of reasons. One very important element in your decision will be the needs of users in your country.

By focusing on one right you will develop a core competence in the management of this right. The business plan will be less complex than if you were to manage several rights: identifying the rightsholders and potential users may be easier, you can concentrate all your resources on acquiring and honing the necessary skills and knowledge to administer this right.

Managing a number of rights may on the other hand achieve economies of scale. The skills and knowledge you acquire might be easily transferable to the management of another right. You might be dealing with the same rightsholders and users. The additional administrative burden might be small in comparison to the revenue you can achieve by managing this other right. You have to make a cost benefit calculation to find out which rights you could usefully offer.

If you cannot achieve a reasonable cost benefit ratio from administering rights in your country because the potential market you have identified is too small, it might be possible to increase the geographical extension of your market over national borders. Because you are dealing with cultural goods, you have to take the cultural propensities of your neighbouring countries into account. It is much easier of course to create a common market between similar cultures with similar languages than to market a concept to a group of different cultures.

What rights are there?

Which rights you can manage depends upon which rights are available in your national law. As described in Chapter 3, the rights your national law provides are based on the stipulations in international treaties and – if applicable – in regional legislation. However, they still reflect the particularities of your country and may therefore differ from country to country.
Below you will find a list of rights RROs manage in different countries, based on mandates from rightsholders. RROs do not necessarily manage the entire right and do they not usually manage it exclusively. This list uses internationally harmonised terms as far as possible.

RROs might manage the following rights:

**Reproduction right** refers to a number of different uses where the work being is duplicated in one way or another. Reproduction rights for the purposes of publishing by printing are normally exercised by the publisher. Some RROs have mandates to license republication i.e. the publishing of an already published work in another context, e.g. reproducing a text in a company newsletter.

A work may be reproduced by reprography, a process which results in a copy of published material on a graphic surface such as paper: a photocopy, a fax or a print. A work may also be reproduced digitally, i.e. a digital copy is made from a digital or paper original by scanning, storing a file in a database and so forth.

**Right of communication** to the public covers any form of transmission or of making available for access by members of the public by wire or wireless means. This right is important in cases where the RRO’s mandate includes digital rights. It covers the transmission of content over the internet, for example as an attachment to an e-mail, or the posting of a work on a closed intranet.

**Public performance** means the right to perform a work at a place where the public is or can be present, or at a place not open to the public, but where a substantial number of persons outside the normal circle of a family and its closest social acquaintances are present. Reciting literary works such as poems, at an event, would constitute public performance.

**Public lending right**: where a library offers works for lending, legislation may include remuneration to the rightsholder. Many RROs, especially in Europe, deal with the public lending right.

**Mechanical reproduction right** means fixing content on sound recordings, or producing copies of sounds recordings. In the literary field, the production of so-called audio books would involve this right which may also be called the recording right.

**Remuneration from private copying**: where legislations foresee an exception for private copying, they often also foresee remuneration through a levy on copying devices. The type of device involved varies from country to country. In the field of audio and audio-visual private copying, this remuneration is frequently called a blank tape levy.

RROs, as collective management organisations, may be involved with different types of rights, as the above illustrates. Translation rights are generally individually managed by rightsholders and do not fall within the activities of RROs. Equally, moral rights stay with authors and do not belong to the rights that collective management organisations manage.

### Existing Organisational Structures

Some organisational structures and scopes of activities of existing RROs are listed below. The categorisation of rights is defined by the individual RROs and may therefore differ slightly from that in the previous chapter.

In many countries, there is a provision in the law that only one organisation may manage same right and/or same group of rightsholders. Especially but not only where this is the case, the RRO must observe the requirements of local and regional competition law.

**Reprography organisations**

Some RROs deal exclusively or primarily with reprography. In pace with the technological developments, many of these RROs also manage some digital uses:

- Bonus Presskopia, Sweden
- CADRA, Argentina
- CEDRO, Spain
- CEMPRO, Mexico
- CFC, France
- CLA, UK
- CLASS, Singapore
- Fjölis, Iceland
- HARR, Hungary
- HKRRLS, Hong Kong
- ICLA, Ireland
- JAMCOPY, Jamaica
- JARRC, Japan
- KOPINOR, Norway
- OSDEL, Greece
- Stichting Reprorecht, the Netherlands

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1. For details on the necessary mandates please refer to Chapter 5.2
2. Article 8 of the WIPO Copyright Treaty
General literary rights organisations

Many of the oldest organisations had their genesis in general literary rights organisations, which later began to deal with reprography as part of their activities.

- The Dramatic, Artistic and Literary Rights Organisation (DALRO) in South Africa was incorporated in 1967 and started collecting reprography fees in 1990. It is a multi-purpose collecting society that also manages public performance and broadcasting rights, and reproduction rights in works of visual arts.
- Literar-Mechana, Austria was incorporated in 1959 and has collected reprography fees since 1996. Other collection areas include public reception of broadcasts, cable retransmission, blank tape levies, mechanical rights, schoolbook remuneration and public lending right.
- ProLitteris, Switzerland started with broadcasting rights in literary works when it was incorporated in 1974. It now also manages reprographic rights, reproduction rights in visual art, rights of communication to the public, public lending rights, recording rights and blank tape levies.
- VG WORT, Germany was formed in 1958 and started to collect for reprography in 1965. It also manages the public lending right, private copying levies, video rentals and various secondary broadcasting rights.

Coalitions or ‘umbrella organisations’

The RRO may also be a part of a group of entities under which different groups of rightholders are grouped for joint management of various secondary rights. Such organisations normally have different units or departments for each licensing sector.

- Copy-Dan, Denmark is an umbrella organisation for several independent organisations, including COPY-DAN Writing. Other organisations under the umbrella deal with cable retransmission (COPY-DAN Cable TV), the use of recorded radio and TV programmes in teaching (COPY-DAN AV copies for education), blank tape levies (COPY-DAN Blank Tapes) and visual arts (COPY-DAN Pictorial Arts).
- KOPIOSTO, Finland started with reprography, and now also manages cable retransmission and blank tape levies in audiovisual works.

Multipurpose organisations

There are only few RROs which are true multi-purpose organisations covering several industry sectors. Because music was the first industry sector to develop collective management, the music CMOs are often the oldest collective management organisations, and in some countries it was the music CMO that decided to engage in licensing reprography.

- COSOMA, Malawi: After some 10 years of licensing musical works, it has established a project for licensing reprography. In 2004, the first licensing agreements were concluded with higher and further education institutions, among them the University of Malawi.
- COSGA, Ghana: The management of reprography under the CopyGhana Project was initiated under the auspices of this multipurpose organisation. CopyGhana has concluded its first licence agreement in November 2005 in the higher education sector.

Regional initiatives

In small countries it may be necessary to consider some form of regional cooperation, to make the licensing of reproduction rights economically viable.

- Some Caribbean countries (Jamaica, Trinidad and Tobago, Barbados and others) consider the feasibility of a regional RRO network. A study sponsored by IFRRO has described the legal requirements for such a network.
- Some small South Pacific Nations (Samoa, Solomon Islands, Tonga, Vanuatu, Cook Islands, Kiribati, Niue, Nauru and Tuvalu) are considering a regional approach to the collective management of copyright based within the Pacific Island Forum.
Mandates

Acquiring mandates is one of the first and most fundamental tasks of any RRO. There are different ways to acquire mandates from rightsholders or their representatives. The appropriate coverage of mandates is vital for an RRO.

The importance and meaning of mandates is explained in Chapter 1.8, being one of the very first tasks an RRO has to think about.

Most of the older RROs started with photocopy licensing and therefore their mandates from rightsholders may have been limited to reprographic reproduction. The acquisition of digital rights requires discussions with owners of rights, creators and publishers and, in many cases, new mandates. In cases where the individual management of rights is not possible or practicable, the services of an RRO have also proven to be beneficial in the digital environment.

The following list of options may give you some guidance on various possibilities that are available. All figures refer to the situation in autumn 2005, unless otherwise indicated.

Individual mandates

In many countries mandates are given individually from authors and publishers to the RRO.

- CCC in the United States has contracts covering permissions for millions of works from some 10,000 publishers and from hundreds of thousands of creators, either directly or through their publishers or other agents.
- As of September 2005, CEDRO in Spain has 6,985 authors and 1,060 publishers as its members.
- ProLitteris in Switzerland has 6,498 creators and 632 publishers as its members.

Mandates through authors’ and publishers’ organisations

Many RROs derive their mandates through authors’ and publishers’ organisations which are in turn mandated by their members. Participating authors’ and publishers’ organisations are members of the RRO.

- Bonus Presskopia in Sweden has 15 authors’ and publishers’ organisations as its members.
- JAMCOPY in Jamaica has ten member associations.
- JRRC in Japan has four organisations as members:
  - Council of Authors’ Societies (4,156 literary and 2,060 artistic authors and 4,917 photographers)
  - Copyright Council of Academic Societies (777 STM Societies)
  - Copyright Council of Publishers’ Societies (275 book publishers)
  - Copyright Council of Newspaper Publishers (63 newspaper publishers)
  - REPRONIG in Nigeria has seven member associations representing authors, publishers, artists, translators and newspaper proprietors

Combinations – organisations and individuals

Authors’ and publishers’ organisations are members of the RRO, but individual rightsholders are affiliated to the organisation and have given individual mandates.

- Access Copyright in Canada has 36 publisher and creator organisations as members and, as affiliated rightsholders, 6,408 creators (writers, photographers, artists and illustrators) and 586 publishers (newspaper, books, magazines and journals).
- ICLA in Ireland has received authority from authors through their organisations (the Irish Writers’ Union and the Irish Screenwriters & Playwrights Guild) and individually from publishers (over 135 book and periodicals publishers) and authors (over 100).
- KOPIOSTO in Finland has 45 member organisations and through them 46,000 individual mandates from rightsholders (authors, photographers, performing artists and publishers in all fields of creative work).

Existing licensing bodies

In certain cases, existing licensing bodies have jointly set up the local RRO and work closely with it.

- ALCS (the Authors’ Licensing & Collecting Society Ltd) and PLS (the Publishers Licensing Society Ltd) appointed CLA in 1983 as their agent to administer their members’ rights. In June 1998, CLA signed an agreement with the Design and Artists Copyright Society (DACS) to act as an agent for the licensing of the photocopying of artistic works such as photographs and illustrations in published works.
- HARR in Hungary has as its members three licensing bodies: ARTISJUS, MASZRE and HUNGART representing individual members in different fields.
Membership/representation

When the RRO functions on the basis of a legal licence, it normally serves all rightsholders in the given field, who need not all be direct members. A high representativity is, however, useful for the RRO.

• CAL (Copyright Agency Limited) in Australia has 22,757 members of whom 7,841 are direct members.
• VG WORT in Germany represents about 415,000 authors and 7,500 publishers

Representation of Different Types of Materials

Works of Visual Art and Photography

A lot of visual material is embedded in publications from where they can be copied. It is therefore essential to ensure participation from rightsholders representing works of visual and graphic art, illustration and photography.

Works of visual art and photography are used in many different contexts. They are frequently reproduced separately as postcards and posters, or shown in exhibitions or museum collections. Specialised CMOs for visual arts and photography function in many countries.

When visual material is reproduced in publications it can be copied in a similar manner to text. In order to be able to grant licences for both text and visual material, an RRO needs to have mandates from visual artists and photographers. This can take place through the participation of the specialised visual arts CMOs or their associations, or through individual mandates from visual artists and photographers. Visual artists’ organisations participate in different ways in reprography licensing and collection.

• In Germany, VG Bild-Kunst and VG WORT are both RRO Members of IFRRO. They share the reprography remuneration which is collected by VG WORT.
• In the United Kingdom, CLA acts as an agent for the Design and Artist Copyright Society Ltd (DACS) and collects the reprography remuneration on its behalf. DACS is an Associate Member of IFRRO.
• In Hungary, HUNGART is one of the three founding bodies of HARR.
• In Norway, associations of visual artists and photographers are members of KOPINOR.

Irrespective of the way of incorporation, it is important to ensure that the share to visual material is measured efficiently and corresponding remuneration is distributed cost-effectively. This can take place either directly from the RRO or through specialised visual artists’ organisations. Different ways of distributing photocopying revenue are explained in Chapter 6.4.

13 April 30, 2004
Musical Works

In most countries, special conditions apply to the copying of sheet music. The high vulnerability of print music needs to be taken into account by carefully defining the limits of photocopying.

A recent European Union Directive\(^{14}\) takes into account the special position of sheet music. For instance, in Austria, the amendment of the Austrian Copyright Act (the implementation of the EU Information Society Directive) came into force as of 1 July 2003. Instead of a legal licence, an exclusive right for the photocopying of sheet music is stipulated.

Specialised organisations exist in some countries for licensing photocopy access to musical works in the form of sheet music.

- In France, both CFC and Société des Éditeurs et Auteurs de Musique (SEAM) have been authorised by the Ministry of Culture to function as collective management organisations under the compulsory collective management system.
- The Australasian Mechanical Copyright Owners’ Society (AMCOS) represents music publishers and operates in Australia and New Zealand. AMCOS has set up a voluntary music reprographic licence in primary and secondary schools in Australia to allow schools to photocopy music beyond the limits of the statutory licence, for educational purposes (in New Zealand there is also a voluntary licence). Both licenses include specified limits to the photocopying of print music.
- Christian Copyright Licensing, Inc. (CCLI) operates in the USA, Canada, UK, Australia, New Zealand and South Africa, licensing churches in these countries.

In KOPIOSTO, Finland, associations of music authors and publishers are members and have given a licensing mandate to KOPIOSTO. It started licensing church administration in 1983 and religious communities in 1997. The share of sheet music copying is high in music schools, and in other educational institutions as well.

Newspapers and Similar Publications

Newspapers and similar publications are frequently photocopied by all user groups, especially in trade and industry, services and professions.

In many countries, journalists and publishers participate in the work of an RRO which is mandated to license the copying of newspapers, magazines and similar periodicals but there are still many countries where the participation of rightsholders in these publications needs to be addressed.

The legislative and/or contractual situation of journalists differs from country to country, and it may, further, be different for employed journalists and freelance journalists.

In the United Kingdom and Ireland, there are two separate organisations, the Copyright Licensing Agency (CLA) and the Newspaper Licensing Agency Ltd (NLA) and the Irish Copyright Licensing Agency (ICLA) and the Copyright Licensing Ireland (CLI) respectively.

Internal and External Control

As RROs are normally private entities, this nature should be reflected in both internal and external control.

In some countries statutory or parastatal CMOs have been created, sometimes as an integral part of the government’s Copyright Office. This poses a delicate issue of balance. While RROs should in general be firmly planted in the private sector and be managed and owned by rightsholders, the state may play an important role in supporting the RRO. In many countries it would be difficult to set up an RRO without the active support of the Government. This should first and foremost take the form of providing an adequate legal framework, but it may also consist in promoting the RRO and awareness raising. Even where government involvement goes beyond this, rightsholders should still play an active management role.

Internal control

It is important to emphasise that an RRO functions as a trustee or an agent of rightsholders. Internal control and the highest decision-making power are normally in the hands of rightsholders: authors, publishers and their representatives.

RROs are naturally subject to legal requirements covering their company form, whether the law of associations, company law or equivalent. Such legislation also governs the way rightsholders can exercise control over their RROs.

Transparency and accountability are important issues that RROs need to address. Some CMOs have established various regulatory instruments to govern their activities and to ensure good governance. Sometimes these are codified in the form of codes of conduct or best practices, which may apply to one RRO or to all CMOs in a given country. IFRRO is working on a Code of Conduct for its members.

To take an example of the latter, the Australian Code of Conduct is a good example resulting from negotiations between all CMOs. This code of conduct covers:

- Introduction (background, scope and objectives).
- Obligations of collecting societies (legal framework, membership, licensees, distribution of remuneration and licence fees, collecting society expenses, governance and accountability, staff training, education and awareness).
- Complaints and disputes.
- Publicity and reporting.
- Monitoring, review and amendments.
- Definitions and interpretation.

External control

The State may have a role to play in collective management. Supervision of an RRO may be based on copyright legislation or special legislation concerning collective management.

Government authorisation/approval

The most common requirement is that the RRO needs to be authorised or approved by the relevant authority. Application may be made after the RRO is legally established as an as-

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sociation, company or equivalent. This approval is a prerequisiste for starting RRO activities.

There may be many aspects that play a role in the Government's consideration, one of the most crucial being whether the RRO is representative is its field of operation.

- The Ministry of Culture in Denmark has approved COPY-DAN Writing to function as the national RRO.
- The National Copyright Directorate (Dirección Nacional de Derecho de Autor), a special body of the Justice and Interior Ministry in Colombia, has approved CEDER to function as the national RRO.

General Supervision of Activities

General legislation on collective management of copyright in general, including reprography, exists in some countries.

- The German Patent Office has responsibility for overseeing the operations of collective management organisations, based on a special law concerning the activities of collective management organisations\(^\text{16}\). This legislation has been in force since 1965.
- In France, CMOs are subject to the approval of the Ministry of Culture, renewed every five years on the basis of the CMO's by-laws, diversity of members, management and results. CMOs are under the supervision of the Ministry of Culture, which controls the equitable treatment of all rightsholders whether or not they are members of the CMO. In addition, legislation entered into force in 2001 established a specific commission under the supervision the Cour des Comptes (court in charge of the audit of public finances) for the control of the CMOs' finances and management, including the collection and distribution of royalties.
- In Japan, the Law on Management Business of Copyright and Neighbouring Rights has been in effect since 1 October 2001. The law introduced a registration system for those who engage in the management of copyright, with the aim of ensuring fair operation and facilitating the exploitation of works.

In some countries, supervision includes ongoing reporting requirements, such as providing the Annual Report and information about new tariffs.

Within the European Union, the Commission issued a Communication on Management of Copyright and Related Rights in the Internal Market in April 2004. The Communication concluded that, while ordinary EU laws continue to apply to the activities of CMOs, some further legislative action is needed by the European Union to achieve a genuine Internal Market. A legislative instrument on certain aspects of collective management and good governance of CMOs may be introduced.

Special Dispute Settlement Mechanisms

In some countries, a Copyright Tribunal or Board can determine or regulate fees to be paid by the user. The role of this Tribunal may vary. Sometimes its authority only becomes effective in the event of a failure to agree on payments between the RRO and the potential licensees. In other countries the RRO files licence terms (including payment) with the Board and if no objection is received from the users in a set period, those terms become binding on all copyright users in that class.

In the UK, licensees can refer disputes over licences to the Copyright Tribunal, whose decisions are binding on both parties. As a result of the tribunal decision to include artistic works in the blanket fee, CLA extended its agency agreement with DACS in 2002.

In Australia, the Copyright Tribunal can determine the rate of payment for educational and government licences in the event of a failure to agree between the RRO and the user. The Government has established guidelines for the Tribunal to take into account if and when it is called upon to set the fees. Certain factors provide a useful checklist in determining the appropriate fee:

- The nature of the works copied;
- The need to ensure adequate incentive for the production of educational works in Australia;
- The purpose and character of the copying;
- The effect of the copying on the market for, or value of, the material copied;
- The special circumstances of external students;
- Any unremunerated contribution by educational institutions to the creation of the material copied.

As explained above the arbitration tribunal of the German Patent Office functions as an Arbitration Body in cases of disputes concerning legal licences. The decisions of this Arbitration Body are, however, taken to normal courts, if either party is not satisfied with the decision.

In some countries, the law provides for mediation. Under the Norwegian Copyright Act, the RRO as well as the user is entitled to call for mediation by the Office of the National Mediator. Mediation is quite often called for during major licence negotiations. If both parties agree, they may also bring the dispute to a Statutory Arbitration Board, which was initially set up for remuneration disputes under legal licenses (this has, however, not happened so far).

\(^{16}\) Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Urhreberrechtswahrnehmungsgesetz)
RRO operations in a Nutshell

RROs function as a facilitator between rightsholders on one hand and users on the other. Operations can be grouped into two categories: services to members and services to clients.

A general summary of tasks of any CMO, including RROs, includes:

- Monitoring where, when and by whom works are being used;
- Negotiating with users or their representatives;
- Granting licences against appropriate remuneration and under sound conditions;
- Collecting remuneration, and
- Distributing it to rightsholders.

From the members’ perspective the following are important:
- Understanding and trusting the process;
- Confidence that the process is effective and more efficient than alternatives;
- Confidence that they are receiving fair and equitable payment for use of their works;
- Confidence that their interests are respected.

The users as clients place importance on:

- Confidence that they can use the works;
- Understanding and trusting the process;
- Convenience and security of the process;
- Trusting that their cost is reliably calculated.

The operations of an RRO can be described in a schematic way by using the example of Copyright Agency Limited (CAL) in Australia:

The operations are enabled by policies, process, systems and people.

RRO operations are discussed below in more detail. Membership issues, being one of the first and foremost tasks of any RRO, are covered by Chapter 1.6.

Fig. Top Level Schematic of CAL’s Operations
Data Collection and Statistical Surveys

An RRO needs to identify which works are used, as well as when, where and by whom such use takes place. This information is necessary for collection and distribution of remuneration.

Licensing agreements between the RRO and the user establish two important licensee obligations: payment and reporting. It is important for users to understand what they are paying for and it is in the rightsholders’ interests to verify that the extent of copying does not go beyond what is necessary to meet users’ needs. Similarly, a responsibility for monitoring copying levels affords the user an opportunity to evaluate photocopying volumes and usage patterns.

RROs obtain relevant usage data in a variety of ways. In general, the following options are used:

- **Full reporting**: the user provides the RRO with details of actual copying in each instance;
- **Partial reporting** based on sampling: a subset of users reports their copying over a given period of time;
- **Statistical surveys**: the copying habits of users are measured at given intervals.

Statistical surveys are in principle used for one or both of the following purposes:

- Determining prices, i.e. money IN
- Determining distributions, i.e. money OUT.

The design of the survey may be different in determining the tariff (money in) and distribution (money out).

There exists a variety of different methods to carry out statistical surveys, such as:

- Physical, by providing an extra copy;
- Diary;
- Questionnaire;
- Interview, either in person or by phone;
- Research.

Behavioural studies may be important to understanding the market and to learning more about customers. Such studies may be helpful in product development and may provide valuable information for authors and publishers. Copying behaviour and attitudes of users may be studied by interviewing teachers, students or company employees.

A recent Argentinian study\(^{17}\) revealed that 10% of university students have not read a single book during the previous year. Of those students who did read books, 37% read from photocopies and only 63% directly from books. Some 2,500 million pages were photocopied in universities (converted to an equivalent number of books of 350 pages each, this represents 7 million books). It is clear that this has an enormous impact on the market.

Different methods are employed to meet different needs. Irrespective of the method, the surveys must be statistically valid, neutral and confidential. To ensure confidentiality, surveys are often carried out by independent institutions. Completeness versus costs is of course a relevant consideration, especially for emergent RROs.

**Sebastian Bloj of CADRA:**

“After two years of operations, we knew we needed more information in order to improve our pricing and our distribution system, and to increase our income. We needed to understand the market better, the number of copies made, where they were made, and the purpose for which they were made.

We decided to carry out a statistical survey. Our main licensing focus is the educational sector, so we concentrated our survey on this sector.

We used questionnaires and interviewed university students. Without entering into details of the survey (a Spanish version of which is available on our web site) I want to tell you about the benefits of the study. We learned about the environment and the reality of photocopying in the university sector. It’s like taking a photo of the situation. We obtained a lot of valuable information such as how many books students read per year, why they make photocopies of copyrighted materials, and how many, where they make them, and the economic impact of the photocopies in the book sector.

We drew valuable conclusions for our awareness activities. We found that we must focus much more on teachers because 75% of the students make photocopies as recommended by their teachers. We also learned that 42% of the students believe that they do not need authorisation to photocopy copyrighted material. This showed us how urgently we have to make them aware of copyright and how it really works. Finally, another major benefit of the study was the publicity we gained: many newspapers, magazines and radio programmes were interested in spreading the survey results. This type of activity helps us to reinforce our credibility and reputation – not only with users but also with rightsholders.”

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**Note:**

17. 2005 study made by CADRA
Case Study 1: CLA in the UK

CLA licences require licensees to participate in a data collection exercise. Distribution of the licence fees to identified copyright owners is supported by data collection. The exercise may take various forms, some of which – a record-keeping activity, a questionnaire survey and an information audit – are described below. Different methods are employed to meet different needs.

The record-keeping survey involves recording, over a period of weeks, the photocopying of copyright works carried out at preselected photocopiers, agreed in advance with the licensee. It is a simple operation. Users of the machines will be asked to make an extra copy of just one page (the title page or imprint page) that carries the unique international serial number of the work from which they are copying. They then record the number of pages copied from the work and the number of multiple copies made onto an adhesive label supplied by CLA. After fixing the completed label to the photocopier, the information is transferred to a digitised catalogue of copies which is kept by the employee over a short period.

A questionnaire survey consists of a series of short and informal face-to-face interviews about photocopying practices and only involves an agreed sample of employees. The interview is based on a diary of photocopying of copyright works kept by the employee over a short period.

Information audits draw on the licensee’s library holdings and subscriptions, including departmental subscriptions. In conjunction with questionnaire surveys, this data enables CLA to calculate fee distributions to individual rightsholders.

Where scanning/digitisation of copyright works is permitted under the licence, licensees may be required to record bibliographic details and levels of use. All information collected from licensees is held in the strictest confidence by CLA.

Case Study 2: Access Copyright in Canada

Access Copyright requires copying data to form the basis of an equitable distribution of licence money collected from schools across Canada18. The methodology used in sampling is the extra copy method.

For each instance of copying under the licence, teaching staff and other personnel are asked to:

- Make an extra copy of the page containing the most bibliographic information about the published work copied;
- For copies made of published works containing works of more than one creator, in addition, make a copy of the first page of the individual extract copied to identify the creator, and attach it to the previous copy;
- Complete and attach to the extra copy a sticker recording basic numeric and other information about the copying instance; and
- Deposit the extra copy in a box provided by Access Copyright.

Information on the Extent of Copying

The extent of copying forms a basis for licensing negotiations and tariff calculations. It is important for an RRO to know at an early stage how much photocopying takes place.

Information on the extent of copying is of paramount importance in licence negotiations. Often, when first licence agreements are being negotiated the RRO is not aware of real copying volumes and the licence is based on estimated amounts. In such instances it is important to specify in the agreement that verified volumes will be used in subsequent negotiations. In most cases, surveys show much higher copying than had been estimated at first.

Studies from different countries show the following results from university copying:

- 1,272 copies per university student per year in universities in Norway;
- 465 pages per university student per year in Spain;
- 400 pages per university student per year in Australia.

Case Study 1: CAL in Australia

The rate per student that applied to CAL’s early arrangement was based on the educational institutions’ estimates of their copying. The sample survey of copying showed much higher copying than had been estimated by licensees. CAL was therefore in a position to renegotiate the licence payment. Once the licence payments were based on actual levels of copying, CAL turned to renegotiate the price per page. Being unable to agree on an increased payment rate with the licensees, CAL then applied to the Copyright Tribunal to set new

18 Three-year bibliographic sampling plan (K-12) annexed.
per page rates for both schools and universities. The effects of this strategy have been a significant increase in licence fees paid to rightsholders.

The extent of different types of material varies greatly in different user groups. In educational premises, copying of non-fiction material, including teaching material, is a major part of all copies.

**Case Study 2: KOPIOSTO in Finland**

KOPIOSTO classifies protected and payable material into five groups: non-fiction, fiction, press, sheet music and illustration. Based on statistical surveys conducted in each user category and negotiations, member organisations decided to divide remuneration in 2003 as follows:

<table>
<thead>
<tr>
<th>Licensing Areas</th>
<th>Education</th>
<th>Music schools</th>
<th>State administration</th>
<th>Municipal administration</th>
<th>Church administration</th>
<th>Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-fiction</td>
<td>57.3%</td>
<td>5.10%</td>
<td>35.00%</td>
<td>47.80%</td>
<td>22.80%</td>
<td>25.79%</td>
</tr>
<tr>
<td>Fiction</td>
<td>4.55%</td>
<td>-</td>
<td>1.00%</td>
<td>1.00%</td>
<td>2.70%</td>
<td>1.92%</td>
</tr>
<tr>
<td>Press</td>
<td>12.00%</td>
<td>1.00%</td>
<td>45.00%</td>
<td>35.40%</td>
<td>9.80%</td>
<td>47.12%</td>
</tr>
<tr>
<td>Sheet music</td>
<td>6.73%</td>
<td>92.20%</td>
<td>-</td>
<td>-</td>
<td>58.20%</td>
<td>-</td>
</tr>
<tr>
<td>Illustrations</td>
<td>19.69%</td>
<td>1.70%</td>
<td>19.00%</td>
<td>16.00%</td>
<td>6.50%</td>
<td>25.17%</td>
</tr>
</tbody>
</table>

**Licensing**

**Licensing Areas**

Enormous numbers of photocopies are made every year in educational institutions, by governments and other public bodies, within industries and associations as well as by private individuals. Where to start and with whom to negotiate are relevant considerations.

When deciding which category of users to target first, the scope of existing copyright legislation and case law interpreting it, as well as local infrastructure, play important roles. In most countries, RROs began by licensing educational institutions. In countries where high-volume photocopying takes place in copyshops, it is important to establish that copyright legislation supports licensing in this sector.

Some examples of different licensing areas are described below. Examples of licences are annexed.

**Education at different levels**

**Case Study 1: COPY-DAN in Denmark**

COPY-DAN started licensing educational institutions the year it was founded, in 1980. Extended collective licensing, in effect since 1 July 1985, supports voluntary licensing which covers copying at primary and secondary schools, technical and commercial schools, teacher training colleges, universities, music schools, folk high schools (cultural schools), nursing schools, examination papers, agricultural schools, other institutions of higher education as well as private companies offering education as the main part of their business.

COPY-DAN has extended its licence to include scanning of published printed works into closed networks, such as intranet, for educational purposes. Scanned documents must be stored in a format which prevents manipulation. Access to the databases must be limited by use of a password.

Most of the agreements are negotiated with representative organisations. For instance, the agreement between COPY-DAN and the Union of Municipalities is a recommendation agreement and every municipality concludes an individual agreement with COPY-DAN, based on the recommendation.

**Case Study 2: CAL in Australia**

In Australia, the statutory licence for educational institutions is available to schools, institutes of technical and further education, universities and institutions assisting people with print and intellectual disabilities.

The Copyright Act sets out the rights and obligations for institutions relying on the licence. These include the opportunity for agreement with CAL on certain operational issues such as the amount of the licence fee. In the event of disagreement, the Copyright Tribunal can determine the licence fee and also the monitoring arrangements for identifying the copyright owners.

The educational statutory licence covers the sale of books of readings to students, provided there is no intention to make a
profit. It also allows electronic reproduction and/or communica-
tion of works to users without prior consent of, but against
remuneration to, rightsholders.

CAL's first licences were issued to educational institutions
able to copy under the statutory licence. The first licence
agreement with an educational institution was signed in
1988. Since then, licence agreements have been entered
into with over 10,000 educational institutions in Australia.

Case Study 3: CCC in the United States

CCC offers a variety of services to the academic community
through its Academic Licensing Services (ALS). The oldest
of these services provides a centralised system for the ex-
change of rights and royalties related to the creation and pro-
duction of photocopied academic course packs for students
at royalty fees set by the rightsholders. Now fully accessible
through the web\textsuperscript{13}, the ALS course pack licensing service
enables professors and course pack producers to automati-
cally search and select from CCC’s catalogue of authorised
rightsholders and works; determine the price for each item
to be included in the course packs; build a course pack; and
generate invoices. This system enables CCC to license on a
“24/7” basis.

Through its Electronic Course Content Service (ECCS) CCC
licenses electronic storage, distribution and display of copy-
righted materials in the academic sector for electronic re-
serve access to digital course content and for distance edu-
cation. Course materials can be cleared for placing on the
institution’s network, from where registered students with a
password may access these materials from remote locations
on or off campus.

Case Study 4: Access Copyright in Canada

Access Copyright has offered a Post Secondary Electron-
ic Course Content Service (PECCS) since 1999 to provide
universities with electronic reserves licensing. Most publish-
ers and creators have now granted digital conversion and
importation rights through a new
\textsuperscript{13}www.copyright.com

through the web, the ALS course pack licensing service
enables professors and course pack producers to automati-
cally search and select from CCC’s catalogue of authorised

rightsholders and works; determine the price for each item
to be included in the course packs; build a course pack; and
generate invoices. This system enables CCC to license on a
“24/7” basis.

The survey indicated significant levels of copyright works
and provided an objective basis for tariff negotiations. In conjunc-
tion with Copibec, a joint

organisation COSSMA started

with the government of Jamaica
for photocopying in the public sector in 2003, covering a
three year period.

Case Study 9: CEMPRO in Mexico

CEMPRO has concluded a licensing agreement with the
Mexican Supreme Court covering its 43 libraries, throughout
the country.

Trade and industry, services and professions

Case Study 9: CLA in the UK

The UK Copyright, Designs and Patents Act, 1988, was
changed when the UK implemented the EU Directive on
copyright and related rights in the information society. The
first of the three changes addresses the copying of copyright
material for commercial research that henceforth would re-
quire the permission of the rightsholder(s) or to be carried out
under licence. The UK Patent Office Guidelines to the busi-
ness sector advised that “most research being undertaken

\textsuperscript{13}www.copyright.com
by a business conducted for profit will be for a commercial purpose and so copying in connection with this research will fall outside the scope of the exceptions (sections 29, 38, 39 & 43 of the Copyright, Designs and Patents Act, 1988)".

Therefore, building on the new business licence, launched in 2002, and to prepare for the implementation of the Infosoc Directive in the summer of 2003, CLA introduced a new small business licence. For a simplified flat fee, businesses employing up to 50 people are authorised to make, and to e-mail company-wide, scanned copies of works published in analogue form.

Case Study 10: JRRC in Japan

Licensing began in 1992 with business and professions, and the major part of photocopying revenue collected by JRRC (Japan Reprographic Rights Center) still comes from these sources.

Case Study 11: CAL in Australia

CAL offers a voluntary press clipping licence that allows agencies to scan, store and distribute newspaper articles to clients. The downstream licence allows government and corporate clients of these agencies to distribute the clips internally by e-mail or intranet.

Case Study 12: CFC in France

In France, CFC licenses both press clipping agencies for distribution of digital press reviews to their clients, and companies and government for displaying these digital reviews on their intranets.

Copyshops

Case Study 13: CADRA in Argentina

CADRA began collecting from copyshops in 2002. It no longer issues licences to copyshops within universities, but only to those located outside.

Case Study 14: CEDRO, Spain

Even if surveys conducted by CEDRO show that the percentage of copies of copyright material in copyshops is not among the most significant, CEDRO decided to consider this sector one of the main licensing targets because of its public visibility. The aim was not only to make sure that copying activities in copy shops were fully legitimate, and to increase remuneration to rightsholders, but also to convey the message to the general public using copyshop services that there are some legal limits to that activity. As of 1 April 2005, 400 copyshops have obtained a licence from CEDRO.

Licence Agreements

The very basis of a licence agreement rests in mandates from rightsholders. RROs can only license such uses as they are mandated to grant. An RRO licence typically grants authorisation to copy a portion of a publication, in a limited number of copies, for internal use of institutional users.

The licence agreement specifies the scope of the licence: the repertoire of the licensor, who is allowed to copy, for what purposes, under which terms and conditions, and how the licensee reports usage.

What repertoire can the RRO offer?

The repertoire of an RRO comes from its mandates, both national and foreign. In some countries, an RRO may be mandated by another national collective management organisation, for instance the representative of works of visual art. As a result, the user obtains authorisation to copy both repertoires in a single licence.

In Spain, the licence of CEDRO also includes the repertoire of VEGAP, on the basis of a cooperation agreement between the two organisations.

What type of a licence is in question?

- Blanket licensing (also called repertoire licensing) gives a user a permission to photocopy from any publication in the RRO’s repertoire within the limits of the agreement. This method is common in reprography licences that cover large sectors.
- Transactional licensing (also called work-by-work licensing or use/title/fee-specific licensing) gives a user permission to photocopy certain defined works. This method is often used in licensing course packs and similar targeted compilations. Transactional licensing is widely used in the digital environment.

What is the purpose of copying?

- Photocopying in the education field is a supplement to the normal supply of educational material, not a replacement or substitute for acquisition of textbooks and other educational materials.
- In administration and businesses, the purpose of photocopying is internal information and research. Copies are used also in internal training. Copying may take place by employees of the company.
- Copying for external use and commercial purposes is in most cases excluded.
What is the scope of the licence?

- The rights granted in the licence form the scope of the agreement.
- In photocopying licences reprographic reproduction rights are granted, with an adequate definition of reprography.
- RRO having digital mandates from rightsholders may include electronic copying and digital distribution of material.

What terms and conditions exist?

The licence agreement sets out the terms and conditions for permitted copying. In general, the copying of whole books and other publications is prohibited. In case of out-of-print books, special arrangements may be agreed upon with the consent of rightsholders.

It is important to discuss the limits of licences with rightsholders, to gain their confidence in the appropriateness of the licensing system.

The limits of copying differ in various countries. Copying is limited to a specified portion or a chapter of the work, ranging normally from 5 – 25% of the publication. The number of copies from a single work may also be specified. It is also important to specify the period of time before a further percentage from the same publication can be copied again.

Some examples:

- In Australia, the educational statutory licence is restricted to 10% of the pages in a publication, or one chapter. The whole work can be copied if it is unavailable for purchase.
- With Bonus Presskopia, Sweden, the general rule is that copying more than 15% of the publication is not permissible, and never more than 15 pages from a single book, booklet, magazine or other publication (the so called 15/15 rule).
- With CEDRO, Spain, 10% of the material may be photocopied in most cases. A single article from a magazine or periodical may be copied in full even if it is longer than the percentage. Libraries may copy 20%.
- With KOPINOR, Norway, the general rule is 15% of the publication and maximum of 25 pages of works still in print. In several major agreements one may copy up to one single chapter from a book. For out of print works the limit is 30% and a maximum of 50 pages.

Copying of especially vulnerable material, such as sheet music, may be subject to special conditions.

Tariffs

The licence agreement also specifies on what basis remuneration is to be paid. Common parameters are a price per page, a price per student or employee and a price per machine.

The rate of payment, or tariff, may differ depending on the type of copyright material or type of copying. For instance, the tariff for a loose photocopy may be different from a copy made for a course pack.

The most common tariff structure is a price per page or a price per student or employee or a combination of the two. Tariffs may differ in different user categories, such as education, administration and business.

In practice, the calculation of the fee can take place as follows:

- Users report, or statistical surveys indicate, how many pages of copyright protected material are being copied.
- The volume of copying is divided by the number of students, leading to the copying volume per student.
- The number of pages per student is multiplied by the page price.
- The result is the per-student fee to be paid.

As an example, if 350 pages are copied for each student per year and the page rate is 2.50 euro cents, the per-student fee to be paid would be 8.75 euro per student per year. This figure is then multiplied by the number of students at a particular institution so that each institution pays a licence fee relevant to their use of copyright material. In fee calculation, it is also important to take into account that copying is carried out by the staff of the institution, which affects the calculation.

Photocopies are normally used as complementary teaching material. A comparison with book prices may give a concrete idea about the size of photocopying fees. In Australia, for example, where some 400 photocopies are made for each student each year, the number of photocopies per university student per year is equal to two books.

Case study 1: KOPINOR in Norway

KOPINOR’s basic rate\(^\text{23}\) for books, journals and sheet music is 8 euro cent (NOK 0.642) per page. As central agreements and model agreements with users may reduce costs, discounts from this basic rate may be applicable. Thus, the rate is 5 euro cents (NOK 0.402) in universities and 4.3 euro cents (NOK 0.343) in schools.

\(^{23}\) Tariff for the year 2005.
Case Study 2: ProLitteris in Switzerland

ProLitteris' tariff is 2.4 euro cent (CHF 0.035) per copyright-protected page. Statistical surveys show how many pages are being copied in different user groups. In Switzerland, the following fees per student are applicable:

- Universities: 10.50 euros (CHF 16) per student per year based on surveys results that 35% of the material copied in universities is protected by copyright.
- Upper secondary schools: 3.05 euro (CHF 4.60) per student per year based on surveys results that 30% of the material copied in upper schools is copyright-protected.

Case study 3: CLA in the UK

In 2002, following the referral of CLA’s higher education licence to the Copyright Tribunal, the Tribunal ruled that a fee of GBP 4.00 per full time equivalent student per annum should be paid by the HE sector for copying under the revised terms of the HE photocopying licence. The fee is index linked and the 2005 rate is GBP 4.42 or EUR 6.48.

Case study 4: CEDRO in Spain

CEDRO’s tariff for copy-shops combines:

- The number and capacity of the machines in the copyshop. A different amount is paid for every machine, according to its capacity.
- The location of the copy shop. Three different tariffs are established, for copyshops in cities without university colleges or faculties (A), copyshops in cities with university colleges and faculties (B), and copyshops located within premises of university colleges or faculties (C).

Certain limits on the fee to be paid are applied. The following shows CEDRO’s tariffs (EUR) for copyshops in 2005, combining both criteria:

<table>
<thead>
<tr>
<th>Type of machine</th>
<th>Copy shop A</th>
<th>Copy shop B</th>
<th>Copy shop C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15 cpm</td>
<td>121,53</td>
<td>178,29</td>
<td>267,07</td>
</tr>
<tr>
<td>16 – 49 cpm</td>
<td>246,70</td>
<td>356,22</td>
<td>530,39</td>
</tr>
<tr>
<td>50 or more cpm</td>
<td>372,39</td>
<td>530,39</td>
<td>797,45</td>
</tr>
<tr>
<td>Limits</td>
<td>1,522,87</td>
<td>2,219,42</td>
<td></td>
</tr>
</tbody>
</table>

Collection through Equipment and Operator Levies

Remuneration for private copying takes place through levies on copying equipment supplemented by so-called operator fees. The fee relates to the type of equipment and its capacity.

The legal basis is defined differently:

- In Austria, the law covers equipment designed for reproduction by means of reprographic or similar methods.
- In Belgium, the law mentions appliances permitting the copying of protected works.
- In Germany, it specifies appliances intended for the making of reproductions by the photocopying of a copy or by some other process having a similar effect.
- In Spain, reproduction carried out exclusively for private purposes by means of non-typographical technical apparatus or instruments is covered.

The coverage or scope of equipment levies varies from country to country. It may cover private use only, or include personal use, research, educational and library use.

The equipment levy may cover one or all of the following devices: copy machines, fax machines, reader printers, scanners, multifunctional devices, printers, CD and DVD burners and PCs. The operator levy is a kind of user fee which may be payable by schools, colleges or universities making large volumes of photocopies.
Some examples of current equipment levies and operator fees are:

**Case Study 1: Austria**

The law does not permit copying of whole books or periodicals unless unpublished or out of print. The extent of permitted copying covers single copies for private and own use. Schools and universities are permitted to make and distribute copies for purposes of teaching or training in the quantities required for a specific class or lecture (except from works which are intended for teaching or training). Copying for the purpose of making available to the public is not accepted as own use. The tariff was established by a general agreement between relevant CMOs and organisations representing the machine and electronic industries:

<table>
<thead>
<tr>
<th>Copy machines</th>
<th>euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 9 copies per minute</td>
<td>10.80</td>
</tr>
<tr>
<td>70 copies and more per minute</td>
<td>364.04</td>
</tr>
<tr>
<td>Colour copies as above, but minimum</td>
<td>93.33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fax machines</th>
<th>euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Without scanner</td>
<td>5.56</td>
</tr>
<tr>
<td>With scanner</td>
<td>11.20</td>
</tr>
<tr>
<td>With laser/toner</td>
<td>22.41</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scanners</th>
<th>euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hand operated</td>
<td>3.95</td>
</tr>
<tr>
<td>Up to 12 per minute</td>
<td>10.56</td>
</tr>
<tr>
<td>More than 70 per minute</td>
<td>331.00</td>
</tr>
</tbody>
</table>

**Case Study 2: Belgium**

The law covers works fixed on a graphic or similar medium and copying for personal or internal use. The tariff, established by a Royal Degree, runs according to the capacity of the machine.

- The copy machine tariff varies from euro 4 to 1,500 according to the capacity.
- The scanner tariff varies with a percentage of the value (2% maximum) and from euro 1.70 to 80, depending on resolution.

**Case Study 3: Germany**

The law excludes sheet music, and essentially complete copies of a book or periodical. According to the German Act, Articles 53 (1), (2) and (3) single copies for private use by a natural person, or for own use, and copies of small parts of a book or individual articles for teaching in the quantity required for one class or examinations, may be made – subject, by Article 54a, to the payment of equitable remuneration by the manufacturers or importers of copying appliances (equipment levy) and specified operators of such appliances (operator levy).

The undisputed scope of the equipment levies covers photocopiers, fax machines, reader printers, CD and DVD burners and scanners. The arbitration court of the German Patent Office has held that PCs, printers and multifunction devices are also subject to the equipment levy, but these issues are now before the normal courts because the industry was not prepared to accept the arbitration decisions. At first instance the normal courts have confirmed that these devices are remunerable.

- The tariff for photocopiers varies between euro 38.35 and 306.78 according to the capacity of the machine. Double remuneration is payable for colour copiers.
- The tariff for fax machines is euro 10.22.
- The tariff for scanners varies between euro 10.22 and 255.60 depending on capacity. For hand scanners it is euro 4.09.
- The tariff for CD burners is euro 7.50, of which euro 5.50 is for audio and audiovisual material and euro 2 for reprography.
- The tariff for DVD burners is euro 9.81, of which euro 2.16 is for reprography (22.05%) and euro 7.65 for audio and audio-visual material.

**Case study 4: Spain**

The law only covers books and publications. Private copying remuneration covers only private use and provided the copy is not put to collective or profit-making use. Copies made in establishments offering reprographic services to the public (even if they are not made for profit) are not legally considered as private copies. Spanish law does not include stipulations on operator fees.

- The tariff for photocopiers varies between euro 45 and 222 according to the capacity of the machine.
- The tariff for scanners is euro 10 per machine.
- The tariff for multifunction devices is euro 16.67 per machine.
Distribution of Remuneration

Irrespective of the method of distribution, the aim is the same: to distribute licence fees to those whose works are copied. The goal is to maximise distribution to rightsholders and to minimise costs while maintaining sufficient accuracy.

A basic principle of collective management of individual rights is that remuneration should be distributed to rightsholders according to the actual use of their works. Thus, ideally, each rightsholder would receive individual remuneration according to the actual use of his or her work.

However, for practical and administrative reasons, this is often impracticable and other solutions have therefore had to be found. RROs often base their collection and distribution on some form of statistically obtained data collected from a subset of users over a specific period of time.

In principle, two main options exist in distributing photocopying remuneration: title specific distribution and non-title specific distribution.

Title Specific Distribution

As explained in 6.2, distribution can be based on different underlying data, with the following the main methods of achieving title-specific distribution:

- Full reporting.
- Partial reporting based on sampling.
- Objective availability, also called the possibility to be copied, or distribution on probability.

Full reporting

Full reporting means that a user records details of every copyright work copied. Full reporting is the ideal basis for distribution but may be perceived as burdensome by the user and may entail a heavy administrative burden and costs for the RRO.

The development of digital technology means that RROs may be able to move to full reporting in the future more often than currently.

Case study 1: CCC in the United States

CCC uses a variety of methods to collect and distribute remuneration. In so-called full transactional reporting a licen-
see maintains a record of each instance of copying. CCC then invoices according to each use at a price set by the rightsholder, and the revenue is distributed to rightsholders accordingly.

Common elements in transactional services are:

- They are case by case permissions (transactional licensing);
- Rightsholder-set-pricing with prices and rights per individual work;
- Works are cleared before use and clearance takes place online;
- CCC’s fee is 15%.

In practice, the process flows thus:

- The user searches for the work on the CCC website, and finds that it is available.
- The user gets a quick price – for instance $0.250 per page per copy.
- The user orders the work and fills in the required information – for instance 9 pages x 6 copies x 25 ¢ = $13.50
- The rightsholder’s remuneration is 13.50-15% = $11.48

Case study 2: CLA and document delivery in the United Kingdom

The first public body to be licensed was the British Library Document Supply Centre (BLDSC), in 1991. BLDSC supplies individuals with copies of documents by post or as encrypted pdf files for which copyright fees are payable. Organisations that register as account holders with BLDSC are sent copies by secure electronic delivery. If the requested document is intended for any kind of commercial use, copyright fees are payable.

Organisations and individuals based in the USA also pay copyright fees, which are set by the publishers of the works copied and therefore differ from publication to publication. But paying the copyright fee does not mean that further copies can be made without a further licence. Changes to the transactional licence fees received from BLDSC and from CLA’s transactional document delivery licences amounted to 8% of domestic income in 2005.

Partial Reporting based on sampling

In partial reporting, users report their copying during a certain period of time, or their copying is observed during a certain period of time. This method can also be called sampling, since distribution is based on a sample of actual copying. In homogenous usage areas, such as educational institutions, it is normally sufficient for only a subset of users to record their copying. This subset is then generalised, with the help of statistical methods, to represent all copying.

Case Study 3: COPY-DAN in Denmark

Five per cent of all schools covered by the school licence report all copying of copyrighted material to COPY-DAN for a period of 12 months. Reporting is done by submitting an extra copy. Collected data is registered in a database by COPY-DAN to obtain 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.

Distribution of analogue copies is based on this sample. In 2004, 45,000 different authors and 2,500 publishers received remuneration. The distribution for digital copying is based on full reporting, since electronic files contain all the necessary information.

Case Study 4: CLA in the UK

In the United Kingdom, CLA samples 2% of educational institutions for a period of six weeks. During the sampling period users must make extra copies. Sampling is not carried out on an annual basis, but every three to five years. Additional data is collected from a limited number of users reporting their copying. As explained in 6.2, the distribution is based on a combination of sampling and reporting data.

Objective availability/possibility of being copied/distribution on probability

Objective availability or the possibility of being copied is based on the assumption that all material existing on the market can be photocopied, and at some stage probably will be. This method is also called distribution on probability.

If it is impossible or impracticable to collect information from the users, distribution can be based on the principle of objective availability, a method of distribution often used by RROs that manage legal licences, especially levy systems. As it is well-nigh impossible to collect user data from private persons, this is a cost effective way of obtaining distribution data.

Rightsholders report their works and publications to the RRO, and remuneration is allocated to material on the market.

Case Study 5: ProLitteris in Switzerland

Rightsholders report to ProLitteris on their works: ISBN/ISSN, name of the publisher and of the author, title of the book or the article, circulation, number of pages, price, year of publication, genre (fiction, non-fiction, scientific work, scholarly textbook) and language. Calculation of remuneration is based on these parameters and each work gets its share of remuneration for a certain number of years.

The principles of domestic distributions are:

- Distribution is made only to reported works on condition that they have been published and have a price;
- The minimum print-run of books is 100 and of newspapers 500;
- Remuneration is paid for the same work for a certain number of years after publication (fiction 25 years, scholarly textbooks five years, non-fiction and scientific books and journals 10 years, newspapers one year);
- The calculation of remuneration for each work is made separately on the basis of reported data such as the number of copies, price, circulation and genre;
- The genres are given a factor. Fiction and newspapers rate 1, periodicals rate 2, non-fiction and scientific journals rate 4, scholarly books rate 5 and scientific books rate 7.

The following example is of an author who reports a scientific book he wrote:

<table>
<thead>
<tr>
<th></th>
<th>Report</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>A = number of pages</td>
<td>213 pages</td>
<td>3</td>
</tr>
<tr>
<td>B = price</td>
<td>283 CHF</td>
<td>7</td>
</tr>
<tr>
<td>C = number of authors</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>D = original version</td>
<td>yes</td>
<td>1</td>
</tr>
<tr>
<td>G = genre</td>
<td>scientific works</td>
<td>7</td>
</tr>
</tbody>
</table>

Value of points for books 2003 = 1.08

The calculation takes place as follows:

\[(A + B) \times C \times D \times G \times \text{value points for books} = \text{CHF 75.60}\]

The following example is of a publisher who reports a new scientific book:

<table>
<thead>
<tr>
<th></th>
<th>Report</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>A = number of pages</td>
<td>213</td>
<td>3</td>
</tr>
<tr>
<td>B = price</td>
<td>68 CHF</td>
<td>3</td>
</tr>
<tr>
<td>G = genre</td>
<td>scientific book</td>
<td>7</td>
</tr>
</tbody>
</table>

Value of points for books 2003 = 1.08

The calculation takes place as follows:

\[(A + B) \times G \times \text{value points for books} = \text{CHF 52.92}\]
In calculating the value of points, the total collected revenue for books and press is divided by the corresponding number of points in the category\(^22\).

**Case Study 6: VG WORT in Germany**

In Germany, independent surveys define the volume of copying in different locations (trade and industry, public administration, professions and service industries, copy-shops, libraries and universities) for different categories of protected works (scientific, technical and specialised books, scientific and technical journals, newspapers and popular magazines, pictures and graphics, fiction books and maps). Authors and publishers report their work to VG WORT and receive remuneration for each publication according to its category.

The location of copying machines is taken into account in Step 1:

<table>
<thead>
<tr>
<th>Location of copying machines</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade and industry</td>
<td>52.4%</td>
</tr>
<tr>
<td>Public administration</td>
<td>24.5%</td>
</tr>
<tr>
<td>Professions, service industries</td>
<td>21.0%</td>
</tr>
<tr>
<td>Copy shops</td>
<td>1.4%</td>
</tr>
<tr>
<td>Libraries, universities</td>
<td>0.4%</td>
</tr>
</tbody>
</table>

and the category of works copied is taken into account in Step 2:

<table>
<thead>
<tr>
<th>Categories of works</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Scientific, technical and specialised books</td>
<td>32.86%</td>
</tr>
<tr>
<td>Scientific and technical journals</td>
<td>34.97%</td>
</tr>
<tr>
<td>Newspapers and popular magazines</td>
<td>12.30%</td>
</tr>
<tr>
<td>Pictures and graphics</td>
<td>15.90%</td>
</tr>
<tr>
<td>Fiction books</td>
<td>3.61%</td>
</tr>
<tr>
<td>Maps</td>
<td>0.46%</td>
</tr>
</tbody>
</table>

The share for pictures, graphics and maps, minus an adjustment for illustrations provided by text authors, is passed to VG Bild-Kunst. The balance of the remuneration is allocated between different departments within VG WORT covering different broad categories of works, the share for fiction being allocated to the public lending right department, and disbursed with PLR distributions.

Each department has its own distribution plan, varying in the author-publisher split, social and cultural deductions, and the ways in which rightsholders are entitled to participate in distributions.

The author-publisher split has to be agreed between these two categories of rightsholders within VG WORT. VG WORT is required by German law to make social and cultural deductions. In terms of the statutes the overall level of these deductions may not exceed 10% but the deduction varies from department to department.

As a general principle, entitlement to participate in a distribution depends on the rightsholder reporting the publication of each relevant work published in Germany, usually by 31 January in the year following publication. Individual entitlement, as a portion of the amount available for distribution in each sector, is then calculated according to the distribution plan of the work concerned, for example the distribution for non-fiction and academic books for publishers: the entire amount available for publishers of these works is split in three equal shares: one for the number of titles, one for prices and one for the size of their turnover (with a cap of 2%, i.e. the sum distributed must not exceed 2% of the publishers turnover).

Assuming a total amount of 3,000 euro, each share would amount to 1,000 euro. The first 1,000 euro would be divided by the total number of titles, the second 1,000 euro by the prices etc.

In 2004, authors of scientific books (broadly defined) received EUR 380 per book, and authors of scientific journals EUR 2.80 per page. In all, 50,049 individual scientific authors received payments. Altogether, 2,678 publishers benefited from a scientific book distribution in 2004, and 795 from a journal distribution.

VG WORT also distributes levy remuneration to foreign rightsholders via bilateral agreements with other RROs. Separate statistical surveys are carried out from time to time to identify, for each category of works, the percentage of copying by language (and in respect of some languages, notably English, to identify the country of origin). Distributions are then made to sister RROs on a non-title specific basis\(^23\).

**Case study 7: CEDRO in Spain**

CEDRO collects remuneration from three sources: equipment levy (private copying), voluntary licensing and foreign RROs.

The domestic collection is distributed to foreign RROs, visual artists via VEGAP (the special visual artists’ CMO) and authors and publishers in Spain.

Every year the collections from the previous year are distributed among rightsholders in all the books published in the three previous years, all the periodicals published in the two previous years; and all the sheet music published in the five previous years.

\(^22\) For further information please refer to www.prolitteris.ch

\(^23\) For further information please refer to www.vgwort.de
The money is allocated to books according to their subject and price. The allocation of money to a single book according to its subject is made on the basis of a wide statistical survey on photocopying in Spain, conducted by CEDRO. It shows the percentages in which books covering 28 subjects are copied.

**Non-title-specific Distribution**

*In this distribution method, remuneration is attributed to individual authors and publishers in an indirect way.*

In some countries, rightsholders have opted for non-title-specific distribution of remuneration. Statistical surveys are used to collect generic information on the volume of copying in the type of material and category of publication, rather than identifying the specific publication, author and publisher. Data is collected from a limited number of users covered by the agreement, for a limited period of time. Surveys are conducted at intervals – normally every four to five years. Through this method, the RRO distributes to its member organisations representing authors and publishers. It is generally left to the rightsholders’ associations to decide on the criteria for further distribution. Authors often have grant schemes while publishers may combine the data on market shares and pay the remuneration individually.

This method of distribution applies only to national rightsholders. The share due to foreign rightsholders can be determined on the basis of survey results.

**Case Study 7: KOPINOR in Norway**

KOPINOR carries out surveys in each sector every five years. Surveys are carried out by independent statistical bureaux, engaged jointly by KOPINOR and the user. The survey identifies 15 different categories of publications (such as textbook, scientific journal, sheet music and newspaper) and 15 different types of material (such as poetry, scientific text, photo, illustration and musical notes). For each area, data is processed into a matrix, which is used as a basis for calculating the shares in the distribution of the remuneration. The table below is an example of a matrix demonstrating the total cumulative distribution from all sectors surveyed.

Every new survey provides a new matrix for its field (schools, universities and so on). Each cell in the matrix corresponds to an amount due to one or more publisher groups and one or more author groups. This amount is subsequently divided between the corresponding publisher and author groups. The first stage of the process is to determine the split between the organisations representing authors and publishers respectively while the second stage is to determine the further division of the publishers’ share between different publisher and author categories.

<table>
<thead>
<tr>
<th>Type of source</th>
<th>Books</th>
<th>Textbooks, academic non-fiction</th>
<th>Fiction, prose</th>
<th>Ed. non-fiction, scientific text</th>
<th>Editorial, news, commentary</th>
<th>Feature article, article, etc.</th>
<th>Reviews</th>
<th>Brochure, advertising copy, etc.</th>
<th>Photo of handicraft</th>
<th>Photo of visual art</th>
<th>Technical illustration</th>
<th>Other illustration</th>
<th>Photograph</th>
<th>Sheet music</th>
<th>Table, etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>100%</td>
<td>62.1%</td>
<td>2.3%</td>
<td>1.7%</td>
<td>2.2%</td>
<td>8.2%</td>
<td>6.5%</td>
<td>3.4%</td>
<td>0.1%</td>
<td>4.6%</td>
<td>0.9%</td>
<td>0.4%</td>
<td>0.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drama, play</td>
<td>0.6%</td>
<td>0.2%</td>
<td>2.2%</td>
<td>0.2%</td>
<td>2.3%</td>
<td>0.5%</td>
<td>1.1%</td>
<td>2.9%</td>
<td>0.1%</td>
<td>2.6%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.3%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poem, lyrics</td>
<td>8.6%</td>
<td>1.2%</td>
<td>0.6%</td>
<td>0.5%</td>
<td>0.4%</td>
<td>5.8%</td>
<td></td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiction, prose</td>
<td>3.6%</td>
<td>1.6%</td>
<td>1.1%</td>
<td>0.7%</td>
<td></td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ed. non-fiction, scientific text</td>
<td>52.7%</td>
<td>47.0%</td>
<td>0.6%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>2.9%</td>
<td>0.5%</td>
<td>0.3%</td>
<td></td>
<td>0.1%</td>
<td>0.2%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Editorial, news, commentary</td>
<td>4.6%</td>
<td></td>
<td></td>
<td>3.6%</td>
<td>0.1%</td>
<td>0.6%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feature article, article, etc.</td>
<td>4.3%</td>
<td>0.1%</td>
<td></td>
<td>0.9%</td>
<td>0.2%</td>
<td>2.6%</td>
<td>0.2%</td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reviews</td>
<td>0.2%</td>
<td></td>
<td></td>
<td>0.3%</td>
<td>0.3%</td>
<td></td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brochure, advertising copy, etc.</td>
<td>2.4%</td>
<td>0.1%</td>
<td></td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Photo of handicraft</td>
<td>0.2%</td>
<td></td>
<td></td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Photo of visual art</td>
<td>0.6%</td>
<td></td>
<td></td>
<td>0.4%</td>
<td></td>
<td>0.4%</td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical illustration</td>
<td>8.2%</td>
<td>6.8%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other illustration</td>
<td>5.5%</td>
<td>2.5%</td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.6%</td>
<td>0.1%</td>
<td></td>
<td>0.1%</td>
<td>0.3%</td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Photograph</td>
<td>4.1%</td>
<td>1.2%</td>
<td>0.1%</td>
<td>1.4%</td>
<td></td>
<td>1.5%</td>
<td></td>
<td>0.3%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.2%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheet music</td>
<td>0.4%</td>
<td></td>
<td></td>
<td>1.8%</td>
<td>1.5%</td>
<td></td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Table, etc</td>
<td>0.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.1%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

24 For further information please refer to www.cedro.org
The abovementioned divisions are reached through negotiations between KOPINOR’s 21 member organisations, each representing one category of rightsholders such as non-fiction writers, fiction writers, illustrators, journalists, book publishers and newspaper publishers. The negotiations are managed by a distribution board that may mediate and eventually make a ruling which in turn may be appealed to an internal arbitration tribunal.

Money is distributed to member associations. The publishers’ association combines data from KOPINOR with market data to determine the distribution to individual publishers, members and non-members, while money is normally paid out to individual authors in the form of grants.

### Share between Authors and Publishers

There are various methods to define the share between authors and publishers.

- The split could be based on stipulations in national legislation as, for instance, in Belgium (REPROBEL) and Romania (CopyRo).
- In most countries, including Germany (VG WORT), Norway (KOPINOR) and the United Kingdom (CLA), the split is based on agreement between the parties.
- The split could be based on agreements between individual authors and publishers on a work by work basis (CAL).

#### Case Study 1: Belgium and Romania

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.

Article 109 (1) of the Romanian Copyright Act establishes that the remuneration for photocopying “shall be distributed equally through the relevant collective administration organisations, between the authors and the publisher”.

#### Case Study 2: Germany, UK and Norway

In Germany, remuneration for non-fiction works, both books and journals, is distributed 50/50 between authors and publishers by VG WORT. For books the division is 50:50, for journals 57:43. For works of fiction, the distribution is 70% to authors and 30% to publishers.

UK rightholder organisations are responsible for determining distribution policy. For books, a deduction of 8% is made to DACS and the balance split 50% to authors and 50% to publishers. For journals, 8% goes to DACS and of the balance 21% goes to authors and 71% to publishers (unless publishers own 90% of the rights, in which case they receive 100%).

The member organisations of KOPINOR, in Norway, have negotiated a detailed scheme for the split between authors and publishers, depending on the category of publication photocopied and where the copying takes place:

<table>
<thead>
<tr>
<th>Source (publication)</th>
<th>Authors</th>
<th>Publishers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Textbooks</td>
<td>Universities/colleges</td>
<td>60 %</td>
</tr>
<tr>
<td></td>
<td>All other areas</td>
<td>50 %</td>
</tr>
<tr>
<td>Non-fiction/prose books</td>
<td>Schools</td>
<td>75 %</td>
</tr>
<tr>
<td></td>
<td>Universities/colleges</td>
<td>60 %</td>
</tr>
<tr>
<td></td>
<td>All other areas</td>
<td>70 %</td>
</tr>
<tr>
<td>Reference works/encyclopaedias</td>
<td></td>
<td>50 %</td>
</tr>
<tr>
<td>Original works of fiction</td>
<td></td>
<td>75 %</td>
</tr>
<tr>
<td>Collected works of fiction</td>
<td></td>
<td>60 %</td>
</tr>
<tr>
<td>Music</td>
<td>Universities/colleges</td>
<td>75 %</td>
</tr>
<tr>
<td></td>
<td>All other areas</td>
<td>50 %</td>
</tr>
<tr>
<td>Song books/ballad books</td>
<td>Music</td>
<td>60 %</td>
</tr>
<tr>
<td></td>
<td>Lyrics</td>
<td>50 %</td>
</tr>
<tr>
<td>Newspapers</td>
<td></td>
<td>70 %</td>
</tr>
<tr>
<td>Scholarly journals, cultural and other journals</td>
<td></td>
<td>60 %</td>
</tr>
<tr>
<td>Specialist press, weekly and monthly magazines, comic strips</td>
<td></td>
<td>70 %</td>
</tr>
<tr>
<td>Government publications</td>
<td></td>
<td>75 %</td>
</tr>
<tr>
<td>Other material produced by publishing houses</td>
<td></td>
<td>50 %</td>
</tr>
</tbody>
</table>
General requirements

The distribution method of an RRO needs to be transparent and easily understood, not only for its constituencies but also for users and society at large.

For rightsholders it is important that revenue is distributed as soon as possible, as accurately as possible and as cost effectively as possible.

The speed of distribution varies in different countries. Distribution should take place at least once a year, during the year following collection.

Many RROs have developed dispute mechanisms to resolve any disagreements arising over distributions. A special distribution board may exist within the organisation for that purpose.

It is important that the distribution principles are communicated to the rightsholders and other interested parties clearly and unambiguously. For instance, COPY-DAN in Denmark has published a manual on how it manages and distributes collected revenues. KOPINOR in Norway has set out its distribution principles in a similar publication.

Operations

The operations of an RRO requires solid working methods for accounting, systems and databases. Costs play an important role and should be seen in relation to the size of the market and the age of the organisation. Awareness among members, government and the public is vital and requires continuous nurturing.

Costs and accounting

RROs are like any other organisations in many respects. Accounting, for example, needs to follow the standards and requirements prevailing in the country. National legislation concerning the type of company that has been chosen for the RRO forms the point of departure.

The overseeing of finance and the annual audit is the responsibility of the Board at regular intervals. Providing members with regular financial and status reports is one of the cornerstones of transparency.

Funds are normally invested in secure instruments pending distribution at agreed intervals. Investment income is normally taken into account when costs are deducted from revenue, before distribution. Subject to the decision of its governing body, an RRO may have an agreed surplus or reserve policy in terms of which some money is set aside for contingencies or as a cushion for unexpected expenditure in the future.

Costs are normally deducted from revenue, and the rest is distributed to rightsholders. Although some RROs charge a specific administrative fee to cover administrative costs, an RRO would typically deduct between 11 and 15% to cover administrative costs. More than one quarter of European RROs spend 10% or less on administration.

In the case of funding applications, whether from IFRRO, banks or any other source, economic statements and projections of future revenue and expenditure are required.

Systems and databases

Systems and databases are needed for incoming and outgoing monies. The first needs of an emergent RRO are likely to be accounting, invoicing and simple databases for licensing information. Standard solutions that exist on the market may either apply as such or be easily adjusted to the RRO operations. Development of a website to establish a presence for promotional purposes and to support licensing activities may be a good investment in the early stages, subject to the national infrastructure and use of the internet in general.

More complex and finely-tuned systems are normally needed for distribution purposes. An RRO needs to identify rightsholders and publications. The data requirements for distributions need to be identified early in the process, and it forms part of the licence negotiations, as explained in Chapter 6.2.

It is important to establish credibility among rightsholders and to be able to distribute the first licensing revenue within a reasonable timeframe. Emergent RROs may find that help from a mentoring RRO is of paramount importance in the first years in tackling these challenges.

Most RROs face the same challenges in identifying rightsholders and publication. Partnerships may lead to cost effective solutions, especially where markets and linguistic conditions are fairly similar. Joint solutions in so-called back 25 Available on www.copydan.dk/cm632.asp?id=1
26 Available on www.kopinar.no
office activities may be a feasible solution between RROs that operate in neighbouring countries with similar user and rightsholder profiles.

**Case Study: Data on French-language printed works**

COPIBEC (Canada), ProLitteris (Switzerland), SACD-SCAM and CFC (France) have signed an agreement to exchange data on French-language printed works. The societies, which mainly administer francophone works, have agreed to share information on their respective national repertoires, to enhance the identification of foreign works and their related rightsholders and, as a consequence, reduce costs.

Each society has developed databases featuring bibliographic information on works, creators and publishers, enabling them to distribute royalties collected from reprographic reproduction. Each society will be able to access other societies’ information via a virtual database and will be allowed to incorporate the shared data in their own systems.

**Communications and marketing**

As markets are in constant change, it is important to pay attention to the needs of users and to recognise that their needs change over time. This is particularly true when users want to replace some of their analogue copying with digital copying.

It is important for an RRO to communicate the rights and obligations of users clearly and in a way that encourages legitimate uses. The message is to provide access legally rather than to market prohibitions.

**Member relations**

RROs need to be present where rightsholders gather; trade shows and book exhibitions are examples of places where many RROs have regular stands to meet with their constituencies.

If associations are members of the RRO, it may be an idea to regularly invite them to have their meetings at the premises of the RRO. This provides an easy opportunity to talk about RRO developments at the beginning of the meeting. In any event, an RRO ought to always observe competition law, which would require it not to become a tool for collusion among its members, by for example allowing them to discuss prices at its premises.

**Government relations**

Government relations are in full force at the times of legislative reform. It is important to provide your legislators with real-life experiences and an impact analysis of the planned measures. It is also vital to nurture government relations at other times, by informing about developments, major reforms, users’ feedback and rightsholders’ opinions on a continuous basis.

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**Cultural and social purposes**

*Deductions for social or cultural purposes can be based on the agreements with national and foreign rightsholders through mandates/statutes and bilateral agreements or on provisions in the law, especially in case of remuneration for private copying.*

**Article 10 of the IFRRO Model Bilateral Agreement Type A** includes a possibility for a deduction for social or cultural purposes. According to the model, such deductions are allowable within reasonable limits, according to the national legal, cultural and political environment, and by negotiation between the two RROs involved. Such a deduction is not automatic, but needs to be expressly negotiated.

In countries where national law provides for social or cultural purposes, the percentage deducted may be higher. Such stipulations are normally applicable where the law provides for remuneration for private copying in the form of equipment levies and operator fees. For instance, in Greece and Spain the law provides for a deduction of 20%.

Among the European RROs, deductions cover both social and cultural purposes in three countries (Austria, Germany and Spain); OSDEL in Greece deducts only for cultural purposes and ProLitteris only for social purposes. Purposes include organising cultural events and administering social schemes.

**Case study: CEDRO in Spain**

According to Spanish Intellectual Property Law, every collective management society in Spain must develop a social function addressed to authors and publishers, financed with 20% of collections from the equipment levy. This social function must comprise actions in three fields: training, promotion and social work or assistance, and may be run directly by collective management organisations themselves or with the help of other organisations. CEDRO plays this role partially by itself and partially through Spanish authors’ and publishers’ associations.

At present, CEDRO’s social function includes three main programmes:

- Free life and permanent disability insurance for authors;
- A programme of social aids, addressed to authors;
- The financing of projects and activities run by authors’ and publishers’ associations, including the promotion of creative works and of authors’ rights.
International cooperation within IFRRO

What is IFRRO?

The International Federation of Reproduction Rights Organisations (IFRRO) is an international non-governmental organisation. Its seat and General Secretariat are located in Brussels, Belgium. It is a private, independent, member-based organisation under Belgian law.

IFRRO was founded in 1984 as an informal forum, a platform for the exchange of information and to facilitate contacts between its members. Since 1988, IFRRO has been an independent federation eligible to represent its members before national and international bodies. Over the years, IFRRO has turned into an active, independent organisation serving its members with a multitude of activities, publications and events.

IFRRO’s Board of Directors confirmed the following mission statement for the organisation in 2005:

“The International Federation of Reproduction Rights Organisations (IFRRO) is an independent organisation established to foster the fundamental international copyright principles embodied in the Berne and Universal Copyright Conventions. Its purpose is to facilitate, on an international basis, the collective management of reproduction and other rights relevant to copyrighted works through the co-operation of national Reproduction Rights Organisations (RROs). Collective or centralised rights management is preferable where individual exercise of rights is impractical.

IFRRO works to develop and increase public awareness of the need for effective RROs and to support joint attempts by publishers, authors and other rightsholders to create and develop rights management systems world-wide. To accomplish its mission, IFRRO fosters the development of studies and information-exchange systems; relationships between, among and on behalf of members; and effective methods for conveyance of rights and fees among rightsholders and users, consistent with the principle of national treatment.”

IFRRO’s work is based on the following core values:

- IFRRO encourages management of rights and provides systematic and proactive support to RROs and supports joint efforts by authors, creators and publishers of literary and scientific works worldwide to establish RROs.
- IFRRO works to strengthen its role as the leading international body in fostering and providing information on reprographic reproduction rights and the collective administration of such rights.
- IFRRO provides opportunities for authors, creators, publishers and their representatives to meet, exchange information, collaborate and partner in the field of reprography, document delivery and certain digital uses of their works.
- IFRRO and its members deploy the highest ethical standards when dealing with the rights which they are involved in administering (collection and distribution of remunerations) and the funds they hold in trust.
Membership

IFRRO’s members come from all Continents. Reproduction Rights Organisations (RROs) are normally members with full RRO status while other member organisations are associate members. Membership is in dynamic development, and each year new RROs start operating in countries all over the world.

To become an RRO member, a national organisation has to fulfil a set of criteria. It must have a mandate to manage reproduction rights. It must represent authors and publishers alike. Both these categories of rightsholders must be represented on the Board or other governing body of the organisation. RROs act with integrity, and deploy the highest ethical standards regarding mandates, collections and distributions when dealing with the rights they are administering.

The way in which an individual organisation fulfils these conditions will depend upon the domestic legal framework and the circumstances. As we have seen, an RRO may have direct representation or through associations of authors and publishers since both methods are fully acceptable solutions to the requirement of representing authors and publishers.

National and international associations of authors, creators or publishers are associate members and have in common that they support IFRRO’s goals and aims, and in particular the management of reproduction rights through the formation of RROs, in the interest of authors and publishers.

You can become a member by filling in the online application form, available at www.ifrro.org. Your application will be processed by the Membership Committee and must finally be approved by IFRRO’s Board of Directors.

Countries with IFRRO Members

Africa: Ghana, Kenya, Malawi, Nigeria, South Africa, Zimbabwe
Asia/Pacific: Australia, Hong Kong, Japan, Korea, New Zealand, Singapore,
North America: Canada, USA
Latin America and the Caribbean: Argentina, Brazil, Chile, Colombia, Jamaica, Mexico, Trinidad & Tobago, Uruguay
Europe: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal, Poland, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, UK
Main Tasks of IFRRO

IFRRO’s main tasks concern its membership – established and emergent – as well as copyright awareness in society more broadly. IFRRO assists rightsholders world-wide in their attempts to create RROs and to raise awareness of copyright and collective management.

As a member you have access to a wide range of events, publications and activities which IFRRO organises alone or in cooperation with WIPO, UNESCO and other national and international governmental and non-governmental organisations. You also have access to a world-wide network of RROs and rightsholder representatives with whom you can share experiences and negotiate reciprocal agreements.

Fostering the Creation of New RROs

One of the main tasks of IFRRO is to encourage the creation of new RROs in countries where none exist so far. IFRRO assists rightsholders from all over the world in their attempts to form RROs to the benefit of users and rightsholders.

An RRO is not created overnight. As soil must be tilled for plants to grow, the ground must be prepared for an RRO. A framework must be created before an RRO can be founded and start operations. An RRO needs an appropriate legal infrastructure, which means not only a good piece of legislation on paper but one that is understood and respected. IFRRO can help stakeholders to analyse the facts and circumstances in their countries, identifying needs and the ways of meeting them.

While there can be no one-size-fits-all solutions, because every country has its own culture and traditions, there are some international principles which must be respected. IFRRO’s development work is aimed at assisting each country to find its own best solution while keeping within the international framework.

IFRRO uses a number of tools to achieve these aims. It provides practical assistance, it shares information and it arranges training. In order to fulfil these goals it produces publications such as this manual to spread knowledge and the experiences of its members over the course of time.

It provides practical training by sending experts or organising training visits, and also makes use of its member base for development activities. Its mentor system twins RROs on a medium- to long-term basis so that an established organisation is in constant contact with a younger organisation, sharing experience and advice. The mentor RRO can answer day-to-day questions or send a member of its staff to the partner RRO to coach it on specific questions.

To reflect IFRRO’s global nature, it has formed four regional committees: the Asia/Pacific Committee, the Committee for Latin America and the Caribbean, the Development Committee for Africa and the Middle East and the European Group. Both RRO and associate members meet in their regional committees to share their experiences and develop strategies for the future. A great deal of IFRRO’s development work occurs via these regional committees.

In the financial year 2004/05 alone, IFRRO realised around 50 projects world-wide. The cooperation of RROs and other stakeholders with IFRRO is long-term to achieve sustainable results. IFRRO can realise all these projects thanks to the voluntary contributions of its members to a special fund, the Development Fund, which is set aside for development work. Members can allocate their contributions to a particular region or leave it to the discretion of the Board within the framework of the Principles for the Use of Development Fund monies.

IFRRO can award grants for certain activities or loans to provide an RRO with start-up capital. The detailed rules on the Development Fund are annexed.

Relationships between Members

IFRRO is the sum of its Members, and its strength lies in the multiplicity of different rightsholders gathered together in the Federation.

IFRRO’s members face a number of issues on which IFRRO provides them with a forum for the exchange of experiences and views and an infrastructure for the development of strategies for the future. Much work is being done through different working groups and committees, both permanent and ad hoc.

IFRRO has working groups on digital strategies and international document delivery, on legal issues and on the different types of repertoire: visual material, musical works and newspapers. It also has a forum on equipment levies. Through the expertise of its technical working groups and committees, IFRRO is a pioneer in various fields of activity.
IFRRO has developed model agreements under which RROs can exchange their repertoires and which provides users with access to a world-wide repertoire. The current model agreement covers analogue uses. Through participation in the activities of IFRRO, members all over the world can get up-to-date and state-of-the-art information on analogue as well as digital copying and rights management.
### RRO Membership

**RRO MEMBERS OF IFRRO WITH GENERAL LICENSING AND/OR COLLECTION FOR REPROGRAPHY**

<table>
<thead>
<tr>
<th>Member</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABDOR, Associação Brasileira de Direitos Reprográficos</td>
<td>Brazil</td>
</tr>
<tr>
<td>Access Copyright - The Canadian Copyright Licensing Agency</td>
<td>Canada</td>
</tr>
<tr>
<td>AIPO, Associazione Italiana per i Diritti di Reproduzione delle Opere dell’ingegno</td>
<td>Italy</td>
</tr>
<tr>
<td>AUTOR, Asociación Uruguaya para la Tutela Organizada de los derechos Reprográficos</td>
<td>Uruguay</td>
</tr>
<tr>
<td>Bonus Presskopia</td>
<td>Sweden</td>
</tr>
<tr>
<td>CADRA, Centro de Administración de Derechos Reprográficos, Asociación Civil</td>
<td>Argentina</td>
</tr>
<tr>
<td>CAL, Copyright Agency Limited</td>
<td>Australia</td>
</tr>
<tr>
<td>CCC, Copyright Clearance Center, Inc.</td>
<td>USA</td>
</tr>
<tr>
<td>CEDER, Colombian Center of Reprographic Rights</td>
<td>Colombia</td>
</tr>
<tr>
<td>CEDRO, Centro Español de Derechos Reprográficos</td>
<td>Spain</td>
</tr>
<tr>
<td>CoMPro, Centro Mexicano de Protección y Fomento a los Derechos de Autor, Sociedad de Gestión Colectiva</td>
<td>Mexico</td>
</tr>
<tr>
<td>CFC, Centre Français d’exploitation du droit de Copie</td>
<td>France</td>
</tr>
<tr>
<td>CLA, The Copyright Licensing Agency Ltd.</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>CLASS, The Copyright Licensing &amp; Administration Society of Singapore Limited</td>
<td>Singapore</td>
</tr>
<tr>
<td>CLL, Copyright Licensing Ltd</td>
<td>New Zealand</td>
</tr>
<tr>
<td>COPIBEC, Société québécoise de gestion collective des droits de reproduction</td>
<td>Quebec</td>
</tr>
<tr>
<td>COPY-DAN Writing</td>
<td>Denmark</td>
</tr>
<tr>
<td>COPYGHANA</td>
<td>Ghana</td>
</tr>
<tr>
<td>CopyRo (Societate de Gestione Colectiva a Dreptunior de Autor)</td>
<td>Romania</td>
</tr>
<tr>
<td>CopyRus, Society on Collective Management of Reprographic Reproduction Rights</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>COSOMA, Copyright Society of Malawi</td>
<td>Malawi</td>
</tr>
<tr>
<td>DALRO, Dramatic, Artistic and Literary Rights Organisation (Pty) Limited</td>
<td>South Africa</td>
</tr>
<tr>
<td>Fjólís</td>
<td>Iceland</td>
</tr>
<tr>
<td>HARR, Hungarian Alliance of Reprographic Rights</td>
<td>Hungary</td>
</tr>
<tr>
<td>HKRRLS, The Hong Kong Reprographic Rights Licensing Society Limited</td>
<td>Hong Kong</td>
</tr>
<tr>
<td>ICLA, The Irish Copyright Licensing Agency</td>
<td>Ireland</td>
</tr>
<tr>
<td>JAMCOPY, Jamaican Copyright Licensing Agency</td>
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</tr>
<tr>
<td>JRRC, Japan Reprographic Rights Center</td>
<td>Japan</td>
</tr>
<tr>
<td>KOPIKEN, The Reproductions Rights Society of Kenya</td>
<td>Kenya</td>
</tr>
<tr>
<td>KOPINOR</td>
<td>Norway</td>
</tr>
<tr>
<td>KOPJOOSTO</td>
<td>Finland</td>
</tr>
<tr>
<td>KOPJAMALT</td>
<td>Malta</td>
</tr>
<tr>
<td>KRTRC, Korea Reprographic and Transmission Rights Center</td>
<td>Republic of Korea</td>
</tr>
<tr>
<td>Literar-Mechana</td>
<td>Austria</td>
</tr>
<tr>
<td>LUXORR, Luxembourg Organization for Reproduction Rights - luxorr, asbl</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>OSDEL, Greek Collecting Society for Literary Works</td>
<td>Greece</td>
</tr>
<tr>
<td>ProLitteris</td>
<td>Switzerland</td>
</tr>
<tr>
<td>REPROBEL bcvba- srl, Belgium</td>
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</tr>
<tr>
<td>REPRONIG (The Reproduction Rights Society of Nigeria)</td>
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</tr>
<tr>
<td>SADEL, Sociedad de Derechos Literarios</td>
<td>Chile</td>
</tr>
</tbody>
</table>
### Annexes

<table>
<thead>
<tr>
<th>Member</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stichting Reprorecht</td>
<td>Netherlands</td>
</tr>
<tr>
<td>TTRRO, The Trinidad and Tobago Reproduction Rights Organisation</td>
<td>Trinidad and Tobago</td>
</tr>
<tr>
<td>VG Bild-Kunst, Verwertungs-gesellschaft Bild-Kunst</td>
<td>Germany</td>
</tr>
<tr>
<td>VG WORT, Verwertungs-gesellschaft WORT</td>
<td>Germany</td>
</tr>
<tr>
<td>ZIMCOPY</td>
<td>Zimbabwe</td>
</tr>
</tbody>
</table>

### ASSOCIATE MEMBERS OF IFRRO: VISUAL ARTS COLLECTIVE MANAGEMENT ORGANISATIONS; REPROGRAPHY LICENSING AND/OR COLLECTION FOR WORKS OF VISUAL ART AND/OR PHOTOGRAPHY

<table>
<thead>
<tr>
<th>Member</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADAGP, Société des Auteurs dans les Arts Graphiques et Plastiques, France</td>
<td>France</td>
</tr>
<tr>
<td>AIP, American Illustrators’ Partnership, USA</td>
<td>USA</td>
</tr>
<tr>
<td>ARS, Artists Rights Society, USA</td>
<td>USA</td>
</tr>
<tr>
<td>ASMP, American Society of Media Photographers, USA</td>
<td>USA</td>
</tr>
<tr>
<td>BUS, Bildkonst Upphovsrätt i Sverige, Sweden</td>
<td>Sweden</td>
</tr>
<tr>
<td>DACS, Design and Artists Copyright Society Ltd., UK</td>
<td>UK</td>
</tr>
<tr>
<td>GAG, Graphic Artists Guild, USA</td>
<td>USA</td>
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<td>Stichting BURAFO, the Netherlands</td>
<td>the Netherlands</td>
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<td>VEGAP, Spain</td>
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<tr>
<td>VISARTA, The Romanian Visual Arts Copyright Collecting Society, Romania</td>
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<tr>
<td>VISCOPY Limited, Australia</td>
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### ASSOCIATE MEMBERS OF IFRRO: MUSIC COLLECTIVE MANAGEMENT ORGANISATIONS, REPROGRAPHY LICENSING AND/OR COLLECTION FOR MUSICAL WORKS

<table>
<thead>
<tr>
<th>Member</th>
<th>Country</th>
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<tbody>
<tr>
<td>AMCOS, Australasian Mechanical Copyright Owners Society, Australia</td>
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<tr>
<td>CCLI, Christian Copyright Licensing, Inc., USA</td>
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<tr>
<td>SEAM, Société des Editeurs et Auteurs de Musique, France</td>
<td>France</td>
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<tr>
<td>SEMU cvba - Société des Editeurs de Musique, Belgium</td>
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<tr>
<td>VG MUSIKEDITION, rechtsfähiger Verein kraft Verleihung, Germany</td>
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### ASSOCIATE MEMBER OF IFRRO, REPROGRAPHY LICENSING AND/OR COLLECTION FOR COPYING OF NEWSPAPER ARTICLES

<table>
<thead>
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<tbody>
<tr>
<td>NLA, The Newspaper Licensing Agency Limited, UK</td>
<td>UK</td>
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<tr>
<td>NLJ, Newspaper Licensing Ireland Limited, Ireland</td>
<td>Ireland</td>
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IFRRO Statements

Principles for international document delivery

Document Delivery is the reproduction and delivery or communication of literary and artistic works to remote clients on his or her request. For example, the reproduction and delivery or scanning, storage, transmission of an article from a print journal for a client who requested to read it as a photocopy, on screen, as a temporary copy or to print it out on paper.

International Document Delivery is document delivery across national borders.

International Document Delivery raises issues of mandate, international conflict of laws and differential pricing.

IFRRO states the following principles with regard to Document Delivery and International Document Delivery.

- **Affirming** and supporting the right of rightsholders (creators and publishers) to control the rights in their works.
- **Respecting** the Berne Convention in particular Article 9 – The TRIPS Agreement, Article 13, and the WIPO Copyright Treaty, Article 10, which set out the “Three Step Test.”
- **Article 13 of TRIPS states**: “Limitations and Exceptions” Members shall confine limitation or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.”
- **Affirming** the IFRRO – Author Coalition (AC) Joint Statement on Electronic Use of Copyright Works (Brussels, February 2000).

Considers that any Document Delivery of copyright works be conducted:
- with the rights holders’ permission;
- with the price of the permission set by the rightsholders; or
- with the rightsholders’ authorised representative’s permission; and
- the price of the permission set by the rightsholders’ authorised representative; or
- if performed under an exception in national legislation, which complies with the Three Step Test whether or not subject to an independent or governmental authority or the jurisdiction of a tribunal, then with the price agreed to and accepted by the rightsholders in that territory or by their authorised representatives.

Considers that any International Document Delivery of copyright works be conducted:
- with the permission of rightsholders in the country of supply and in the country of reception; and
- with the price of the permission agreed by the rightsholders in the country of supply and the country of reception; or
- with the permission of the authorised representatives of the rightsholders in the country of supply and in the country of reception; and
- with the price of the permission agreed by the authorised representatives of the rightsholders in the country of supply and in the country of reception; or
- if performed under any exception complying with the Three Step Test in national legislation in the country of supply, or the country of reception, or of both countries, whether or not subject to an independent or governmental authority or the jurisdiction of a tribunal in either country or in both countries, then at a price agreed to and accepted by the rightsholders or their authorised representatives in both countries.

October 2004
IFRRO statement on piracy
Adopted by the IFRRO Board April 2005

The role of Reproduction Rights Organisations (RROs) is to encourage respect for copyright, and to fight piracy, through awareness raising, licensing, and assisting in the enforcement of intellectual property rights world-wide.

1) Copyright industries and piracy

Copyright industries – a significant contributor to economic growth and cultural independence

‘Copyright industries’ consist of authors, artists and other creators of literary and artistic works such as books, journals, music, artwork and films, as well as the enterprises which invest in the production, reproduction, marketing and distribution of those creations. It is the rubric for a number of different industries that have one thing in common: their products and services are of a dual nature as they are both commercial and cultural in nature.

The ‘copyright industries’ are among the most important contributors to the cultural independence and economic growth of nations. No distinctive culture can be created or kept alive without them. Intellectual development and growth would be put at risk if they are not allowed to evolve properly.

Copyright industries contribute significantly to GDP generally 4-6% in developed nations. They remain among the main growth areas and are also major contributors to the creation of new jobs. In several countries, these industries are growing at speeds substantially higher than those of other industries, and have over the past decades been the only sector showing a steady and unbroken growth in employment rates.

Within the cultural industries, the print industry (including writing, associated image-making, and paper/electronic publishing) – i.e. literature, sheet music and press/periodicals from daily newspapers through trade publishing to scientific publishing – is among the most important contributors to a society’s overall well-being. If a nation wishes to benefit from its potential to stimulate cultural and economic development, it needs to ensure that these industries have market conditions that guarantee a fair reward for their products. Governments must ensure adequate copyright protection inter alia to enable authors and publishers to collect revenues for the use of their works.

Unauthorised reproduction – a threat to copyright industries

The single most important obstacle to a healthy development of a local creative and publishing industry in many parts of the world is the infringement of their copyrights. Copyright infringement includes all forms of unauthorised reproduction: commercial piracy and counterfeiting, as well as other forms of illegal uses, such as unauthorised photocopying and digital dissemination of copyright works.

Of all the forms of copyright infringement, piracy is the biggest single threat to copyright industries and therefore also to the evolution of cultural expressions. Piracy can be defined as the mass, for-profit reproduction of others’ works without authorization or compensation. Yearly, it represents billions of Dollars and Euros in financial loss to rights holders. Piracy is a threat to all copyright-based industries and creators because piracy is the trafficking in content created by others. IFRRO strongly and unequivocally supports efforts to combat piracy of all forms of intellectual property in order to maintain the advantages of a functioning copyright-based industry and culture at large. IFRRO encourages governments to place high priority on combating piracy to avert the very serious threat posed to economic and cultural development, innovation and employment.

Combating piracy requires adequate protection

In order to ensure that creators and the copyright industries are motivated to continue to create and add to the existing body of intellectual property, and in order to ensure the flow of old and new creations to users and audiences in all countries, the protection of existing and future content from piracy must be maintained in legislation and in practice. There is a clear link between the legal protection of the rights of creators and related rights holders and the state of copyright-based industries. Protection of such industries by protecting the content they provide from piracy in combination with a working and fully implemented copyright system is therefore of utmost importance.

2) What are RROs?

RROs (Reproduction Rights Organisations) are collective management organisations in the field of reprography and related areas. They assist rights holders in dealing with widespread uses of their works in that they act as an intermediary between the rights holders and the user of their content whenever it is impractical or impossible for the rights holder to act individually. This is typically the case when a user needs to reproduce excerpts of the works, often of several rights holders in multiple copies for internal use. RROs provide access to copyright works through licensing mechanisms: copying from books, journals, newspapers, sheet music and...
other printed publications is authorised up to a certain limit so as not to interfere with the primary market of selling the work itself. RROs exist all over the world and operate under various systems depending inter alia on the legislative culture of their country.

Reproduction Rights Organisations (RROs) assist rights holders to combat piracy.

The establishment and operation of RROs and the fight against commercial piracy should be seen as complementary. It is not the role of the RROs to legitimise the actions of pirates. Instead, they assist in regulating reproduction and ensure that it operates within reasonable and balanced limits that are acceptable to creators, publishers and users.

A key aspect of RRO work is the introduction of licences. Licensing mechanisms not only represent an important element in providing legal access to copyright works, but also establish the conditions for the successful combating of commercial piracy. They enable regularisation of reproduction of copyright material, make it more difficult to distribute pirate copies, and facilitate the securing of evidence when copyright infringement occurs, as they clarify and simplify the boundaries between lawful and unlawful copying. Licensing also leads to a reduction in the needs for pirated products, by making it legal to copy from copyright works within reasonable limits, such that the primary market for those works is safeguarded.

3) How do RROs contribute to the fight against piracy?

Awareness – Licensing – Enforcement – three facets of the role of RROs worldwide.

Awareness
RROs organise conferences, training and information activities, publish various information and education materials and host other activities, all with the intention of raising public awareness of the need to respect copyright as any other proprietary right. RROs also strive to bring awareness to governments, corporations, academia, and other organizations as well as to the public of the detrimental effect of piracy on the economic and cultural development of nations. Only when there is general public knowledge and understanding of why copyright must be protected and the harm that unauthorised reproduction in general, and piracy in particular, may cause publishers and creators, can one hope to create a culture of compliance.

Licensing
RROs’ core-business includes the licensing of users for specifically defined uses of published works. RRO licences typically grant authorisation to copy publications that are limited (e.g., to a portion of a work, to a maximum number of copies, to a limited set of recipients, for a limited time), in order not to interfere with, but rather complement, the ability of the creators and rights holders to exploit their own works. In countries with functioning RROs and well-established licensing schemes, substantial parts of the reproduction of printed material in education, public administration, and private corporations are authorised through RROs. The offering of a legal alternative in itself effectively contributes to fighting piracy by providing a legal alternative to infringing activities, especially piracy. Book, journal, newspaper and sheet music piracy is much less of a threat in countries with a working RRO than in those without one.

Enforcement
RROs assist in the enforcement of intellectual property rights. Through licensing the activities of a large number of users of copyright material, they acquire a comprehensive overview of the market. By putting this knowledge to use to identify infringements and gather evidence, they can be of great value to authors and publishers in their fight against piracy and other illegitimate use of their works. Subject to the mandates provided, RROs can become active in pursuing pirates themselves, both directly through actions on behalf of their members or indirectly by assisting rights holders individually. Although RROs do not normally own or control rights themselves, when granted specific permission to do so they can also litigate on behalf of rights holders and enforce their rights.
IFRRO Position paper on open access

The International Federation of Reproduction Rights Organisations (IFRRO) acknowledges the growing interest and concern of authors, creators, and publishers in the Open Access initiatives. Open Access describes a number of different concepts aiming to increase the dissemination of literary and scientific works. At the core of them are two tenets:

1. Works published under Open Access should be universally and freely accessible via Internet.
2. The copyright owner(s) irrevocably gives up some or all rights in their work, in advance and in perpetuity, or within a specified limit of time to use, reproduce or disseminate the article in its entirety or in part, in any format or medium.

Recognising that there is a cost to be borne in producing, reviewing, authenticating, archiving, and disseminating articles, many Open Access journals have shifted the burden of those costs from the subscriber or user of the articles to the authors/creators. Charges to authors for publishing Open Access articles are usually substantial. Thus, the author/researcher pays for the privilege of having her or his work “published” with no possibility of future rights to claim compensation for the use of it, including compensation under remuneration schemes.

However, not all Open Access initiatives involve charging content providers. Some models exist simply to encourage the permanent waiver of some or all rights to control a work so that it can be freely disseminated and used by others. It is thus critical that Open Access models are transparent, understandable and sustainable. Organisations or individuals soliciting articles for use under Open Access initiatives must inform rights holders fully of what rights they are giving up, in order for them to make a well grounded choice. While IFRRO recognises the right of authors and publishers to choose freely between different contract models, it is equally important that Open Access contracts are not imposed on them.

IFRRO acknowledges that while RROs are well established and provide a tried and tested licensing solution to the mutual benefit of creators, publishers and users, Open Access ideas are still at the formative stage. IFRRO is therefore prepared to watch and see how these models evolve. However, IFRRO cannot support Open Access initiatives that cause confusion amongst creators, publishers and users which may in turn discourage respect for copyright. IFRRO therefore urges all parties to be clear, unequivocal, and transparent in the presentation of the Open Access model and urges authors, creators and publishers (rights holders) to make sure they thoroughly understand their rights, obligations, and expected return before entering into any contractual arrangement.

Most rights holders strive to maximise the cost efficient distribution of their works. RROs provide services that assist them in this effort and act thus in the interest of both rights holders and users to whom they facilitate the legal access to copyrighted works. They act to the extent that creators and publishers wish to make use of their services. RROs’ agreements or licenses with users specify the conditions for the use of the work, including whether payment is due.

RROs respect the interest of rights holders to retain the control over their works and to receive fair remuneration for their use. Their roles and business models depend on the existing or absent business models between rights holders and users. The decision of the role of RROs should be made by publishers, authors and creators and the RRO in light of the specific sets of circumstances of the model. The development of business and value models and their implementation will therefore lie in the hands of the rights holders, and RROs will endeavour to find a way to complement it in cooperation with creators and publishers.

Adopted by the IFRRO Board – June 2005
IFRRO Guidelines

Model Bilateral Agreement Type A

RECITALS

1. Society A and Society B are Reproduction Rights Organisations (RROs) as defined in Article 3 of the Statutes of the International Federation of Reproduction Rights Organisations (IFRRO) and are RRO members of that organisation.

2. Society A through its principals/member organisations represents the reprographic reproduction rights of individual rightsholders resident in or citizens of or incorporated in Territory A and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights, works and publications in that territory.

3. Society B through its principals/member organisations represents the reprographic reproduction rights of rightsholders resident in or citizens of or incorporated in Territory B and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights works and publications in that territory.

4. As Society A desires to discharge its obligations to rightsholders in the Territory of Society B, Society B is willing to act as non-exclusive agent to receive fees due to Territory B rightsholders, not presently represented by Society B but being authors and publishers of the same categories of rights, works and publications presently represented by Society B.

5. Further, Society B is willing to represent other categories of Territory B rightsholders’ reprographic reproduction rights in Territory B (if agreed with those rightsholders) and to receive on behalf of such rightsholders from Society A money due to Territory B rightsholders in those categories. If and when Society B has entered into an agreement with those categories of rightsholders, Society B will advise Society A of its representation.

6. In the context of this agreement, National Treatment means that the rightsholders of Society A are treated by Society B in the country of Society B as the rightsholders in that country are treated by Society B.

7. In the context of this agreement, National Treatment means that the rightsholders of Society B are treated by Society A in the country of Society A as the rightsholders in that country are treated by Society A.

8. Society A and Society B support the principle of National Treatment and consider the collective admin-

istration of reprographic reproduction to be the only workable clearance and licensing procedure for users in their respective territories of operation.

9. Society A and Society B are striving to establish procedures for the licensing of reprographic reproduction and for distributing to rightsholders the fees collected from the licensing of reprographic reproduction in their respective territories of operation.

10. The systems and legal structures employed by Society A and Society B in the collective administration of reprographic reproduction vary and these variations present practical difficulties.

11. Society A and Society B have entered this Agreement in a spirit of co-operation and goodwill and in the interests of securing and maintaining strong and effective copyright laws of benefit to all rightsholders.

AGREEMENT

1. LICENCE/AUTHORITY TO COLLECT

On behalf of the rightsholders it represents, Society A hereby grants to Society B the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory B of the rights, works and publications as described in Schedule A to this Agreement on the same basis and on the same conditions as Society B licenses and collects fees for reprographic reproduction of the rights, works and publications of the rightsholders it represents. If, in the event of continued non-use by Society B of any rights transferred by this Agreement, then Society A, by twelve months’ notice in writing to Society B, may withdraw those rights from the operation of this Agreement.

2. LICENCE/AUTHORITY TO COLLECT

On behalf of the rightsholders it represents, Society B hereby grants to Society A the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory A of the rights, works and publications as described in Schedule B to this Agreement on the same basis and on the same conditions as Society A licenses and collects fees for the reprographic reproduction of such rights, works and publications of rightsholders it represents.
If, in the event of continued non-use by Society A of any rights transferred by this Agreement, then Society B, by twelve months’ notice in writing to Society A, may withdraw those rights from the operation of this Agreement.

3. EXERCISE OF RIGHTS

In consideration of the above grant, each RRO hereby undertakes within the limits of the grant of rights, works and publications from the other RRO and of its own articles of association or rules and of the governing law of its territory of operation to:

1. exercise the rights of the rightsholders represented by the other RRO in the same ways and to the same extent as it exercises the rights of rightsholders it represents;

2. apply to the rights, works and publications of the rightsholders represented by the other RRO the same tariffs, methods and means of collection and allocation of fees as those applied to the rights, works and publications of its rightsholders providing it does not contravene any governing law;

3. make available for exploitation, and to use all reasonable endeavours to exploit the rights, works and publications granted pursuant to Clauses 1 and 2 hereof in accordance both with each RRO’s normal procedures and sound commercial practice;

4. use all reasonable endeavours to collect fees from users at regular intervals;

5. use all reasonable endeavours to promote public awareness of the need, where appropriate, to obtain licences for the reprographic reproduction of works;

6. co-operate with the other RRO in co-ordinating efforts to raise the level of and to increase the effectiveness of copyright protection in their respective territories of operation.

4. NO ASSIGNMENT

Other than for the limited purposes of the management of collection or for central licensing, no assignment or transfer of all or any part of the rights and privileges granted to one RRO under this Agreement is permitted without the express written authorisation of the other RRO.

5. WARRANTY AND INDEMNITY

1. Each RRO warrants and represents to the other RRO that it has the full right and power to enter into this Agreement and to grant to the other RRO all those rights and powers which are hereby granted.

2. Society A indemnifies and agrees to keep indemnified Society B against all actions, judgements, costs and expenses legal and otherwise which may arise as a consequence of or arise out of any rightsholder in Society A’s territory of operation taking action, proceeding or making demand against Society B for the payment of compensation for reprographic reproduction in Society B’s territory of operation.

3. Society B indemnifies and agrees to keep indemnified Society A against all actions, judgements, costs and expenses legal and otherwise which may arise as a consequence of or arise out of any rightsholder in Society B’s territory of operation taking action, proceeding or making demand against Society A for the payment of compensation for reprographic reproduction in Society A’s territory of operation.

4. This Agreement does not relieve either RRO of any obligation under the law of their respective territories of operation to meet claims for compensation from individual rightsholders whose rights, works and publications have been copied by reprographic reproduction whether or not the individual rightsholder is a member or affiliate of the other RRO (or its principals/member organisations). The RRO against which such a claim has been made will provide all relevant information to the other RRO and consult with the other RRO on the settlement to be made with the individual rightsholder.

5. Subject to clause (d), whenever any claim for compensation is made by a rightsholder for reprographic reproduction by a licensed user for which one RRO receives a transfer of fees from the other, which claim under law, the RRO (or its principals/member organisations) is obliged to meet, the RRO may set off money paid on such claim (including legal and other costs connected therewith) against the next transfer of fees from that RRO to the other RRO. That RRO will provide the other RRO with complete information as to the payment made as well as costs.

6. Paragraph (e) shall also apply when either RRO is obliged on the basis of a licensing agreement to meet a claim for redress from anyone required under law to pay compensation to a rightsholder. Where either RRO includes such provisions in its licensing agreements it shall inform the other RRO.

6. COVENANTS

During the term of this Agreement both parties covenant and agree:

1. for the purposes of allocating the fees which are the subject of this Agreement, to communicate with rightsholders
in the territory of the other RRO only through the agency of the other RRO unless otherwise obliged by its governing law, in which case the other RRO shall be notified of that communication;

2. not to communicate with individual rightsholders or users in the other RRO’s territory of operation without the agreement of the other RRO;

3. not to enter into agreements with other organisations in the territory of operation of the other RRO to allow such organisations to licence any of the rights, works or publications which are the subject of this Agreement.

4. subject to the confidentiality restrictions set out in Schedule F, supply the other RRO with copies of statutes, by-laws, contractual forms or other documents setting out the conditions under which the RRO represents the individual rightsholder;

5. to notify the other RRO in writing from time to time of any changes in its mandate from rightsholders which has bearing on the administration of this Agreement;

6. subject to the confidentiality restrictions set out in Schedule F, upon request from the other RRO, make available all documents records and information which may be of assistance to the other RRO in exercising its obligations under this Agreement including but not limited to information about the types of user licensed, the method of licensing, licensing agreements and the statistical investigations of reprographic reproduction which the RRO undertakes;

7. to advise the other RRO of changes to any governing law or other circumstances in its territory of operation which may be relevant to the administration of this Agreement and in the event of any relevant changes to governing law, to co-operate with the other RRO in amending this Agreement to accommodate those changes.

8. subject to the confidentiality restrictions set out in Schedule F, allow the other RRO to consult its records of the collection and allocation of the fees in order that the other RRO may monitor the administration of its rights, works and publications.

9. PROVIDED THAT the RRO requiring the information under this Clause 6, arranges for the translation (if required) of any documents supplied in accordance with this clause.

7. MEMBERS

Each RRO agrees that:

1. its member or affiliate rightsholders will be represented by the other RRO for the purposes of this Agreement without any formalities or authorisations being required of those members or affiliates;

2. other than as required by governing law only those rightsholders who are resident in or citizens of or incorporated in the territory of operation of the RRO will be accepted as member or affiliate rightsholders for representation by that RRO;

3. where the above paragraph 7(b) cannot be implemented due to the effect of any governing law, each RRO will consult each other reciprocally in respect of applications for representation by way of membership or otherwise from rightsholders in the other RROs territory of operation.

4. the rightsholders whose works form the subject matter of this Agreement do not include rightsholders represented by virtue only of agreements that the RRO holds with RROs not party to this Agreement;

5. any dispute between the parties to this Agreement in relation to the representation of rightsholder by either RRO shall be settled in a spirit of compromise and in the best interests of the rightsholder concerned.

8. FUNDS

Each RRO agrees that:

1. in accordance with the principle of National Treatment, the fees collected in respect of rights, works and publications which are the subject matter of this agreement, shall be determined and allocated to individual rightsholders in accordance with the system that the RRO collecting the fees applies to rights, works and publications of rightsholders represented by it. Each RRO hereby agrees to accept that determination as it is made by the other RRO.

2. the fees collected in respect of rights, works and publications which are the subject matter of this Agreement shall be treated according to the systems which the respective parties apply to the rights, works and publications of their rightsholders PROVIDED THAT, where the transferring RRO (by registration, sample, survey or other means) attributes the fees to individual rightsholders, those fees may at the discretion of the receiving RRO be distributed to the individual rightsholders concerned subject to the distribution principles which the receiving RRO other-
wise applies to the relevant categories of rights, works and publications HOWEVER where the transferring RRO is unable to identify particular rightsholders or specific amounts due to particular rightsholders the receiving RRO shall use its best judgement to make an equitable distribution to rightsholders or to otherwise apply those fees to a collective purpose of benefit to the particular rightsholders concerned.

3. When fees under this agreement are collected and allocated by the transferring RRO to rightsholders in categories of works which the receiving RRO does not at the time represent, the RRO will transfer the fees as in (b) above HOWEVER, the receiving RRO will hold the fees thus received in trust for the rightsholder(s) or the organisation(s) representing the rightsholders in those categories of rights, works and publications until such time as the receiving RRO and such rightsholder(s) or organisation(s) shall agree on terms of representation or, if an agreement on representation is not reached within then on distribution. Where no agreement can be reached then after the receiving RRO may otherwise apply those fees to a collective purpose of benefit to the particular rightsholders concerned.

9. ACCOUNTS

Each of the parties shall as transferring RRO transfer the fees due to the receiving RRO each year at the times and in the currency set out in Schedule C (in respect of Society A) and Schedule D (in respect of Society B) to this Agreement. Fees are considered due when they have been collected and allocated to the rightsholders represented by the receiving RRO. Such allocation shall take place within a reasonable time and within the terms set out in Schedule C and Schedule D respectively. When remitting the payment, the transferring RRO shall submit a statement to the receiving RRO which includes:

1. a summary of the fees collected by the transferring RRO on behalf of the rightsholders in the receiving RRO’s territory of operation since the previous allocation of fees;
2. all information in the possession of the transferring RRO in order to enable the receiving RRO to distribute the fees to rightsholders including but not limited to the information specified in Schedules C and D of this Agreement;
3. an indemnity and undertaking in the form annexed as Schedule E for execution by the receiving RRO; and
4. a statement of such amounts, if any, as each transferring RRO is required by law to deduct in respect of taxation (such as, but not limited to, withholding tax) and of the amounts deducted for administration purposes in accordance with clause 10. Each of the parties as receiving RRO hereby undertakes to make any necessary application to the taxation authorities in the territory of the transferring RRO for consent to receive all payments of fees under this agreement gross and without deduction of tax in that territory, the transferring RRO undertaking to provide the receiving RRO with all necessary information and assistance in connection with such application.

10. Each RRO shall keep the information submitted in accordance herewith confidential and neither RRO shall disclose beyond its organisation (unless required by court action or governmental action or unless the information is, or becomes, part of the public domain through no fault of either RRO) information thus obtained as to reprographic reproduction in the territory of the other RRO, except that either RRO may disclose such information to its principals/member organisations, but only on a basis of confidentiality. Neither RRO shall divulge information from which the reprographic reproduction activities of a specific user may be identified.

11. DEDUCTION OF ADMINISTRATIVE EXPENSES

Each RRO shall be entitled to deduct from the fees it collects on behalf of the other RRO an amount necessary to cover its effective administration expenses. This amount shall not exceed in percentage terms that which is deducted for this purpose from fees collected by the RRO for the rightsholders it represents through its own principals/member organisations. Each RRO shall always endeavour in this respect to keep such deductions within reasonable limits having regard to local conditions within its territory of operation.

12. OTHER DEDUCTIONS

As negotiated by the parties and specified in Schedule G, each RRO shall be entitled within reasonable limits to deduct a proportion of the fees it collects which shall be allocated by it for specified social and cultural purposes. This amount shall not exceed in percentage terms that which is deducted for this purpose from fees collected by the RRO for the rightsholders it represents through its own principals/member organisations. Any deductions in accordance with this clause must be made before the amounts transferred to the receiving RRO are determined. Each RRO shall always endeavour in this respect to keep such deductions within reasonable limits having regard to local conditions within its territory of operation.

13. DISPUTE SETTLING MECHANISM

Each RRO has entered into this Agreement in good faith and in the spirit of co-operation and will use its best endeavours to resolve by conciliation or mediation any disputes that may arise in relation to the interpretation of this Agreement. Any
dispute as to the interpretation or application of this agreement not thus settled shall be resolved by arbitration. The arbitration tribunal shall apply the law of the country in which the reprographic reproduction to which the dispute is related, has taken or will take place. If the dispute is independent of a particular act of reprographic reproduction as mentioned, it shall be subject to the law of the territory of operation of the RRO against whom the claim giving rise to the dispute, is directed. The arbitration shall take place in the territory the law of which is to be applied. The arbitration tribunal shall be composed in accordance with the rules applying in that territory and the arbitration shall be conducted in accordance with the law and custom of that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law.

When according to the above a dispute or several disputes which are dealt with simultaneously, would involve arbitration in both territories, the arbitration shall take place in the territory of the party against whom the claim which originally gave rise to the dispute, is directed, and the composition of the arbitration tribunal and the procedure shall be according to the rules applied in that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law.

The member or members of the tribunal shall be knowledgeable in relevant copyright matters.

14. TERM

This Agreement shall take effect on signature and shall be for an initial period ending on the and shall continue from year to year, unless the Agreement is terminated by either RRO by a notice delivered at least six (6) months prior to the date of expiry of the then current period. However, any licence with users shall include the rights, works and publications of the other RRO for the entire period of such licence or for years from the date of expiry of this Agreement, whichever period is the shorter. The obligations of the parties under this Agreement shall continue in respect of such licences.

15. NOTICES

Notices under this Agreement shall be in writing and shall be sufficiently served if sent prepaid by recorded delivery or by facsimile transmission to the address specified below or to such other address as may be notified by each RRO from time to time. Any notice sent prepaid by recorded delivery shall be deemed served on the commencement of business on the tenth business day next following the sending of the Notice.

Address of Society A:

Address of Society B:

16. WHOLE AGREEMENT

This Agreement and the Schedules hereto embody all the terms agreed between the parties relating to the transfer of Reproduction Rights. The terms and conditions of this Agreement may only be varied by documents in writing, in terms agreed between the parties and any such documents shall be signed by both parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.
Model Bilateral Agreement Type B

RECITALS

1. Society A and Society B are Reproduction Rights Organisations (RROs) as defined in Article 3 of the Statutes of the International Federation of Reproduction Rights Organisations (IFRRO) and are RRO members of that organisation.

2. Society A through its principals/member organisations represents the reprographic reproduction rights of individual rightsholders resident in or citizens of or incorporated in Territory A and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights, works and publications in that territory.

3. Society B through its principals/member organisations represents the reprographic reproduction rights of rightsholders resident in or citizens of or incorporated in Territory B and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights, works and publications in that territory.

4. In the context of this agreement, National Treatment means that the rightsholders of Society A are treated by Society B in the country of Society B as the rightsholders in that country are treated by Society B.

5. In the context of this agreement, National Treatment means that the rightsholders of Society B are treated by Society A in the country of Society A as the rightsholders in that country are treated by Society A.

6. Society A and Society B support the principle of National Treatment and consider the collective administration of reprographic reproduction to be the only workable clearance and licensing procedure for users in their respective territories of operation.

7. Society A and Society B are striving to establish procedures for the licensing of reprographic reproduction and for distributing to rightsholders the fees collected from the licensing of reprographic reproduction and in their respective territories of operation.

8. The systems and legal structures employed by Society A and Society B in the collective administration of reprographic reproduction vary and these variations present practical difficulties.

9. Society A and Society B have entered this Agreement in spirit of co-operation and goodwill and in the interests of securing and maintaining strong and effective copyright laws of benefit to all rightsholders.

AGREEMENT

1. LICENCE/AUTHORITY TO COLLECT

On behalf of the rightsholders it represent, Society A hereby grants to Society B the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory B of the rights, works and publications as described in Schedule A to this Agreement on the same basis and on the same conditions as Society B licenses and collects fees for reprographic reproduction of the rights, works and publications of the rightsholders it represent.

If, in the event of continued non-use by Society B of any rights transferred by this Agreement, then Society A, by twelve months’ notice in writing to Society B, may withdraw those rights from the operation of this Agreement.

2. LICENCE/AUTHORITY TO COLLECT

On behalf of the rightsholders it represents, Society B hereby grants to Society A the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory A of the rights, works and publications as described in Schedule B to this Agreement on the same basis and on the same conditions as Society A licenses and collects fees for reprographic reproduction of such rights, works and publications of rightsholders it represents.

If, in the event of continued non-use by Society A of any rights transferred by this Agreement, then Society B, by twelve months’ notice in writing to Society A, may withdraw those rights from the operation of this Agreement.

3. EXERCISE OF RIGHTS

In consideration of the above grant, each RRO hereby undertakes within the limits of the grant of rights, works and publications from the other RRO and of its own articles of association or rules and of the governing law of its territory of operation to:

1. exercise the rights of the rightsholders represented by the other RRO in the same ways and to the same extent as it exercises the rights of rightsholders it represents;

2. apply to the rights, works and publications of the rightsholders represented by the other RRO the same tariffs, methods and means of collection and allocation of fees as those applied to the rights, works and publications of its rightsholders providing it does not contravene any governing law;
3. make available for exploitation, and to use all reasonable
devour to exploit the rights, works and publications
granted pursuant to Clauses 1 and 2 hereof in accord-
ance both with each RRO’s normal procedures and
sound commercial practice;
4. use all reasonable endeavours to collect fees from users
at regular intervals;
5. use all reasonable endeavours to promote public aware-
ness of the need, where appropriate, to obtain licences
for the reprographic reproduction of works;
6. co-operate with the other RRO in co-ordinating efforts
to raise the level of and to increase the effectiveness of
copyright protection in their respective territories of op-
eration.

4. NO ASSIGNMENT

Other than for the limited purposes of the management of
collection or for central licensing, no assignment or transfer
of all or any part of the rights and privileges granted to one
RRO under this Agreement is permitted without the express
written authorisation of the other RRO.

5. WARRANTY AND INDEMNITY

1. Each RRO warrants and represents to the other RRO
that it has the full right and power to enter into this Agree-
ment and to grant to the other RRO all those rights and
powers which are hereby granted.
2. Society A indemnifies and agrees to keep indemnified
Society B against all actions, judgments, costs and ex-
penses legal and otherwise which may arise as a conse-
quence of or arise out of any rightsholder in Society A’s
territory of operation taking action, proceeding or make
demand against Society B for the payment of compensa-
tion for reprographic reproduction in Society B’s territory
of operation.
3. Society B indemnifies and agrees to keep indemnified
Society A against all actions, judgments, costs and ex-
penses legal and otherwise which may arise as a conse-
quence of or arise out of any rightsholders in Society B’s
territory of operation taking action, proceeding or making
demand against Society A for the payment of compensa-
tion for reprographic reproduction in Society A’s territory
of operation.
4. This Agreement does not relieve either RRO of any obli-
gation under the law of their respective territories of op-
eration to meet claims for compensation from individual
rightsholders whose rights, works and publications have
been copied by reprographic reproduction whether or
not the individual rightsholder is a member or affiliate of
the other RRO (or its principals/member organisations).
The RRO against which such a claim has been made
will provide all relevant information to the other RRO and
consult with the other RRO on the settlement to be made
with the individual rightsholder.
5. Subject to clause (d), whenever a claim for compensa-
tion is made by an individual rightsholder represented by
one RRO, against the other RRO for reprographic repro-
duction by a licensed user, which claim under law, the
RRO (or its principals/member organisations) is obliged
to meet, this RRO may claim redress against the other
RRO for money paid on such claim (including legal and
other costs) connected therewith That RRO will provide
the other RRO with complete information as to the pay-
ment made as well as costs.
6. Paragraph (e) shall also apply when either RRO is obliged
on the basis of a licensing agreement to meet a claim for
redress from anyone required under law to pay compen-
sation to a rightsholder who is represented by the other
RRO. Where either RRO includes such provisions in its
licensing agreement it shall inform the other RRO.

6. COVENANTS

During the term of this Agreement both parties covenant and
agree:
1. not to communicate with individual rightsholders or us-
ers in the other RRO’s territory of operation without the
agreement of the other RRO;
2. not to enter into agreements with other organisations
in the territory of operation of the other RRO to allow such
organisations to licence any of the rights, works or publi-
cations which are the subject of this Agreement.
3. subject to the confidentiality restrictions set out in Sched-
ule C, supply the other RRO with copies of statutes, by-
laws, contractual forms or other documents setting out
the conditions under which the RRO represents the indi-
vidual rightsholder,
4. to notify the other RRO in writing from time to time of
any changes in its mandate from rightsholders which has
bearing on the administration of this Agreement;
5. subject to the confidentiality restrictions set out in Sched-
ule C, upon request from the other RRO, make available
all documents records and information which may be
of assistance to the other RRO in exercising its obliga-
tions under this Agreement including but not limited to
information about the types of user licensed the method
of licensing, licensing agreements and the statistical in-
investigations of reprographic reproduction which the RRO undertakes;

6. to advise the other RRO of changes to any governing law or other circumstances in its territory of operation which may be relevant to the administration of this Agreement and in the event of any relevant changes to governing law, to co-operate with the other RRO in amending this Agreement to accommodate those changes.

7. subject to the confidentiality restrictions set out in Schedule C, allow the other RRO to consult its records in order that the other RRO may monitor the administration of its rights, works and publications. PROVIDED THAT the RRO requiring the information under this Clause 6, arranges for the translation (if required) of any documents supplied in accordance with this clause.

7. MEMBERS

Each RRO agrees that:

1. its member or affiliate rightsholders will be represented by the other RRO for the purposes of this Agreement without any formalities or authorisations being required of those members or affiliates;

2. other than as required by governing law only those rightsholders who are resident in or citizens of or incorporated in the territory of operation of the RRO will be accepted as member or affiliate rightsholders for representation by that RRO;

3. where the above paragraph 7(b) cannot be implemented due to the effect of any governing law, each RRO will consult each other reciprocally in respect of applications for representation by way of membership or otherwise from rightsholders in the other RROs territory of operation.

4. the rightsholders whose works form the subject matter of this Agreement do not include rightsholders represented by virtue only of agreements that the RRO holds with RROs not party to this Agreement

5. any dispute between the parties to this Agreement in relation to the representation of a rightsholder by either RRO shall be settled in a spirit of compromise and in the best interests of the rightsholder concerned.

8. FUNDS

Each RRO agrees that:

1. Fees collected by Society B for reprographic reproduction of works and publications as set out in Clause 1 of this agreement will be retained by Society B.

2. Fees collected by Society A for reprographic reproduction of works and publication as set out in Clause 2 of this agreement will be retained by Society A.

9. ACCOUNTS

Each RRO will provide the other RRO each year with a statement of the fees collected on behalf of the rightsholders in the other RRO’s territory of operation and retained by the RRO since the previous year.

10. DEDUCTION OF ADMINISTRATIVE EXPENSES

Each RRO shall be entitled to deduct from the fees it collects an amount necessary to cover its effective administration expenses. Each RRO shall always endeavour in this respect to keep such deductions within reasonable limits having regard to local conditions within its territory of operation.

11. OTHER DEDUCTIONS

As negotiated by the parties and specified in Schedule D, each RRO shall be entitled, within reasonable limits, to deduct a proportion of the fees it collects which shall be allocated by it for specified social and cultural purposes. Any deduction in accordance with this clause must be made before the distribution amount by the RRO is determined. Each RRO shall always endeavour in this respect to keep such deductions within reasonable limits having regard to local conditions within its of operation.

12. DISPUTE SETTLING MECHANISM

Each RRO has entered into this Agreement in good faith and in the spirit of co-operation and will use its best endeavours to resolve by conciliation or mediation any disputes that may arise in relation to the interpretation of this Agreement. Any dispute as to the interpretation or application of this agreement not thus settled shall be resolved by arbitration. The arbitration tribunal shall apply the law of the country in which the reprographic reproduction to which the dispute is related, has taken or will take place. If the dispute is independent of a particular act of reprographic reproduction as mentioned, it shall be subject to the law of the territory of operation of the RRO against whom the claim giving rise to the dispute, is directed. The arbitration shall take place in the territory the law of which is to be applied. The arbitration tribunal shall be composed in accordance with the rules applying in that territory and the arbitration shall be conducted in accordance with the law and custom of that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law.

When according to the above a dispute or several disputes which are dealt with simultaneously, would involve arbitra-
tion in both territories, the arbitration shall take place in the territory of the party against whom the claim which originally gave rise to the dispute, is directed, and the composition of the arbitration tribunal and the procedure shall be according to the rules applied in that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law.

The member or members of the tribunal shall be knowledgeable in relevant copyright matters.

13. TERM

This Agreement shall take effect on signature and shall be for an initial period ending on the [Insert Date] and shall continue from year to year, unless the Agreement is terminated by either RRO by a notice delivered at least six (6) months prior to the date of expiry of the then current period. However, any licence with users shall include the rights, works and publications of the other RRO for the entire period of such licence or for [three/five] years from the date of expiry of this Agreement, whichever period is the shorter. The obligations of the parties under this Agreement shall continue in respect of such licences.

14. NOTICES

Notices under this Agreement shall be in writing and shall be sufficiently served if sent prepaid by recorded delivery or by facsimile transmission to the address specified below or to such other address as may be notified by each RRO from time to time. Any notice sent prepaid by recorded delivery shall be deemed served on the commencement of business on the tenth business day next following the sending of the Notice.

Address of Society A:

Address of Society B:

15. WHOLE AGREEMENT

This Agreement and the Schedules hereto embody all the terms agreed between the parties relating to the transfer of Reproduction Rights. The terms and conditions of this Agreement may only be varied by documents in writing, in terms agreed between the parties and any such documents shall be signed by both parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.
**IFRRO development fund procedures**
Adopted by the Board 17 June 2005

1 GRANTS AND LOANS

IFRRO has a two-tier system for allocations from the Development Fund:

- **Activity Grants** – to encourage the conditions for collective copyright licensing, develops copyright infrastructure, or informs local stakeholders about collective copyright management; such as study visits and training, seminars, workshops, research, studies, legal reforms and translation may be covered by an activity grant. The list is not exhaustive. Activity grants are non-reimbursable.

- **Project Loans** – to support the initial operating costs of a new RRO. Project loans are reimbursable.

1.1 Funding criteria
To ensure that Development Funds grants and loans are consistent with IFRRO’s long-term goals and objectives, IFRRO has adopted the following funding criteria:

- support collective administration of copyright in the recipient country; and
- lead to RROs being self-sustainable in the long term.

1.2 Approval process
The relevant IFRRO Regional Committee, who will make a recommendation to the Board, will consider applications for both Activity Grants and Project Loans. The Board approves Grants and Project Loans on the basis of the applications and the Committee recommendation.

1.3 Timescale
The Secretariat will inform the applicant whether the Board had approved the application. Funding under the Development Fund will normally have to be claimed within one year from the notification of the approval.

1.4 Principles regarding the payment of Activity Grants and Loans

**Grants**
Payments of Grants are made to the beneficiary free of bank charges.

**Loan**
The beneficiary may claim that payment and repayment of Loans are paid at the exchange rate at the time of the Board’s approval of the Loan. Repayment is made free of interest rates and bank charges.

**Loan and Grants**
The beneficiary shall acknowledge receipt of payments to the Secretariat.

1.5 Publicity
The beneficiary shall make public IFRRO’s funding by mentioning its name in documents related to the project, including press releases, and by using its logo followed by “project sponsored by IFRRO’s Development Fund”.

2 GRANTS

The upper limit of an Activity Grant will normally be 15,000. The limit is regularly reviewed and may be exceeded by the Board.

2.1 Activities which may be covered by a Grant
Any activity that encourages the conditions for collective copyright licensing, develops copyright infrastructure, or informs local stakeholders about collective copyright management; such as study visits and training, seminars, workshops, research, studies, legal reforms and translation may be covered by an activity grant. The list is not exhaustive.

2.2 Who can apply for Grants
Any RRO, whether established, new, in membership of IFRRO or not; rights holder groups; authors and publishers groups; national and international organisations, such as CERLALC; government offices; IFRRO regional committees; and the IFRRO Secretariat may submit applications for Activity Grants.

2.3 Procedures
An application for an Activity Grant should use the template published on IFRRO’s website; or, if that form is not used, must comment on each of the matters listed in the template and the IFRRO Funding criteria (1.1 above). A budget must be attached, preferably using the template on IFRRO’s website.

The Application is to be sent to the IFRRO Secretariat, directly or via the IFRRO Regional Committee or a mentor RRO. On the approval of the grant by the Board, the Secretariat will inform the applicant whether the Grant has been approved.

2.4 Costs eligible for Activity Grants
Costs outside the programme period are not eligible. The following costs are eligible for grant applications:

- Consultancy fees
- Travelling and accommodation costs
- Conference/seminar/workshop organisation costs
- Translation and interpretation costs

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2.5 Payment of Activity Grants

The beneficiary shall request in writing to the Secretariat payment of the Grant providing necessary bank details for payment to be made: bank account number, IBAN and or SWIFT codes, name and address of the bank. Payments are made free of bank charges.

IFRRO will usually pay out an Activity Grant after the completion of the activity and upon receipt of the activity report and (if applicable) original invoices. Upon request from the beneficiary, the Secretariat may pay out up till 50 % of the grant prior to the event.

2.6 Activity report

The applicant must submit a report on the activity, together with a documented reconciliation of the Activity Grant. The report will include:

- background – if applicable including legislative summary, comments on local publishing industry and copying practices, other relevant information;
- description of the activity and participants;
- any particular issues raised during the activity; and
- outcomes including any follow-up activities.

3 LOANS

There is in principle no limit to the size of a loan application. The Secretariat and/or the Regional Committee will assist the applicant to identify a maximum funding that might be made available to the applicant.

3.1 Activities which may be covered by a Loan

Project Loans is granted to support the initial operating costs of a new RRO.

3.2 Who can apply for a Loan

Any RRO, whether established, new, about to be established, in membership of IFRRO or not; rights holder groups, authors and publishers groups establishing an RRO may apply for a Loan from the Development Fund for the RRO. It is foreseen that priority be given to support the establishment of new RROs, preferably already in or in the process of applying for membership in IFRRO.

3.3 Procedures

An application for a Loan must use the template published on IFRRO’s website. It must address the following issues:

- declare that the RRO has been legally formed and has been granted the authorisation to act
- name its principal members and directors
- project origin and background, indicating also investments already made
- analysis and compliance with IFRRO’s Funding Criteria (see 1.1 above)

3.4 Costs eligible and non eligible under a Loan agreement

The following costs are eligible for grants application:

- Consultancy fees
- Administrative fees, including staff and equipment costs
- Marketing
- Travelling and accommodation costs
- Bank and other loan related charges

Non-eligible costs are costs outside the programme period, litigation and arbitration costs, bad debts, VAT and other tax charges, staff redundancy or business termination costs.

3.5 Local matching of IFRRO contributions

Financial assistance through a Development Fund Loan is to be granted to allow an emerging RRO to start their operations. It may be approved once the Board after consulting the relevant Regional Committee has determined that the elements to ensure the success of a new RRO are present. The financial assistance policy should be at level consistent with these objectives. Inter alia in order to ensure an appropriate level of commitment by new RROs, any Loan package by IFRRO should be matched by local stakeholders and shown in the Business Plan. The matching inverted comings should be substantive but need not be equal contributions to the loan. It could be in cash and/or in kinds. A schedule of promised contributions must be annexed to the application. The Board in consultation with the relevant Regional Committee may exempt from the requirement of a matching contribution from local stakeholders.

3.6 Payment of the Loan

A written loan agreement signed on IFRRO’s behalf by the Treasurer and the Secretary General and by two legal representatives of the beneficiary is necessary any payment of the loan is made. Payment of the Loan is set out in the loan agreement and made subject to drawdown notices from the beneficiary to the Secretary General. It will normally be disbursed gradually.
3.7 Reporting and Monitoring

Annual reports
Recipients of loans are required to submit reports on milestones etc., in accordance with the signed loan agreement. That should at least include the submission of an annual report during the loan term to the IFRRO Board with a copy to the appropriate Regional Committee:

- a brief narrative report describing inter alia licensing activities;
- an audited statement of income and expenditure;
- a balance sheet;
- financial projections for the next year, including proposed licensing activities;
- copies of bank statement for the separate account into which the IFRRO payment was deposited

At the end of the loan period
At the end of the loan period, the recipient RRO must submit a project completion report with an analysis of the factors which contributed to the success of the recipient RRO, and those which restricted its operations.

If the loan has not been repaid, the recipient RRO must submit to IFRRO an analysis of the factors which contributed to its inability to repay, together with a revised business plan and repayment schedule. The recipient RRO must continue to submit annual reports until the loan is repaid.

EXPLANATORY MEMORANDUM to IFRRO Development Fund Procedures
Adopted by the Board 17 June 2005

1. THE STATUTES OF IFRRO:
SUPPORT LOCAL INITIATIVES

The objectives of IFRRO as established in Article 3 of its statutes includes providing support to facilitate the establishment of collective or centralised management schemes for reproduction rights. In order to achieve the objectives, Article 3, §2 of the statutes specifies further that IFRRO will offer support and promote

Joint attempt by authors and publishers in any country to create and develop Reproduction Rights Organisations (RROs)

Thus, the policy of IFRRO is to work closely with local rightsholders and their associations when assisting in the setting up of RROs.

2. IFRRO’S BUSINESS PLAN 2004 - 2008

IFRRO’s Business Plan 2004 – 2008 was adopted by the Board on June 29 2004. This document sets out the main goals and strategies of IFRRO and establishes the IFRRO policy in a number of areas, including development activities.

Objective 4 stresses that IFRRO will give

Systematic and proactive support to the creation of RROs worldwide

To this end, Strategy B is consecrated entirely to development work. It foresees a balance between the strengthening of established RROs and the creation of new ones:

Many countries do not have established RROs, while RROs all over the world need to revise their working methods… The development work of IFRRO should endeavour to keep a balanced approach between these two development needs.

In order to achieve this, there is a need for clear target countries towards which financial assistance should be focused, and the strengthening of the role of the committee chairs, inter alia to enable this focussed approach:

Increase the number and the delivery speed for IFRRO’s own Development Fund projects
The role of mentor RROs and of the regional chairs in the management of development fund grants will increase, in order to deliver "tailor made" solutions to local RROs or rightsholder associations

3. THE IFRRO DEVELOPMENT FUND

Article 17 of the IFRRO treats the Development Fund. §9 establishes that the purpose is to

to allocate and/or lend funds needed for the establishment and development of new RRO and to finance special projects meeting the social and cultural objective of the Association in keeping with the decisions of the Board Directors.

Financial assistance should be granted to allow emerging RROs to start licensing their operations once the Board in co-operation with the relevant Regional Committee has determined that the elements to ensure the success of a new RRO are present. The financial assistance policy should be at a level consistent with these objectives. It should also reflect the need to maintain the IFRRO Development Fund.

The necessary funding is to be obtained through voluntary contributions from the membership, in accordance with Article 17§12 of the Statutes:
The Development Fund consists of voluntary contributions of members or third parties. The Board of Directors and donors shall agree on the conditions and/or limits for the use of those contributions. It is important to note that, the money allocated for the Development Fund is not to be used for administration, but directed entirely towards specific projects.

4. STRATEGY. ADOPTION OF POLICY THROUGH REGIONAL COMMITTEES

The Business Plan 1996 – 2000, Towards the Millennium also dealt with the IFRRO Regional Committees, which should be established to ensure the adoption of the policy, especially with respect to the establishment of new RROs:

regional committees - Africa, Asia-Pacific, Europe and Latin America - will have a broad watching brief for their designated areas and be responsible for encouraging and overseeing the formation of RROs in countries targeted by them and endorsed by the Board.

This policy has been carried forward by the Board in successive Business Plans, including the current one.

5. PRIORITIES WITHIN THE REGIONS

Priority recommendations within each of the regions have been left to the Committees. Each of committees report priority countries to the Board and the AGM at each meeting.

All Committees submit reports to the Board and the AGM, thus enabling these governing bodies of IFRRO to influence the priorities of the Committees.

6. CONCLUSION

Allocation of money from the IFRRO Development Fund is based on several documents and decisions by the Board and the AGM. The decision making process is democratic:

- **The fundamental basis** for allocations is embedded in the IFRRO statutes, to which all members subscribe upon becoming a member, and the policy documents Business Plan 2004 – 2008 and IFRRO Development Fund Procedures.
- **Priority recommendations** are left to the Regional Committees established by the AGM (European Group) or the Board. The Committees have delegated responsibility based on their knowledge of and contact with their respective regions.
- **Reports** to the Board and the AGM on activities and suggested priorities ensure necessary control and follow-up.
Draft business plan

BACKGROUND
Outline organisation in question, history, fundamental legal and mandatory basis for its activities

MISSION STATEMENT
Main objectives of the organisation in question

OBJECTIVES
The main objective in relation to administration of reprography and/or reproduction rights

BUSINESS PLAN

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IMPLEMENTATION AND REVIEW OF BUSINESS PLAN
Short description on how to implement the Business Plan, success criteria and how to go about to review the Plan

EXPECTED RESULTS

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## TOTAL COSTS

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Examples from RROs in different countries

Statutes of the Hungarian Alliance of Reprographic Rights


The Hungarian Alliance of Reprographic Rights (Alliance hereafter) at its statutory meeting establishes its Statutes as follows:

I. General Provisions

1.1. Name of the Alliance: Magyar Reprográfiai Szövetség

1.2. Short name of the Alliance: RSZ

1.3. Foreign (English) name of the alliance: Hungarian Alliance of Reprographic Rights

1.4. Short foreign (English) name of the Alliance: HARR

1.5. Domicile: 1015 Budapest, Hattyú u. 8/b.

1.6. Activity of the Alliance extends to the whole territory of the country

1.7. The Alliance is a nationwide alliance of societies representing copyright holders concerned by reprography in accordance with Article 21. (1) of the 1999. LXXVI Hungarian Copyright Act (CA hereafter) on the basis of compulsory collective administration of rights as provided in Article 21. (7) and Article 85. of the CA

1.8. Income of the Alliance:
   • membership fees
   • handling fees being deducted in accordance with Article 21. (5) of the CA from revenues stemming from collective administration of rights
   • offerings and contributions of foreign and domestic legal entities and persons

II. Purpose and activity of the Alliance

2.1. Shall be to determine and collect fees, on the basis of the Article 21. (1)-(3) of the CA, due for private purpose copying by means of reprography to copyright holders concerned by reprographic reproduction. To transfer collected revenues - according to the the proportions and without direct individual distribution to concerned members, related domestic and foreign right holders as defined in Article 21. (5)-(6) of the CA - to member societies registered as being able to keep file of works, affected members and related copyright holders concerned by reprography. Related copyright holders are represented in the Alliance (an organisation which comprise societies of collective administration of rights) indirectly through its member societies.

2.2. To safeguard and protect interests of its member societies and related rightsholders and to represent them at forums concerning implementation of reprographic rights held at home and abroad.

2.3. To contribute to preparations of copyright regulations concerning implementation of reprographic rights and relating bills, and to conciliation of such bills.

2.4. Economic-business activities may be carried out by the Alliance secondarily only in order to secure financial conditions necessary for accomplishing its goals.

III. Membership terms

3.1. Any society may become member of the Alliance (a nationwide alliance of civil organisations) which by having claim for reprographic remuneration for its members as defined in Article 21. (1) of the CA undertakes that:
   • It shall distribute royalties received from the Alliance among its members and related copyright holders in accordance with Article 88. (1) paragraph f.5. of the CA.
   • It shall keep file of copyright holders and their works (documentation) concerned by reprography in accordance with Article 88. (1) paragraph 2. of the CA.
   • It shall, in accordance with Article 88. (1) paragraph e. of the CA, sign reciprocal representation agreements with adequate foreign societies administering reprographic rights, or holding statement of will thereof.
   • It has been registered as being able to accomplish the above mentioned goals and activities at the respective court having competence thereto and in respect of collective administration it has been registered by the Minister of National Cultural Heritage (MNCH hereafter) having competence therein according to Article 86. (1) of the CA and 16/1999. Decree of the MNCH. In the latter case it may be sufficient for admission if the applicant prove that application for registration has already been submitted to the MNCH.
3.2. Membership status starts with admission. Admission to membership of a new organisation shall be approved by the general meeting. Participants being present at the statute meeting shall become members by approving the Statutes. Societies wishing to become members should submit their written applications to the general meeting proving with adequate documents that all criteria set out in Article 3.1. have been met.

Membership status shall come into effect on the date the resolution of the general meeting is passed.

3.3. Membership terminates:
- by resignation
- by exclusion
- should the member be deleted from any of the registrations set out in Article 3.1., or should application for registration be refused by legally binding rejection in case the applicant’s registration at MNCH is already under process.
- Should the member be dissolved having a legal successor, on the date of dissolution, if the successor does not meet membership criteria.

3.3.1. Any member wishing to resign shall submit a written notice of resignation to the general meeting and the meeting at its next session shall be obliged to declare resignation of the member, delete its member status and notify the member in writing. Membership terminates on the date the general meeting declares the membership terminated.

3.3.2. The general meeting may exclude the member which despite of notices shall not execute its obligations stemming from membership in the Alliance, or the Alliance’s interest are seriously violated by the member’s misconduct. Membership terminates on the date the decision about exclusion is made. The excluded member must be notified in writing. Decision about exclusion may be challenged at court by the excluded member within 30 days after notice.

3.4. On behalf of a member, a representative chosen according to the regulations of the member society and registered at the Capital City’s Court (or at County Courts), shall be entitled to act.

IV. Rights and obligations of members

4.1. Each member of the Alliance having equal right to vote (one vote each) at the General meeting authorised to decide over any matter concerning the work of the Alliance may take part in the activities and meetings of the Alliance. Each member exercises its right to vote by its representative as described in Article 3.4.

4.2. Members of the Alliance shall be entitled, as defined in Article 21. (5), (6) of the CA, to receive the respective share of collected royalties in accordance with Article 2.1.

4.3. Members of the Alliance may vote by their representatives and their representatives may be elected into the bodies of the Alliance according to the provisions of these Statutes.

4.4. Members of the Alliance shall be obliged according to Article 87 (2) of the CA to make an agreement between each other and the Alliance which provides, in regard of claims for reprographic remuneration as defined in Article 21 (1) of the CA, that implementation of remuneration claims towards users and subsequent transfer of collected royalties to member societies without distribution as described in Article 21. (5), (6) of the CA shall be carried out by the Alliance while file keeping (documentation) necessary for individual distribution and distribution itself shall be carried out by member societies representing all related rightsholders.

4.5. Members of the Alliance shall be obliged to take part in the work of the Alliance’s bodies and shall exercise their rights and obligations by their registered representatives.

4.6. Members of the Alliance shall be obliged to pay membership fee determined by the resolution of the general meeting. The statute meeting following the adoption of the Statutes with regard to Article 4.7. shall pass a resolution about the amount of the membership fee.

4.7. Property necessary for commencement of the Alliance’s work shall be provided to the Alliance by its member societies in accordance with Article 4.6. of the statute meeting.

4.8. Property of the Alliance shall be accumulated primarily from fees paid by its members and from offerings and contributions paid by legal entities and persons.

V. Structure of the Alliance

General meeting

5.1 The principal body of the Alliance is the general meeting. The general meeting is quorate if all members are present. The general meeting is called together by the chairman. Session of the general meeting may be initiated by the supervisory board (SB hereafter) or by any of the members.
5.2. An annual general meeting shall be called together once in every year and special general meetings shall be held if initiated by the chairman, the director or the SB.

5.3. It shall be exclusively included into the competence of the general meeting:

- To elect and remove the chairman, the director and the members of the SB, to adopt and amend the Statutes.
- To admit members.
- To determine the annual budget of the Alliance and to approve within this the annual report of the chairman and the director and to approve the annual financial report made in accordance with the Accounting Law (including decision over further use and distribution of collected royalties (net income) due from remuneration claims set out in Article 21. (5), (6) of the CA.)
- To determine and modify the amount of membership fee.
- To decide over statements of royalty rates (tariffs), distribution code, and other internal regulations necessary for the work of the Alliance.
- To determine dissolution or merger with other civil organisation.

5.4. Convening the general meeting

5.4.1. The general meeting (annual general meeting) shall be called together once in every year. Special general meetings may be called together according to the Statutes should decisions be due over matters falling into the competence of the general meeting or should it be ordered so by the Court or should any member consider it necessary.

5.4.2. General meetings shall be called together by the chairman. If the session of the general meeting has been proposed and called by those entitled thereto it may not be objected by the chairman. If the general meeting is not called together within 30 days after initiated so by the SB the SB shall be entitled to call it together thereafter.

5.4.3. Members shall be notified about the general meeting's session with a written notice of invitation including place, date and agenda of the meeting. Notices must be posted at least 15 days before the meeting. Proposals intended to remove the chairman, the director or an SB member must be forwarded with a written explanation to the chairman at a time when a new point concerning removal could still be included in the agenda of the meeting.

5.4.4. Invitations apart from the contents mentioned in Article 5.4.3. must also contain information about consequences of inquorum of the meeting and about voting right for which regulations set out in Article 5.6.2. shall be directive.

5.5. Participation at general meetings

5.5.1. Members may participate at the general meeting by their representative as determined in Article 3.4. or by a trustee holding thoroughly proven authorisation thereto endorsed by the representative. The right of representation and any modification thereof shall be officially proved with a copy of registration statement from the Court having competence therein. Statement of registration submitted to the meeting at the first time shall remain valid until any modification in the right of representation becomes effective.

5.5.2. Members being present at the general meeting shall be kept record of by filling out an attendance sheet on which the member’s name, domicile, its representative's name, office and rank (with regard to her/his organisational status as a fully authorised representative or trustee) shall be recorded. The attendance sheet shall be validated by the conducting chairman of the meeting and by the recordkeeper. The conducting chairman and the keeper of the records shall be elected from among those being present.

5.6. Quorum of the general meeting

5.6.1. The general meeting is quorate if all the members are present.

5.6.2. If the general meeting is inquorate a second general meeting called together with the original invitation notice for any date between the third and fifteenth day after the original meeting assembled shall be quorate in matters of the original agenda with no regards to the number of members being present if members have already been informed thereof with the original notice of invitation. If the general meeting is to decide over questions necessary to fulfill legally binding obligations concerning the making of the financial report the second general meeting may be appointed to any date.

5.7. Decision making

The general meeting shall make its decisions by simple majority open voting. In the event of a tie vote the vote of the member society which at the time of voting gives the chairman of the Alliance shall be decisive.

5.8. Minutes

5.8.1. Minutes shall be kept about the general meeting which includes:
5.8.1.1. Name of the Alliance

5.8.1.2. Place and date of the general meeting, names of members and representatives present at the general meeting including those present with consulting rights.

5.8.1.3. Name of the chairman, the keeper of the minutes, the validator of the minutes

5.8.1.4. The agenda, major events and proposals of the general meeting

5.8.1.5. Decisions in relations with points of the agenda, number of votes for and against decisions, number of those abstained from voting.

5.8.2. The minutes shall be signed by the keeper of the minutes and the conducting chairman, and shall be validated by one of the members. The attendance sheet shall be attached to the minute.

5.8.3. Decisions of general meetings shall be contained into a book of resolutions starting with new numbering at each calendar year. Keeping the book of resolutions shall fall into the responsibilities of the director.

VI. Supervisory Board

6.1. The supervisory board is an internal controlling body of the Alliance established by the members. Within the framework of supervision the board is entitled to ask for and acquire information and/or reports from the chairman, director or employees of the Alliance and entitled to examine the books and documents of the Alliance.

6.2. SB is obliged to review the annual business report, the business plan, the financial report made in line with the Accounting Law and submitted to the general meeting. Results of the revision shall be set forth by the chairman of the SB, resolution may not be passed over the business plan and the financial report of budget and accounts.

6.3. The SB consist of 3 members. Its members shall be elected for 4 years. Members may be reelected.

6.4. Any SB member shall be removed if his/her obligations towards the Alliance defined in the Statutes or in other internal regulations are not met. Any SB member may be removed if his/her misconduct seriously violates the Alliance in achieving its goals or in its interests.

6.5. Call for the SB's assembly, admission, quorum, the protocol of decision making, or any other matter concerning the work of the SB shall be provided for by the SB's regulations. The regulations of the SB shall be established by the board itself which may not be contrary to the Statutes.

VII. Chairman

7.1. The chairman is the representative of the Alliance. Represents the Alliance towards domestic and foreign legal entities, persons and authorities. Entitled to individually sign on behalf of the Alliance, i.e., to sign his/her name according to his/her official signature sample under the prewritten, patterned or printed name of the Alliance.

7.2. The chairman conducts the session of the general meeting. If unable to attend the general meeting elects a substitute chairman conducting the session.

7.3. Only natural person may be nominated for chairman. The chairman shall be nominated from among members of societies and by the societies which represent the following groups of copyright holders, in the following order:

- At first, the society of collective administration of rights representing fine and industrial artists and photographers
- Secondly, the society of collective administration of rights representing authors of literary and musical works and music publishers
- Thirdly, the society of collective administration of rights representing writers of scientific, professional and literary works and publishers of books and periodicals
- Subsequently, the societies of collective administration of rights following each other according to the hereby set out order

Should the thirdly mentioned society not be established or should not become member of the Alliance by the time it has the right of nomination the order of nomination shall be applied only to the two member societies.

If a member society of collective administration of rights entitled for nomination does nominate its non-natural person member for chairman the natural person shall be indicated by name to whom of its members, employees or officials the nomination is concerning.

7.4. The chairman is elected of nominees for 4 years

7.5. Should the nominee be not elected the nomination and election procedure shall be repeated, if the repeated election procedure fails the former chairman's mandate shall be prolonged for other 4 years.

7.6.1. The chairman shall be removed if his/her obligations
defined in the Statutes towards the Alliance are not met.

7.6.2. The chairman may be removed if his/her misconduct seriously violates the Alliance in achieving its goals or in its interests.

7.6.3. The chairman may not take part in passing a resolution concerning his/her removal and may not conduct that session.

7.6.4. To remove the chairman the rules of election shall be applied appropriately

**VIII. Director**

8.1. The director is the leader of the working structure of the Alliance, the manager of the Alliance. The director’s position is an employee status to be filled within the framework of a contractual relationship for employment or by professional, civil or social assignment. The director is entitled to individually represent the Alliance and to sign on behalf of the Alliance by writing his/her name under the prewritten, patterned or printed name of the Alliance.

8.2. The director shall be elected by the general meeting for an indefinite period of time.

8.3. The director shall remain employed until the new director’s employment status is established

8.4. Preconditions for removal of the director are contained in the employment contract, in other legal contract establishing employment status or in assignment contract signed with the director according to Article 8.1. of the Statutes.

The written proposal for removal of the director shall be forwarded to the members with an adequate explanation. To remove the director the rules of election shall be applied appropriately.

8.5. The director shall exercise employer’s rights towards all employees of the Alliance. Any decision may be taken by the director in matters which have not been transferred into the competence of other bodies of the Alliance by law or by these Statutes. His/her decisions may not be contrary to the resolutions of the general meeting.

8.6. The chairman and the director shall be entitled together to dispose over the bank account of the Alliance.

8.7. The director shall be responsible for complying with requirements concerning the making of the annual financial report in accordance with the Accounting Law and also for the regular bookkeeping of the Alliance. Once in every year the director shall give an account to the general meeting of the Alliance’s work, assets and of the amount of royalty handed over to members.

**IX. Uniform regulations concerning the chairman, director and members of the SB**

9.1. The chairman, director and SB members shall be elected by the general meeting.

9.2. Assignment of the officials set out in Article 9.1. shall cease
   • when the period of their assignment expires
   • by removal
   • if a reason for exclusion regulated by law takes place
   • by resignation
   • by decease

9.3. The legal relationship between the indicated officials and the Alliance - if the function is not filled by the given person on employment basis – shall be regulated by provisions of the Civil Rights Act (CRA Article 474-478) concerning assignment contracts.

9.4. The director in regard of a given circle of matters may entrust representation right to employees having adequate scope of duties in the working structure of the Alliance.

**X. Dissolution of the Alliance**

The alliance shall be dissolved if
   • the general meeting states dissolution or merger with other civil organisation
   • winding up or dissolution is stated by an authority having competence therein

**XI. Miscellaneous provisions**

11.1. In terms of matters have not been regulated hereby the provisions of 1989. II. Act on Right of Union, the 1959 IV. Civil Rights Act and resolutions of general meetings shall be directive.

11.2. Where written notice is referred to by the Statutes, registered mail, or in urgent case telefax or electronic mail confirmed by phonecall shall be meant.

The Statutes were adopted at the statute meeting in Budapest on April 28, 2000. Amendments were enacted by the May 16, 2000 and by the September 13, 2000 general meetings.
1 Name

"ProLitteris, Schweizerische Urheberrechtsgesellschaft für Literatur und bildende Kunst", "ProLitteris, Société suisse de droits d’auteur pour l’art littéraire et plastique", "ProLitteris, Società svizzera per i diritti degli autori d’arte letteraria e visuale", "ProLitteris, Società svizzera da dretgs d’autur per la litteratura e l’art figurativ" is founded as a cooperative society within the meaning of Article 828 et seq. of the Swiss Code of Obligations.

2 Registered office

ProLitteris has its registered office in Zurich.

3 Purpose

3.1 ProLitteris administers copyrights in literary, dramatic, artistic and photographic works which are contractually transferred to it for collective administration by authors, publishers and other rights owners.

3.2 ProLitteris may also temporarily administer copyrights negotiorum gestio, within the meaning of Articles 419 et seq. of the Swiss Code of Obligations, for authors, publishers and rights owners with whom it does not have contractual relations and who are unable to assert their own rights.

3.3 ProLitteris shall establish a pension fund for its members with a view to improving the social protection of authors and publishers. The rules applicable to retirement, disability and survivors’ pension plans shall be set out in the pension fund regulations.

4 Membership

4.1 ProLitteris has four divisions:
Division A1: Writers
Authors of literary dramatic works
Authors of artistic works

Division A2: Photographers,
Division A3: Journalists, Authors of scientific works
Division E: Publishers

4.2 Are eligible for membership of ProLitteris:
• writers
• journalists and authors of scientific works
• authors of artistic works and photographers
• authors of literary dramatic works
• publishers of books
• publishers of newspapers and magazines
• art publishers
• publishers of dramatic and dramatico-musical works
• successors and other owners of copyrights administered by ProLitteris

4.3 Applicants for membership of ProLitteris will be accepted if they can show that:
• they have close ties with Switzerland and/or the Principality of Liechtenstein through their nationality or residence; in the case of associations or legal persons, through their registered office; and
• the rights assigned to ProLitteris will generate remuneration inasmuch as third parties will be able to use their works.

4.4 As an author's legal successors, heirs are eligible for ProLitteris membership provided that the author satisfied the conditions in point 4.3. Heirs shall appoint a joint representative vis à vis ProLitteris and provide the requisite certificate of inheritance.

4.5 The Management rules on membership applications. Decisions refusing membership may be contested by applying to the Board of Directors.

4.6 In the membership agreement, applicants are required to join at least one of the four divisions referred to in point 4.1 and simultaneously to transfer to ProLitteris all the rights in their works listed in the membership agreement.

4.7 Membership is free of charge.

4.8 Membership terminates if:
• a member gives six months’ advance written notice of withdrawal. Members may not withdraw before the end of their first year of membership, and may only give notice for the end of a calendar year;
• despite inquiries, ProLitteris is unable to find a member’s address for more than three years;
• a member no longer satisfies the conditions for membership;
• a member transfers to a foreign sister society which pursues the same objectives as ProLitteris and has contractual relations with it; Transfers of membership are possible at any time;
• a member dies;
• an association or legal person which is a member of ProLitteris is dissolved or liquidated, or is restructured or merged with another legal person.
• a member is excluded by the Board for repeated infringement of his obligations as a member or for a deliberate breach of the ProLitteris regulations;
Members may contest decisions of the Board by applying to the General Meeting of ProLitteris.

4.9 Upon termination of membership, any advances granted by ProLitteris to the member shall become due and payable. Moreover, the former member, or his/her successor(s), is entitled to a royalty statement for the last year of membership and to settlement of the remuneration due to him.

4.10 Membership is not transferrable.

4.11 Members and principals may contest decisions of the Management which directly affect their rights and claims by applying to the Board within 30 days of the time they become aware of the decision.

5 Principals

5.1 In special cases, ProLitteris may accept mandates from principals.

5.2 With the exception of active and passive voting and election rights, principals have the same rights and obligations as members.

5.3 The special conditions regulating mandates are set out in the mandate agreements concluded from time to time between the principals and ProLitteris.

6 Cooperation in Switzerland and abroad

6.1 Where it is in the interest of its members and principals, ProLitteris shall work together with the domestic copyright collecting societies.

6.2 ProLitteris may transfer the rights entrusted to it by its members and principals to foreign sister societies for collective administration abroad.

6.3 ProLitteris may join international federations.

7 Collective administration rules

7.1 General

7.1.1 ProLitteris shall treat all rights entrusted to it equally, following the same rules.

7.1.2 ProLitteris shall ensure that the rights entrusted to it are respected everywhere. In special cases (for example if the relationship between costs and remuneration is disproportionate) ProLitteris may, if it deems it appropriate, waive enforcement of its rights.

7.1.3 ProLitteris shall exercise all rights entrusted to it in its own name. ProLitteris is entitled to conduct legal negotiations independently and, in particular, to conduct legal proceedings.

7.2 Relations with users

7.2.1 ProLitteris shall ensure that the copyright obligations arising from the use of the works in its repertoire can be fulfilled without undue formality.

7.2.2 In the context of the copyrights assigned to it, ProLitteris shall licence the use of the works entrusted to it for a reasonable remuneration. Each licence shall specify that the works in question may only be brought to the public in their original, unchanged form, and that any changes or cuts are subject to the consent of the authors and publishers of the work concerned.

7.2.3 ProLitteris may refuse to grant a licence if there is a risk the user may not handle the work with the necessary care, or if the user cannot offer sufficient security that the remuneration will be paid.

7.2.4 ProLitteris shall set tariffs for the different uses.

7.2.5 ProLitteris shall abstain from exerting any influence whatsoever on the user’s choice of works.

7.3 Distribution

7.3.1 ProLitteris shall ensure that, as a rule, each beneficiary receives the share of remuneration to which s/he is entitled for the use of his/her works.

Where the distribution breakdown involves unreasonable expense, ProLitteris is entitled to estimate the revenues. Estimates must be based on proper, verifiable elements.

7.3.2 The rules for the distribution of remuneration shall be set out in a distribution regulation.

7.3.3 ProLitteris shall process distribution as rapidly as possible. Payments to beneficiaries shall be made at least once a year.

7.3.4 Remuneration which cannot be distributed for want of adequate information on the beneficiaries of a work shall be set aside. If despite inquiries and investigations, ProLitteris is unable to determine the beneficiaries within one year, their share shall accrue to the authors, publishers and other rights owners who have entrusted their rights to ProLitteris.

7.3.5 The amounts required for covering administrative costs shall be deducted from total revenues before
distribution. Where possible, administrative costs shall be calculated separately for each category of rights and deducted from the corresponding revenues. The breakdown of administrative costs shall be reported in ProLitteris’s annual financial statements. Total administration costs should not exceed 25% of total revenues.

7.3.6 ProLitteris shall allocate 10% of the remuneration collected to the ProLitteris Pension Fund. Cases where a foreign sister society which has a reciprocal representation agreement with ProLitteris deducts more than 10% from the remuneration transferred to ProLitteris for its own social security purposes constitute an exception to this rule. In such cases, ProLitteris is entitled in its turn to deduct the same percentage from the remuneration payable to the society in question. Moreover, ProLitteris is entitled to deduct up to CHF 50,000 for cultural purposes from the remuneration distributable to its members and principals.

7.3.7 ProLitteris is a non-profit institution.

8 Bodies

ProLitteris has the following bodies:

- the General Meeting
- the Board of Directors
- the auditors
- the Management

8.1 The General Meeting

8.1.1 The General Meeting is the assembly of all the members of ProLitteris.

8.1.2 The General Meeting has the power to:

- approve the operating account, balance sheet and annual report
- give formal approval to the actions of the directors
- elect the president and the members of the Board
- designate the auditors
- consider applications against decisions
- amend pension fund regulations
- amend the statutes
- decide on mergers, or the dissolution or liquidation of ProLitteris

8.1.3 An ordinary General Meeting is held once a year. The Annual General Meeting shall be convened in writing at least 10 weeks in advance by means of an invitation to members specifying the agenda. Members may request additions to the agenda provided they communicate their proposals in writing at the latest six weeks before the General Meeting. The final agenda and the requisite documentation shall be sent to members at the latest two weeks before the General Meeting.

8.1.4 Each member has one vote at the General Meeting. In addition, each member is entitled to one vote in each division to which s/he belongs. Representation is excluded.

8.1.5 The General Meeting is chaired by the President. In his or her absence, it is chaired by a vice president. In absence of the latter, the General Meeting shall designate a member of the Board of Directors to preside the meeting.

8.1.6 Extraordinary General Meetings may be convened at any time by the Board of Directors or the auditors. The Board shall be obligated to convene an Extraordinary General Meeting upon the written request of one-tenth of the members, or if the majority of the members attending a General Meeting so resolves, specifying the items to be discussed. Invitations to Extraordinary General Meetings must be sent within four weeks of the date of the request but no less than ten days before the meeting is held.

8.1.7 The items for discussion at each General Meeting shall be specified in the final agenda. Important proposals shall be commented.

8.1.8 Regardless of the number of attending members, there is no quorum for General Meetings.

8.1.9 Decisions to call another General Meeting excepted, only items specified on the final agenda may be decided at the General Meeting. Proposals and suggestions must not be announced in advance if they do not require a decision.

8.1.10 Subject to the votes under point 8.1.11, resolutions of the General Meeting are adopted by a simple majority of the votes cast. Abstentions do not count as votes cast.

8.1.11 Resolutions on

- amendments to the Pension Fund regulations
- amendments to the statutes
- mergers, dissolution and liquidation
- are subject to a qualified majority of two-thirds of all votes cast and, if a division so demands (by a majority of votes cast), to the consent of all the divisions referred to in point 4.1.
- For resolutions amending the Pension Fund regulations or the statutes, or resolutions on mergers, dissolutions and liquidations, the Board shall conduct a vote in writing if 100 or more members so request.
8.1.12 As a rule, for subject matters and elections, voting is by show of hand. If either 20 members or the Board so request, voting shall be by secret ballot.

8.1.13 In elections, the first and second rounds are decided by absolute majority, the third round by a relative majority.

8.2 The Board of Directors

8.2.1 The Board of Directors is composed of a President, two Vice Presidents and no more than 9 members.

8.2.2 The 12 Board members are subdivided into the following authors’ and publishers’ groups:
- Group A1: writers
- Group A2: authors of artistic works and photographers
- Group A3: journalists and authors of scientific works
- Group A4: authors of literary dramatic works
- Group E1: Book and art publishers
- Group E2: publishers of newspapers and magazines
- Group E3: publishers of dramatic and dramatico-musical works

8.2.3 The groups referred to in point 8.2.2. each have the following number of seats on the Board:
- Group A1: 2 seats
- Group 2: 2 seats
- Group A3: 2 seats
- Group A4: 1 seat
- Group E1: 3 seats
- Group E2: 1 seat
- Group E3: 1 seat
(see point 8.2.12 on the veto rights of each individual group)

8.2.4 Board members are required to be members of Pro-Litteris as well as Swiss residents. Notwithstanding, officers of Swiss associations do not need to be members of Pro-Litteris.

8.2.5 A majority of Board members must be of Swiss nationality. The four language regions must be appropriately represented on the Board.

8.2.6 Each Board member has one vote. Board members may not represent members who are absent.

8.2.7 The Board is elected for a four-year term. Board members may be re-elected. The President is elected for a two-year term of office. He or she may be re-elected for three additional terms of office. Vice Presidents are elected for a four-year term. They may be re-elected. The terms of office of Board members who are elected during the Board’s four-year term shall be accordingly shorter and shall end at the end of Board’s normal term of office. This rule applies mutatis mutandis to the terms of office of the President and Vice Presidents.

8.2.8 The Board of Directors has the power to decide all matters that are not expressly in the purview of Pro-Litteris’s other bodies.
- decisions concerning the distribution regulation
- ruling on applications against decisions of the Management
- preparing and convening General Meetings
- implementing decisions of the General Meeting
- drawing up the balance sheet and operating account, and monitoring administrative costs in accordance with point 7.3.5
- electing the Vice Presidents
- setting up committees of the Board and other committees
- appointing and supervising the Management
- designating the persons authorised to sign and regulating signatory powers
- decisions concerning membership agreements
- decisions concerning cooperation agreements with other Swiss copyright collecting societies and foreign sister societies
- setting the remuneration of the President and the per diem allowances of Board members and committee members
- decisions concerning the Board’s regulations
- decisions on the allocation of the appropriation for cultural purposes referred to in point 7.3.6

8.2.9 Board meetings are chaired by the President or, in the latter’s absence, by one of the Vice Presidents.

8.2.10 The Board shall meet whenever necessary. Board meetings shall be held within four weeks of the request for a meeting by the President, a Vice President or three members of the Board.

8.2.11 The Board has a quorum when the majority of its members are present.

8.2.12 Resolutions of the Board concerning
- the distribution regulation
- membership agreements
- cooperation agreements with other Swiss copyright collecting societies
- reciprocity agreements with foreign sister societies
- the Board regulations
- are subject to a majority of two-thirds of all members present, and a majority of both the authors’ and the publishers’ representatives in the individual groups.
8.2.13 The Board may establish advisory committees to assist it in certain areas and especially in the field of tariff structures and distribution regulations.

8.2.14 Board members are paid a per diem allowance for their ordinary and extraordinary meetings, and for official talks. The per diem allowance covers meeting attendance and meeting preparation. Moreover, members will be reimbursed their travel and accommodation expenses in connection with their activities for ProLitteris, as well as any other justified expenses.

8.2.15 In case of a tied vote, the President has the casting vote.

8.2.16 The rules regulating the Board of Directors shall be set out in the Board regulations.

8.3 The auditors

8.3.1 Only members of the Swiss Chamber of Fiduciaries (Treuhandkammer) qualify for appointment as auditors.

8.3.2 The auditors must first and foremost verify that the annual financial statements are in accordance with the books, that the books are properly kept and that the annual results are true and accurate and are reported in accordance with legal prescriptions.

8.3.3 The auditors are appointed for two years. Their term of office is renewable.

8.3.4 The auditors’ representative attends all General Meetings and has an advisory vote.

8.4 The Management

8.4.1 Management may be assigned to an individual director or to a management board comprising several members who need not be members of ProLitteris.

8.4.2 The Management reports to the Board of Directors. It attends all General Meetings, Board of Directors’ and committee meetings and has an advisory vote.

8.4.3 The Management represents ProLitteris in and out of court. Management also does the preparatory work for the Board and committees and implements all decisions taken.

8.4.4 Management’s other duties, tasks and powers are regulated by internal rules of procedure which are subject to approval by the Board.

9 Liability

9.1 ProLitteris is answerable for its liabilities only with its assets.

9.2 All personal liability on the part of its members is excluded.

10 Financial year

The financial year coincides with the calendar year.

11 Notifications

All notifications required by law shall be published in the Schweizerischen Handelsamtsblatt / Feuille officielle suisse du commerce.

12 Dissolution and liquidation

12.1 If a resolution to dissolve ProLitteris is adopted, the distribution of income from the last financial year takes precedence over all other work. Funds must be made available for payment of the last year’s settlements to members, principals and sister societies. Dissolution cannot proceed until the settlements for the last year have been paid.

12.2 Any residual assets after all liabilities have been paid shall be allocated to the Swiss or international associations which undertake to pursue ProLitteris’s activities.

13 Coming into effect

These Statutes were adopted by the General Meeting on 7 September 2002 and are effective from 7 September 2002.
Access Copyright. Online transactional licence agreement

INTRODUCTION

THIS AGREEMENT SETS OUT THE TERMS AND CONDITIONS OF YOUR PERMITTED COPYING AND USE OF COPYRIGHT PROTECTED MATERIALS, IN PRINT OR DIGITAL FORM. THE AGREEMENT COMPRISES THIS DOCUMENT, WHICH IDENTIFIES THOSE MATERIALS BELOW, AND THE LICENCE WIZARD CONFIRMATION ("CONFIRMATION"). THIS AGREEMENT IS AN IMPORTANT LEGAL DOCUMENT AND YOU SHOULD READ IT CAREFULLY. UPON CLICKING "I ACCEPT", A BINDING LEGAL CONTRACT WILL EXIST BETWEEN YOU AND THE CANADIAN COPYRIGHT LICENSING AGENCY. IF YOU CLICK "I ACCEPT" WITHOUT READING THIS AGREEMENT, YOU ARE STILL AGREEING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THE CANADIAN COPYRIGHT LICENSING AGENCY ENCOURAGES YOU TO PRINT A COPY OF THIS AGREEMENT AND RETAIN IT IN YOUR FILES ALONG WITH THE CONFIRMATION.

LICENCE

1. This Agreement is between you and The Canadian Copyright Licensing Agency (Access Copyright). Access Copyright hereby grants you permission, on a non-exclusive basis, to copy and use the copyright-protected work(s) identified below (beginning with "Ref. No."), in the manner and in the quantity identified below, for payment as set out in the confirmation. The work or works are referred to hereinafter as "the work".

PERMITTED USES

2. The permitted use of the work is identified below, and is one or more of the following:

(a) "Reproduction - Print" means any reproduction of the work by photocopying, xerography, facsimile transmission and any other reprographic process. The fee is based on the total number of print reproductions you make, that is, the number of pages you copy multiplied by the number of sets you make.

(b) "Reproduction - Digital" means the storing, downloading or e-mailing of a work which you have converted into a digital format or which was already in digital format on any digital recording medium such as floppy disk, CD-ROM or personal computer. The fee is based on the number of pages you copy, multiplied by the number of people having access to the digital reproduction, either by e-mail or by direct access to the digital recording medium.

(c) "Intranet" means the posting of the work on a network to which electronic access is restricted. The fee is based on the number of pages you copy multiplied by the number of people with access, the sum of which is multiplied by the number of months you post the work.

(d) "Internet" means the posting of the work on an open web site. The fee is based on the number of pages you copy multiplied by the number of months you post the work.

(e) "Presentation – Print" means photocopying, xerography, transcription or drying onto acetate or other material for an overhead or slide projection and any other similar reproduction process. The fee is based on the making of one print copy of the work for the overhead or slide projection, multiplied by the number of people attending or registered for the presentation. You are entitled to make one print copy for each person in attendance or registered for the presentation.

(f) "Presentation – Digital" means any digital reproduction of the work for the purpose of inclusion in any electronic presentation. The fee is based on the making of one digital copy for inclusion in your electronic presentation, multiplied by the number of people attending or registered for the presentation. You are entitled to make one digital reproduction only, and one print copy for each person in attendance or registered for the presentation.

(g) "Alternate Format – Print" means a braille or large print (by a reprographic process) reproduction of all or part of a work produced for a person with a disability that inhibits that person from reading or viewing a work. The fee is based on a flat fee for the reproduction of the entire work, multiplied by the number of print copies made of the entire work.

(h) "Alternate Format – Digital" means an audio, electronic encoded or machine readable reproduction of all or part of a work produced for a person with a disability that inhibits that person from reading or viewing a work. The fee is based on a flat fee for the reproduction of the entire work, multiplied by the number of print or digital copies made of the entire work.

LIMITATIONS

3. The following limitations strictly apply to all permitted uses of the work:

(a) All reproductions, whether in print or digital form, will be
accurate and faithful reproductions of the work. No modifications to the work are permitted and no comments or additional content may be incorporated into the work.

(b) Other than as specifically permitted under this Agreement, any copying, use, distribution or further distribution, publication, republication, sale, communication to the public, or licensing of the work, whether in digital, paper, or any other form, will result in this licence being automatically revoked and shall be deemed to be an infringement of copyright, rendering you liable to Access Copyright and the copyright owner(s) for all remedies arising from such infringement.

(c) Permitted uses are only for the work, a copy of which you have lawfully obtained. You are not permitted to make print or digital reproductions of the work if it was obtained through the circumvention of technical measures of protection or through a password-protected web-site and further copying is prohibited by the licence providing access.

(d) You are not permitted to convert the work from a print format to a digital format where the work is commercially available in digital format.

(e) In the case of Intranet use of a work, the work will be made available only within a network where electronic access is by means of electronic password, or other control, permitting access only to those people which are included in the calculation of the fee. At the request of Access Copyright, you shall provide us with the electronic password or other controlled access to the intranet to enable us to audit the integrity and security of the work. Your failure to do so within 15 calendar days of our request shall be a material breach of this Agreement.

(f) This Agreement cannot be combined with other Transactional Licence Agreements or with other Licence Agreements offered by Access Copyright, so as to permit any systematic or cumulative copying of the work.

4. You will include a prominent copyright notice on each print copy of the work, or on the cover page of each set of print copies, or on all electronic copies of the work. The notice will contain each of the following:

(a) (i) ©; (ii) name of copyright owner(s); (iii) name of author(s) if different from the copyright owner(s); (iv) year of first publication; and

(b) a statement which reads:

“This work is protected by copyright and the making of this copy was with the permission of Access Copyright. Any alteration of its content or further copying in any form whatsoever is strictly prohibited.”

PAYMENT

5. While you may carry out all uses permitted by this Agreement immediately upon the start date set out in the confirmation, the licence is automatically revoked and is null and void as if it had never been given if complete payment including the administrative fee and taxes is not received by Access Copyright immediately when made through a payment agent such as a credit card company, or when made directly by you, within 30 days after an invoice has been issued by Access Copyright. There is a minimum payment of five dollars ($5.00), as well as an administrative fee of five percent (5%) on payments over five dollars ($5.00), all exclusive of taxes.

INDEMNIFICATION

6. Subject to paragraph 9 below, Access Copyright agrees to hold you harmless and to indemnify you for any monetary amounts which you are required to pay to another person relating to a claim arising solely as a result of your copying and use of the work, provided that:

(a) you provide written notice to Access Copyright of any claim within five business days of your learning of the claim; and

(b) you are not, at the time you provide written notice to Access Copyright, in breach of any term or condition in this Agreement.

7. The indemnification in paragraph 6 excludes any claim which alleges a breach of any kind of the moral rights of an author.

TERM AND TERMINATION

8. The licence granted to you is on a “one-time only” basis and expires on the end date set out in the confirmation. For intranet and internet uses only, the licence expires on the date identified below, under “Use Period”.

9. Your failure to pay any amount when due, or your use of the work beyond or outside of the scope of this Agreement, shall be a material breach of this Agreement, and shall cause this Agreement to terminate automatically without any further notice from Access Copyright.

10. Upon expiry or termination of this Agreement, you will immediately delete all digital copies of the work from storage or your web site, and you will make no new uses of the work except by separate licence.

11. All your obligations and those of Access Copyright which expressly, or by their nature, impliedly survive termination or expiry, shall continue in full force and effect subsequent to and notwithstanding such termination or expiry.
MISCELLANEOUS

12. No variation to this Agreement is permitted. This Agreement is not transferable or assignable by you unless you obtain Access Copyright’s written permission.

13. The provisions of this Agreement are severable, and if any provision is found to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.

14. This Agreement including the identifying information below (beginning with “Ref. No.”) and the confirmation constitute the entire agreement and understanding of you and Access Copyright and supersede any and all prior understanding or agreements regarding the subject matter of this Agreement.

15. This Agreement will be governed by and interpreted in accordance with the relevant laws of the province of Ontario and Canada, and treated as a contract both signed and wholly performed in Ontario. The parties consent to the exclusive jurisdiction and venue of the Ontario Superior Court at Toronto in all disputes arising out of or relating to the enforcement or alleged breach of this Agreement, without prejudice to the right of Access Copyright and copyright owner(s) to advance any claim for copyright infringement in the Federal Court of Canada.

16. The parties have required that this Agreement be drawn up in English. Les parties ont demandé que cette convention soit rédigée en anglais.
Kopinor: Photocopying agreement universities and colleges 1998-2002

Model agreement between the Norwegian Council of Colleges and the Norwegian Council of Universities on the one hand and Kopinor on the other hand, concluded on 18 September 1998, with changes to §§ 12 and 15 agreed to on 6 November 1998.

Agreement concerning photocopying and similar reproduction of copyright material at universities and colleges for the period 1 October 1998 through 30 June 2002

between ..........................................................

[name of college/university] [hereafter called the institution] on the one hand

and

Kopinor

on behalf of


CHAPTER 1: SCOPE OF THE AGREEMENT

§ 1
This agreement applies to reproduction of protected material from publications that is carried out for use in the operations of the institution including reproductions made for use in teaching, research and administrative tasks, and reproductions made in connection with the institution’s educational programs.

The agreement imposes no limitations on the reproduction licenses accorded directly by law, including i.a., the right pursuant to Act no. 2 of 12 May 1961 relating to Copyright in literary, scientific and artistic works etc. (the Copyright Act) § 12 to make single copies for private use when this is not done for gain, and the right of libraries to make copies in accordance with regulations under the Copyright Act § 16. Reproduction carried out under a direct agreement with an author or a publisher, or their representative, is not covered by this agreement.

§ 2
Subject to the conditions stipulated in this agreement, the institution is by virtue of this agreement granted a license for reproduction of protected material from Norwegian and foreign publications. Under the agreement, this license applies in relation to Norwegian and foreign authors, photographers, catalogue makers and publishers who are represented by Kopinor. From the agreement ensues also that reproduction license by which other authors, photographers, producers of catalogues and publishers are bound by virtue of Kopinor having entered into the agreement (see the Copyright Act §§ 13 and 14, cf. § 36; and references to these sections in §§ 43 and 43a, as well as provisions regulating competition). The license granted covers only reproduction onto paper, transparencies, and slides (cf. § 4, subsect. 3).

CHAPTER 2: CREDITING OF AUTHORS BY NAME, ETC.

§ 3
On reproductions made in accordance with this agreement, the author or photographer must be credited by name when the name is known, and the source and title of the work must always be stated (also see the Copyright Act § 3, § 43a, subsect. 3, and § 11). The source may be cited by ISBN-, ISMN-, or ISSN-number.

For slides, transparencies and other material for projection, the same information must accompany each copy of the material, so that the information can be communicated when the material is shown.

CHAPTER 3: DEFINITIONS
(Defined terms are italicized in the text.)

§ 4
In this agreement protected material means literary, scientific and artistic works (cf. the Copyright Act § 1), photographic pictures (cf. the Copyright Act § 43a), and materials that are protected under the Copyright Act § 43 (catalogues, etc.). The agreement thus applies to reproduction of pub-

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1 From May 2000 called the Norwegian Council for Higher Education. Replaced by a new agreement 1 July 2002

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lished material in the form of writings; drawings and graphic works of an artistic, scientific or technical nature; maps; pictures of paintings, sculpture and other visual art, architectural works and articles of artistic crafts or applied art (models as well as the works themselves); musical scores with or without texts; photographic works and pictures; and also forms, tables, catalogues and similar materials that compile a substantial number of items of information or that are otherwise protected under the Copyright Act § 43. Works such as legal statutes, regulations, and court decisions are not protected under the Copyright Act (see § 9), and thus may be reproduced freely and without regard to this agreement. Nor does the agreement in any way limit the right to reproduce works within the scope of the Copyright Act § 26.

In this agreement a publication means a copy of such protected material as is considered under the Copyright Act § 8, subsect. 2 as having been published; meaning that copies of the material have been brought on to the market or have otherwise been distributed to the public with the consent of the author, the photographer, or the catalogue producer respectively, and including musical scores and dramatic works which have been made available to the public in written form or are held in archives for distribution, as well as reproductions, transcriptions or printouts, of such material. Likewise, material produced by an author and distributed to students by that author is considered a publication. For the purposes of this agreement, offprints of a publication which are available through ordinary channels are always regarded as publications in their own right.

In this agreement reproduction means the making of copies by means of photographic, xerographic, digital or similar methods, including printers and telefax machines in transmission mode, but refers only to copying onto paper and transparencies or slides (see § 2, subsect. 2). This includes the making of masters for stenciling, the making of copies by means of tracing or transcribing, printing out from electronic information storage systems (to the extent that Kopinor shall consent to such printing out), stenciling, offset, etc., and the making of copies on microfiche and similar media, but not other photographic imaging processes. As part of the technical process of making paper copies, transparencies or slides for an end user, digital copies may be made, but this agreement does not allow that such copies be used or made available in digital form, whether by means of electronic display on screens; transmission via local or external networks, including via e-mail; or storage in electronic information systems or on diskette, CD-ROM, or similar media. This agreement does not authorize the making of other digital copies.

In this agreement a reproduction means any copy made by any method listed in the definition of reproduction.

A reproduced page means a reproduction no larger than A4 size, while reproductions in A3 format count as two reproduced pages, etc. If two or more book pages, two or more pages from journals, or two or more press clippings fit on a single A4 page, then each book page, journal page, or press clipping counts as one reproduced page. A press clipping means material from serial publications; however, this does not include material from learned journals.

Cost to the institution means the actual costs for paper and toner, as well as costs for purchase/lease of photocopiers, service, wages/salaries, depreciation on investments and other possible costs incurred in running photocopiers. For that portion of the material which is subject to payment of remuneration under this agreement, the remuneration may be included in the price the institution charges end users for reproductions (cf. § 19, subsect. 4).

CHAPTER 4: WHO MAY MAKE REPRODUCTIONS?

§ 5 Subject to the limitations stipulated in this agreement, reproduction of protected material may be carried out by employees of the institution, students, members of the institution’s committees, boards and other governing or advisory bodies, as well as by others directly connected to the institution. Under this agreement, the institution’s students have no autonomous right to reproduce protected material beyond that right which is accords by law (cf. § 1, subsect. 2 of the agreement).

CHAPTER 5: WHERE MAY REPRODUCTIONS BE MADE?

§ 6 Reproduction of protected material shall be carried out by means of equipment that the institution owns, leases, or otherwise by contract has at its disposal. Notwithstanding, the institution may have the reproduction carried out outside the institution when the institution does not have reproduction equipment, when this is necessary for technical or economic reasons or because of a lack of sufficient capacity, or when the party who undertakes the reproduction has an agreement with Kopinor.

CHAPTER 6: HOW MAY REPRODUCTIONS BE USED?

§ 7 Reproduction of protected material may not be carried out in order to substitute for copies produced by a publisher or for copies of other published material that are commonly avail-
able for purchase from sales outlets, publishers, or similar parties, and which it would otherwise be natural for the user to obtain.

§ 8
Reproduction of protected material shall be carried out only for the purpose of use in the institution’s educational activities and for internal use in research and administration at the institution.

Internal use includes employees supplying reproductions to colleagues at collaborating educational institutions, or to coordinating bodies at such institutions for use by those bodies.

Necessary reproductions may be made for distribution to external parties when this is done as part of the processing of official business, as part of commissioned research, or when those receiving the reproductions are contractual parties.

Press clippings and collections of press clippings that are reproduced in accordance with this agreement may be used for distribution to outside contacts when the reproductions contain information about the institution’s operations or on current issues relevant to its operations and the reproductions are provided free of charge to the recipient.

§ 9
This agreement does not grant a license for reproduction of protected material having the character of a publishing activity, even if it is carried out solely for the institution’s employees, students, et al. This provision does not prevent the institution from producing course packs, for use by students in their current studies or courses, that include material (compilations of copies, collections of articles, etc.) that consists in whole or in part of material prepared in accordance with this agreement (cf. § 18). For such course packs, the provisions in § 19 apply.

The production of copies for use as handouts or for other forms of distribution to the public — including to students other than those who are participants in the programs of study for which the material has been developed — shall always be considered a publishing activity.

§ 10
Articles or course packs (compilations of copies, collections of articles, etc.) that include material that has been reproduced in accordance with this agreement may not be recovered for repeated use, lending out, or renting out, not even for exclusively internal use within the institution.

Course packs that include protected material (compilations of copies, collections of articles, etc.) must be marked so as to show which parts of them have been produced under an agreement with Kopinor, and so as to make clear that the course packs may not be lent or transferred.

§ 11
Works of visual art and photographic pictures may be reproduced only from already existing reproductions in books, periodicals, or similar printed matter.

This agreement does not grant a right to illustrate original texts or texts written by others with photographs, drawings, or similar images reproduced from publications when the originals of the illustrations can easily be obtained from the illustrators, from picture archives, or from similar sources. This provision does not limit the right to reproduction (quotation) accorded by the Copyright Act §§ 22–24 (cf. § 1, subsect. 2 of this agreement).

§ 12
Under this agreement it is not permitted to reproduce musical scores (regardless of the form in which they were published) for use at public performances that are not part of educational activities, or for use by organized choirs, bands, ensembles and orchestras, that are not integrated in the educational activities. (Also see § 15.)

CHAPTER 7:
EXTENT OF REPRODUCTION

§ 13
For each employee, student, etc. reproduction from a single book or similar publication is limited to 15% of the total number of pages. However, an entire chapter or similar unit, an entire short story, or an entire scene of a play may be reproduced from one and the same publication. (Re musical scores, see § 15.)

The extent of reproduction from a single book or similar publication that is no longer available commercially or directly from the publisher is limited in corresponding fashion to 30%. Before the right to reproduction beyond the limits set forth in subsection 1 is exercised, the institution must write to the publisher and satisfy itself that the particular publication cannot be obtained within a reasonable time by means of publishing on demand or a similar method. (Also see § 17.)

§ 14
The limitations set forth in § 13 do not apply to reproduction from periodical publications, such as newspapers, weekly periodicals, cultural, learned or professional journals, etc., nor to reproduction from brochures or other publications intended for distribution free of charge.

Nonetheless, reproduction from any single issue of a learned journal is limited to two articles for any given end user per year, and must in no case exceed 25% of the total number of pages in that issue of the journal.
§ 15
The extent of reproduction from sheet music (a score or similar publication of a single musical work) and from collections of sheet music (collections of the scores of two or more musical works) is limited to 15%, but with a maximum of 10 pages from each separate publication. However, it is permitted to reproduce one whole movement or similar segment from sheet music for use in instruction in music theory.

If the institution should need to make reproductions beyond the limits specified in subsect. 1, for example, to obtain reproductions of a single movement or similar segment for some use other than instruction in music theory, or when supplementary sheet music for choral and orchestral works cannot be leased or the published musical score is no longer available commercially, Kopinor’s clearance service will assist in obtaining permission to make the reproductions (see § 17).

§ 16
The limits specified in §§ 13 – 15 do not apply to the making of copies for use in examinations (group tests, final exams, etc.).

§ 17
If the institution should need to make copies of protected material beyond the limits permitted by this agreement, or should need to make digital copies (see § 4, subsect. 3), the institution is advised to contact Kopinor’s clearance service, which undertakes to exert its best effort to assist in obtaining permission from the author, the photographer (when applicable), and the publisher. If an agreement on clearing of rights must be entered into directly between the end user and the rightsholder(s) or their representative, Kopinor will assist in arriving at such an agreement if one of the parties wishes it to do so.

CHAPTER 8:
The Institution’s Responsibility for Making Reproductions

§ 18
The institution is obligated to make required readings and other necessary instructional material available to students in the form of reproductions when such material either comprises such a small portion of a publication that reproduction is the obvious alternative, or if the book, journal, etc. is sold out from the publisher and to an insufficient extent is available from the institution’s library or in the specific circumstances it is impractical for the students to rely on borrowing the publication from the library. Reproduction of protected material may only be carried out within the framework of this agreement.

§ 19
With regard to the institution’s reproduction of course packs referred to in § 9 and the reproduction referred to in § 18, the institution must itself carry out the reproduction and distribute the reproductions, and may neither leave it to students or others to organize these activities on their own, nor allow students to order reproductions from the library. With regard to libraries’ option to supply reproductions instead of lending, see § 1, subsect. 2 of this agreement.

The distribution of reproductions may be carried out in connection with relevant lectures, seminars and similar sessions, or from faculties, departments, and institutes or a central distribution facility at the institution. The institution may contract with others for centralized distribution on behalf of the institution, in its name and at its expense.

The institution shall take care that the above-mentioned material is distributed only to students participating in the courses of study for which the material has been developed, and is not made accessible to the general public.

If students are to be charged for the distributed material, it is assumed that the institution will establish a closely regulated system for payment. Kopinor has the right to ensure that students’ payments do not exceed the cost to the institution plus Kopinor’s fee for reproduction.

CHAPTER 9:
The Obligation to Give Notice and Provide Information

§ 20
Kopinor undertakes to supply the institution with information materials about this agreement.

§ 21
The institution undertakes to ensure that its employees and others who carry out reproduction or make use of reproductions under this agreement are informed of the provisions of the agreement. General information materials produced about this agreement by the institution shall be sent to Kopinor on an ongoing basis.

The institution shall assign one person administrative responsibility for this agreement and shall at all times keep Kopinor informed of who this person is.

If the institution changes its address, notice must be sent to Kopinor in writing.
CHAPTER 10: REMUNERATION

§ 22
The institution undertakes to pay remuneration to Kopinor for reproductions that are subject to payment under the terms of this agreement, and to adhere to the following provisions in doing so.

Using as a basis for calculation the statistical survey carried out by the Central Bureau of Statistics in 1997 at the commission of Kopinor and the Ministry of Church, Education and Research, and after making deductions for, among other things, reproductions that are assumed to be permitted by law, the institution shall pay remuneration in 1998 as follows:

<table>
<thead>
<tr>
<th>Type of institution</th>
<th>Annual amount per employee</th>
<th>Annual amount per student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities and academic colleges</td>
<td>NOK 333</td>
<td>NOK 291</td>
</tr>
<tr>
<td>Colleges</td>
<td>NOK 333</td>
<td>NOK 186</td>
</tr>
</tbody>
</table>

Note: The volume of reproduction subject to payment is calculated as follows: deductions are made from the total number of copies of protected material to take account of spoiled copies and copies that, because of the type of material or the use to which they will be put, may be made freely under the terms of the Copyright Act.

As a basis for invoicing the state-owned institutions, Kopinor will use the most recent available figures for employees and students from the Norwegian Social Sciences Data Service, as these are listed in the Database for Statistics on Higher Education (the DBH-database). For institutions not owned by the state, Kopinor will invoice on the basis of submitted, audited figures for employees and students. Such figures shall be received by Kopinor for the first time when this agreement is entered into, and thereafter by 1 March and 1 September of each year.

Except for the condition specified in § 19, subsect. 4, it is of no concern to Kopinor how the institution collects payment for students’ reproductions and for reproductions made in the course of commissioned research.

§ 23
The basis for the remuneration amounts listed in § 22 is a fee per reproduced page of 34.5 øre in 1998. For the coming years in the period covered by the agreement, the fee per reproduced page will be adjusted by Kopinor in accordance with changes in the Consumer Price Index of the Central Bureau of Statistics or any Consumer Price Index that replaces it. The amounts per person shall be adjusted in a corresponding fashion.

The adjustment shall be made on the basis of the change in the Consumer Price Index from 15 October of the preceding year to 15 October of the current year, and in a corresponding fashion in future years. The fee per reproduced page shall be rounded off after the adjustment to the nearest tenth of an øre.

Kopinor will inform the institution of each year’s fee per reproduced page and amount per person as soon as these are calculated.

§ 24
Kopinor will invoice each institution twice a year, normally as of 1 April and 1 October, in equal instalments. For the fourth quarter of 1998, the invoice will be as of 1 December 1998.

CHAPTER 11: SPECIAL AGREEMENT

§ 25
The institution has the right to enter into an agreement with Kopinor, to take effect no sooner than 1 January 2000, which would provide that the payment due for course packs of material (collections of copies, collections of articles, etc.) distributed to students according to the rules in § 19 of this agreement be calculated and made by the institution at the time of production on the basis of the volume of the material. A request for such an agreement may not be put forward until after 1 May 1999.

The payment due for course packs containing protected material will be calculated on the basis of each year’s fee per reproduced page (see § 23), and per reproduction in A-4 size or smaller, while reproductions in A3 format count as two reproduced pages, etc. If two or more book pages, two or more pages from journals, or two or more press clippings fit on a single A4 page, then each book page, journal page, or press clipping counts as one reproduced page for purposes of payment.

Accounts for such payment shall be calculated as at 30 June and 31 December of each year, and must be both rendered to Kopinor and settled by payment within 30 days of these dates.

The accounts rendered shall include, for each work, the number of pages that have been reproduced under this agreement, the number of copies made, the name of the author, and, as the case may be, the name of the photographer, when this is known, and the title of the work. In addition, the title of the publication, the name of the publisher, and the year of publication shall be supplied (or, alternatively, the ISBN-, ISSN-, or ISMN-number). Kopinor shall be enabled and entitled to check the accuracy of the accounts, with the help of its own employees or other parties it may authorize.
Kopinor is required to enter into such a special agreement once routines are established for carrying it out.

Kopinor has the right to terminate such a special agreement with three months’ notice. Upon receipt of such notice, the institution has the right to terminate this agreement in its entirety with three months’ notice. Termination in either case must be done in writing and for reasonable grounds only.

During the period covered by this agreement, payment for all other reproductions will be made in accordance with § 24 and on the basis of the following 1998 prices, which will be adjusted as specified in § 23:

<table>
<thead>
<tr>
<th>Type of institution</th>
<th>Annual amount per employee</th>
<th>Annual amount per student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities and academic colleges</td>
<td>NOK 333</td>
<td>NOK 190</td>
</tr>
<tr>
<td>Colleges</td>
<td>NOK 333</td>
<td>NOK 140</td>
</tr>
</tbody>
</table>

Note: The annual amount per student covers reproductions subject to payment, except for those produced for sale (cf. § 25, subsect. 1); that is, the amount covers reproductions handed out at lectures and on similar occasions.

CHAPTER 12: STATISTICAL SURVEYS

§ 26
In the course of 2000/2001 the institution and Kopinor will have a statistical survey carried out to map the extent of the reproduction of protected material.

The surveys will give Kopinor a basis for distributing monies among domestic and foreign rightsholders, and will give the institution and Kopinor the best possible understanding of the situation with regard to reproduction, to be used in negotiations about payment in the next period covered by agreement.

§ 27
The survey, which shall satisfy professional statistical criteria and shall be carried out by an independent statistical analyst, will measure the extent of reproduction onto both paper and transparencies/slides over the course of a whole year. Breakdowns of the data should be by type of institution, type of department or other types of entities.

Each survey shall provide figures as to the total volume of consumption of reproductions used and for the share thereof of published, protected material, and shall map other particulars that are relevant for determining the portion subject to payment. This portion is not to include reproductions of protected material made pursuant to requisite permission through other agreements.

By 30 June 1999, a joint committee on statistics shall be appointed, on which Kopinor and the institutions that have entered into an agreement based on the model agreement shall be represented. The committee shall set aside time for planning, invitation for tenders, the gathering of baseline data, and possible pilot surveys. The committee may appoint consultative bodies. In the course of 2000/2001, the survey proper shall be carried out.

The institution agrees that the Norwegian Council of Colleges (NCC) and the Norwegian Council of Universities (NCU) will, on behalf of the institution, appoint to the committee representatives for the colleges and the universities, respectively. Any institution that is a member of NCC or NCU shall take the initiative towards making such an appointment, and undertakes to nominate and send a representative to the committee upon request from the council. The councils may also appoint representatives for colleges not owned by the state if such colleges make nominations. Costs attached to participation in the committee are to be covered by the participating institution.

The statistical survey shall moreover be carried out in the manner, and at those institutions, that the joint committee on statistics decides on in accordance with the advice of the statistical analyst. The results shall be considered by the committee and made public by the statistical analyst no later than 31 December 2001.

Kopinor on the one hand and those institutions that have entered into agreements based on the model agreement on the other hand will share the charges to the statistical analyst fifty-fifty. However, the total portion paid by institutions that are members of NCC or NCU may not exceed NOK 1,000,000. To cover the institutions’ portion, as of 31 May 1999 Kopinor will invoice each institution that is a member of NCC or NCU for its proportional share as determined from the councils’ tables for sharing of costs. If the entire amount collected is not used, the committee on statistics may elect that the remainder be either paid back or set aside to be applied for similar surveys in the future.

§ 28
If an institution is chosen for participation in a survey, it is obliged to assist in carrying it out by, among other actions, directing its employees and others affected by the survey to follow faithfully the instructions of the statistical analyst.

The cost of working time required of an institution’s employees, committee members and others affected by a survey, as well as the cost of extra reproductions made in connection with the survey, shall be borne by the institution.

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§ 29
The institution and Kopinor undertake to treat as confidential all information about lawful reproduction carried out at the institution. However, statistics from which all identifying information has been removed may be conveyed to others to show the basis for payment and for distribution of payments for reproduction.

Kopinor will distribute payments received from the institution for reproduction to Norwegian and foreign rightsholders, individually or through organizations or their trust funds (cf. the Copyright Act § 37). How the payments are distributed is of no concern to the institution.

CHAPTER 13:
VIOLATIONS AND COMPENSATION

§ 30
In the event of a breach or non-performance of this agreement, the term for correcting the violation is 90 days, starting from the date when written notice sent via registered mail is received by Kopinor’s executive director or the institution’s chief administrative officer.

If the violation committed by a party to the agreement is substantial and the situation is not corrected within the term specified in subsect. 1, the other party may cancel the agreement, with immediate effect. Cancellation and the reason for it must be declared in writing. Compensation for violations may be claimed regardless of whether the agreement is cancelled.

§ 31
The institution is not liable for damages incurred through reproduction carried out by its employees or others in violation of this agreement, except to the extent such liability may arise from § 2-1 of the Act Relating to Damages for Tort of 13 June 1969 No. 26; but in no case shall the institution be held responsible for reproduction carried out by employees and others in violation of guidelines that the institution has provided in accordance with § 21.

CHAPTER 14:
OTHER PROVISIONS

§ 32
Kopinor is required to cover any claims for payment or compensation that the institution may receive from Norwegian or foreign rightsholders, to the extent that the claims concern reproduction that has been paid for and carried out in accordance with the provisions of this agreement. The institution is not required to cover such claims, and Kopinor shall hold the institution indemnified from such claims, and from costs incurred by the institution in connection therewith. If such a claim is received, the institution must immediately reject it and refer it to Kopinor. The institution must not pay a claim unless advised to do so by Kopinor. In the case of a court dispute about a claim, Kopinor has the right to intervene.

§ 33
The institution accepts that Kopinor, on behalf of the rightsholders Kopinor represents, may claim compensation and may file suit in the event of reproduction of protected material that is not permitted by law or by agreement. However, the rightsholders have not renounced their right to claim compensation and file suits themselves against the institution in the event of reproduction of protected material that is not permitted under this agreement. If the institution has compensated Kopinor, Kopinor is then obligated to compensate rightsholders in the event they claim compensation for the same use.

§ 34
The institution and Kopinor have the right to make public that this agreement has been entered into.

§ 35
Subject to advance notice, Kopinor may visit the institution to obtain information about its routines for reproduction and thereby obtain knowledge of how the provisions of this agreement are carried out in practice.

CHAPTER 15:
MEDIATION AND RESOLUTION OF DISPUTES

§ 36
If negotiations on concluding, extending or renegotiating the agreement do not lead to agreement between the parties, either the institution or Kopinor may demand mediation under the Copyright Act § 38.

§ 37
If disputes arise between Kopinor and the institution regarding the interpretation or continuance of the agreement, violations of the agreement, or claims that are otherwise based on the agreement, the parties shall first attempt to settle them through negotiation. If negotiations between Kopinor and the institution do not settle the matter within 60 days from when the negotiations were requested, either of the parties may demand that the dispute be decided by arbitration under the provisions of the Civil Procedures Act Chapter 32. If the parties cannot agree on a chairman, he or she shall be appointed by the Chairman of the Norwegian Bar Association.
CHAPTER 16:
DURATION AND EXPIRATION OF THIS AGREEMENT, AND NEGOTIATION OF A NEW AGREEMENT

§ 38
This agreement covers the period from 1 October 1998 through 30 June 2002. Six months before the expiry of the agreement, Kopinor shall give the institution written notice of the upcoming expiry.

§ 39
Upon termination of this agreement, the institution is required to make every effort to ensure the cessation of all reproduction of protected material that is not permitted by law or separate agreement with the rightsholder.

CHAPTER 17:
SPECIAL CONDITIONS

This agreement has been executed in 2 (two) copies, of which each party retains one.

Place: ......................... Date: .........................

For the institution

(Signature)

(NAME IN BLOCK LETTERS)

Name of contact person:

(Signature)

(NAME IN BLOCK LETTERS)

Phone: .........................................................
Fax: ..........................................................
E-mail: ........................................................

Oslo, the ............. day of..................................

For Kopinor

(Signature)

Kopinor
Interesseorgan for rettighetshavere til åndsverk
Stenersgate 1A
0050 Oslo

Phone: 22 17 94 17
Fax: 22 17 94 22
E-mail: kopinor@kopinor.no
URL: http://www.kopinor.no/
Access copyright creator's affiliation agreement

DEFINITIONS

“Agreement” includes Appendices A to C and the Creator’s Affiliation Form;

“copy” means a reproduction of all or part of a Work which The Canadian Copyright Licensing Agency, doing business as Access Copyright or CANCOPY, is authorized to license by the Creator’s Affiliation Form, and “copying” has a corresponding meaning;

“collective licences” means licences granted by a collective society, including comprehensive or blanket licences applicable to the copying of the Works of a number of Rightsholders and transactional licences applicable to a Work or Works of a single Rightsholder;

“collective society” means a collective society as defined under the Copyright Act, R.S.C. 1985, c. C-42, as amended from time to time, inside or outside Canada, which is authorized to license or administer reproduction rights on behalf of Rightsholders;

“Rightsholder” means a copyright owner or a person entitled to authorize copying of a Work; and

“Work” means a published work protected by copyright.

GRANT OF RIGHTS

2.1 You as Rightsholder are making this Agreement with The Canadian Copyright Licensing Agency (“us” or “we”) as a collective society, for all of the Works covered by the Creator’s Affiliation Form, with the exception of any Works that you have designated as excluded.

2.2 You grant us, with respect to your Works, the exclusive licence to exercise and manage the reproduction rights (the “Rights”) listed in Appendix A through collective licences. This grant of an interest in copyright authorizes us to license other persons to copy your Works, either directly or through agreements with other collective societies, and applies only to the extent that you own or control the Rights being granted. For greater certainty, you retain the right to license your Works through agencies and organizations that are not considered to be collective societies.

2.3 We will permit copying of your Works only within our Licensing Guidelines. The current version of these guidelines is contained in Appendix B, but they may be changed by our Board of Directors, as explained in paragraph 9.4 below.

2.4 We will make reasonable efforts to license people who want to copy your Works, and we will collect appropriate fees for this copying.

2.5 You may set the fee that we must collect when licensing all or some of your Works on a transactional basis, but not when your Works are included in a licensing scheme encompassing the Works of a number of Rightsholders and the tariff is calculated by us as an average or blended rate by genre or by discipline or is set by a decision of the Copyright Board.

2.6 If your Works are to be included in a licensing scheme applicable to the Works of a number of Rightsholders, you may propose to us a specified tariff for particular uses of Works or of certain categories of Works. We will take this into account in negotiating licences or in filing a proposed tariff with the Copyright Board.

2.7 You may exclude any or all of your Works from any of our licences. Provided you notify us, we will implement a request for such an exclusion prior to issuing a new licence or as soon as permitted by the terms of an existing licence.

2.8 You will use reasonable efforts to ensure that we have an accurate list of your works. You will advise us if you are no longer entitled to deal with the Rights with respect to particular Works initially covered by the Creator’s Affiliation Form.

REVENUE DISTRIBUTION

3.1 All payments made to you by The Canadian Copyright Licensing Agency will follow the Revenue Distribution Guidelines. The current version of these guidelines is contained in Appendix C, but they may be changed by our Board of Directors. There is one exception to this, as explained in paragraph 3.3 below.

3.2 Subject to paragraph 3.1, we will pay you any money that we have identified as owing to you no later than the end of our financial year following the financial year in which that money was collected.

3.3 If we collect money but do not have sufficient information to distribute it in the way described in the Revenue Distribution Guidelines, our Board of Directors has the right to approve any other way of distributing that, taking relevant factors into account, the Board considers fair to all Rightsholders, including those whose rights we administer through agreements with other collective societies.
3.4 In determining how much we owe you, we will deduct a percentage from revenues collected to cover our operating costs. This amount will be fixed from time to time by our Board of Directors. We may deposit any money collected in interest-bearing accounts or appropriate securities and apply any resulting interest or other earnings to operating costs.

3.5 If the amount we owe you on a payment date is less than the minimum set by our Board of Directors, then that payment will be withheld until the first payment date when that minimum has been reached.

3.6 By the end of each February, we will mail you a statement of payments made in the previous calendar year, together with a T5 form or other appropriate documentation for taxation purposes.

THE CANADIAN COPYRIGHT LICENSING AGENCY COPYRIGHT NOTICE

4.1 You agree that you will use all reasonable efforts to encourage your publisher to add a copyright notice on all of your publications as follows, or in similar language referring to The Canadian Copyright Licensing Agency: No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, without the prior written consent of the publisher or a licence from The Canadian Copyright Licensing Agency (Access Copyright). For an Access Copyright licence, visit www.accesscopyright.ca or call toll free to 1-800-893-5777.

COPYRIGHT INFRINGEMENT

5.1 You acknowledge that The Canadian Copyright Licensing Agency may do whatever is necessary or advisable, in our opinion, to prevent and stop infringement of the Rights, including the commencement of proceedings in our name.

5.2 You agree to give us any reasonable assistance we need to prevent or stop infringement of the Rights, including co-operating in our proceedings against anyone who has infringed the Rights.

5.3 We will pay the cost of all legal proceedings that we commence in connection with an infringement of the Rights. If we recover any money, then it will be used first to offset our expenses. If there is any excess, it will be distributed to you in accordance with this Agreement.

TERM

6.1 This licence will last for two years and be automatically renewed for further two-year periods. However, it may be ended at any time by either The Canadian Copyright Licensing Agency or you by giving written notice of not less than three months.

6.2 Any notice given under paragraph 6.1 will take effect upon the expiry of any of our licences in which your Works are included, and in any event within 15 months of when we receive such notice.

INDEMNIFICATION

7.1 You agree to compensate The Canadian Copyright Licensing Agency in full for any loss resulting from any proven claims made against The Canadian Copyright Licensing Agency caused by any misrepresentation by you as to the extent to which you own or control rights in Works or your failure to advise us in accordance with paragraph 2.8 that you no longer are entitled to deal with particular Rights.

DISPUTE RESOLUTIONS

8.1 Any dispute arising out of this Agreement will be referred to arbitration, in which case the Arbitration Act, S.O. 1991, c.17, will apply.

AMENDMENTS TO AGREEMENT AND APPENDICES

9.1 No amendment to the main part of this Agreement will take effect unless it is in writing and signed by both you and The Canadian Copyright Licensing Agency.

9.2 You will send us updates to the Creator’s Affiliation Form, or amend it online, if necessary, to update the Works covered by the Creator’s Affiliation Form.

9.3 You may amend the Creator’s Affiliation Form to include or exclude any additional Right. In order to do this you must send us a replacement Creator’s Affiliation Form, which will take effect when we receive it. As soon as reasonably possible, such Right will be dealt with appropriately in our new licences and in our existing licences when they are renewed or when licensed repertoire is updated.

9.4 Our Board of Directors may amend Appendices B and C. Any amendments to these Appendices must be delivered to you by mail and will take effect three months after mailing. Before they take effect, you may give us written notice that you are terminating this Agreement, in accordance with paragraph 6.1.
FURTHER DOCUMENTS

10.1 You agree to sign any further documents that we reasonably request so that we may exercise the rights you have granted to us under this Agreement.

NO RIGHT TO ASSIGN

11.1 We will not assign your rights under this Agreement without your prior written consent. However, we may authorize other collective societies to license and collect revenues on our behalf.

NOTICES

12.1 All notices, requests, consents and amended Appendices or Creator's Affiliation Form permitted or required under this Agreement must be in writing and sent by mail to your address or our address (or any other addresses specified in writing). Such notices, requests, consents and amended Appendices and Creator's Affiliation Forms may be sent electronically, where permitted by law.

GOVERNING LAW

13.1 This Agreement will be exclusively governed by and interpreted in accordance with the relevant laws of the province of Ontario and Canada, and treated as a contract both signed and wholly performed in Ontario.

AUTHORITY OF SIGNATORIES

14.1 The person whose signature appears on the Creator's Affiliation Form confirms that he or she has the authority to sign this Agreement.

APPENDIX A: RIGHTS LICENSED TO THE CANADIAN COPYRIGHT LICENSING AGENCY

Your affiliation with The Canadian Copyright Licensing Agency allows us to manage certain copying rights for you, described below as the BASIC RIGHT. In addition, you may choose to have us manage additional rights in your Works. These are optional, and must be indicated by checking the appropriate box on the Creator's Affiliation Form. Definitions are provided below, and in some cases these also set out the circumstances in which these additional rights will be licensed. This appendix describes the BASIC RIGHT and optional rights selected by you replaces any previous document that you signed describing rights granted to you by us.

1 BASIC RIGHT (PRINT TO PRINT)

Your affiliation with The Canadian Copyright Licensing Agency allows us to license the following:

(a) any copying by reprographic process, which includes facsimile reproduction by photocopying and xerography;
(b) duplicating from a stencil;
(c) copying onto microfilm (including microform and microfiche);
(d) copying, including transcription or drawing, onto acetate or other material for an overhead or slide projection;
(e) for the sole purpose of making paper copies, (i) typing or word-processing without adaptation, and (ii) reproduction by a copier (such as a Xerox DocuTech or Kodak 1500 Series) that makes intermediate digital copies in order to make paper copies; provided that nothing in clause (e) of this BASIC RIGHT authorizes distribution of any electronic file in any electronic form in any way whatsoever, including on disk or over a computer network; and
(f) facsimile transmission.

2 RETRANSMISSION RIGHT (COPYRIGHT OWNERS ONLY)

Your affiliation with The Canadian Copyright Licensing Agency allows us to collect with respect to this right. Authorization by a compulsory licence under the Copyright Act and shareholders may only collect royalties through a collective society.

This is the right to collect or to authorize another collective society to collect royalties for the telecommunication of a Work to the public by means of a cable or other system that retransmits distant signals (television and radio) intended for free reception by the public. We may collect retransmission royalties for a Work which is included in a television or radio program, or for a Work on which a television or radio program is based, but we will not collect retransmission royalties for a Work for which a writer receives his or her share of those retransmission royalties directly from the producer. This right does not include any right with respect to telecommunication of a Work in the form of alphanumeric text.

3A DIGITAL CONVERSION RIGHT (PRINT TO DIGITAL)

Your approval is needed for us to license this right, and is to be indicated by checking the appropriate box on the Creator’s Affiliation Form.

This is the right to convert printed materials into digital form by any technological means, allowing:

(a) storing on a user-owned digital recording medium or personal computer or a user-controlled network;
(b) storing on a Web site;
(c) transmitting to a personal computer controlled by the user or within a user-controlled network only; and
(d) accessing, viewing, and printing.

The Canadian Copyright Licensing Agency may license these
uses provided that:

(e) The digital form is always a faithful and accurate reproduction of the materials.

(f) The scope of this DIGITAL RIGHT will be strictly interpreted as only permitting the making of digital copies if:
   (i) the Licensing Guidelines would permit the making of copies; and
   (ii) a digital copy of the Work is not commercially available.

(g) In any of our licences, this DIGITAL RIGHT will be limited to activities for business or organizational purposes of the licensed user, usually internal. Except when specifically approved by you, these uses will exclude:
   (i) systematic or bulk reproduction and distribution of copies to persons not covered by one of our licences;
   (ii) any accumulation of material copied in digital format beyond the limits of the Licensing Guidelines.

(h) We will not license storing on an open Web site except on a transactional basis and unless a fee for such copying has been set by the Rightsholder.

(i) We will:
   (i) ensure appropriate levels of record-keeping and compensation for copies made in digital format,
   (ii) provide for the deletion of all digital files no later than the termination of our licence, and
   (iii) reserve the right to audit licensed users to ensure adequate security.

(j) We will not license this right so as to result in competition with your own exploitation of your materials.

4 ALTERNATE FORMAT RIGHTS

Your approval is needed for The Canadian Copyright Licensing Agency to license this right, and is to be indicated by checking the appropriate box on the Creator's Affiliation Form.

This is the right to make copies in audio, braille, large print (by reprographic process), and machine-readable form, for persons who are blind, visually impaired or otherwise unable to view print because of a disability.

APPENDIX B: LICENSING GUIDELINES

The Canadian Copyright Licensing Agency’s licences will permit your Work to be copied according to these guidelines:

1 The maximum proportion that can be copied from any Work will depend on the type of licence:
   (a) 10% if the licence does not require full reporting of the Works copied;
   (b) 15% if the licence does require full reporting of the Works copied;
   (c) 20% if the copying is authorized under a transactional licence.

These limits apply whether the copying is in one se-
If a Rightsholder sets the fee that we must collect under a transactional licence, the Rightsholder may also authorize us to licence the copying of up to 100% of the Work for such a licence.

For certain types of publications, there are exceptions to these limits that will allow a higher proportion of a Work to be copied:

- newspapers: an entire article, photograph or other item or the whole of a page can be copied;
- periodicals: an entire article, essay, poem, short story, play or reproduction of an artistic Work can be copied from an issue or volume containing other Works;
- in-print book: an entire article, essay, poem, short story, play or reproduction of an artistic Work can be copied from a book containing other Works, or an entire chapter if the chapter is less than 20% of the book;
- out-of-print book: up to 100%, after we confirm that the Work is out-of-print in all available editions.

When licensing the making of anthologies or coursepacks, we will impose restrictions on the portion of a Work that can be copied, the number of excerpts from the Works of any one author or publisher, and the portion of copying from any type of Work.

Depending on the type of licence, the number of copies that can be made will usually be limited to one copy for each student, library user or employee, together with a reasonable number for teaching, supervisory or internal production purposes.

If copies are required for the licensed user’s external activities, this will usually be permitted only under a licence requiring full reporting.

The Canadian Copyright Licensing Agency will not knowingly authorize copying for:

- partisan, public political activities unless authorized by the Rightsholder; and
- endorsement or advertising of a product, service, cause or institution where the nature of the material to be copied and the proposed use could prejudice the creator’s honour or reputation.

Except when expressly authorized by the Rightsholder and, in the case of 8(b), only when converted to alternate format for handicapped students, we will not authorize copying from:

- unpublished Works;
- any materials intended for one-time use;
- commercial newsletters;
- originals of artistic Works (including photographs and prints); or
- print music.

APPENDIX C: REVENUE DISTRIBUTION GUIDELINES

Unless you advise us that you have an arrangement referred to in paragraph 4, we will distribute royalties according to the arrangements described in these guidelines.

When only the publisher of a Work is affiliated with us, the publisher may ask us to pay that publisher both the publisher’s and the creator’s share of the royalty for any specific Work. In accepting the creator’s share, the publisher agrees to send that money to the creator as soon as reasonably practicable. If the publisher fails to do this, then we may deduct the relevant amount from any subsequent payment to the publisher.

Payments identified by us in respect of specific Works will otherwise be distributed as follows:

- articles and other material copied from newspapers:
  - if contributed by a freelance creator: 100% to creator
  - otherwise: 100% to publisher
- any material in scholarly periodicals in which the creator has assigned copyright to the periodical: 100% to publisher
- any other material copied from periodicals: 35% to publisher, 65% to creator
- any material copied from out-of-print books: 100% to creator
- any material copied from a Work that cannot be classified within (a) - (f) above: 50% to publisher, 50% to creator

Nothing in this Appendix prevents creators and publishers from making different arrangements from those described. We will do our best to implement them in the future, provided we are notified in writing about these arrangements.

Except when expressly authorized by the Rightsholder and, in the case of 8(b), only when converted to alternate format for handicapped students, we will not authorize copying from:

- unpublished Works;
- any materials intended for one-time use;
- commercial newsletters;
- originals of artistic Works (including photographs and prints); or
- print music.
Access Copyright. Three-year bibliographic sampling plan: k-12

CANCOPY requires copying data that will form the basis of an equitable distribution of licence money collected from school systems across Canada. It is necessary that a bibliographic sample of copying be undertaken to satisfy this requirement.

This report outlines the proposed bibliographic sampling plan to be conducted during the 1999-2000, 2000-2001 and 2001-2002 school years. All provinces and territories in Canada, with the exception of Quebec, will be surveyed during the tenure of the sampling plan.

Objective of the survey

The objective in conducting the sample is to establish the fairest possible basis for distribution of royalties collected from school systems to copyright holders in the most efficient manner possible.

Rightsholders must feel assured that a significant amount of their work is reflected in the data collected, making certain that data collection cost should leave the maximum amount of money available for distribution. Similarly, regional rightsholders must feel assured that a significant amount of their work is represented in the data collected.

In addition, the sample should be carried out in a manner that reduces to a minimum the burden placed upon school systems.

Recommendations

Coverage

Every jurisdiction across Canada1 will be entering into a licence with CANCOPY to authorize copying in publicly funded educational institutions. (In Ontario, the licence will be concluded at the school board level.) In addition to educational institutions, the licence will also permit copying by school boards, where they exist, and by staff in ministries of education.

Educational institutions, school boards, and ministries of education will be bound by the same contractual obligations under the licence, including the obligation to participate in bibliographic sampling.

Educational institutions, school boards and ministries of education will be sampled during the tenure of the sampling plan.

Tenure of the sampling plan

The pan-Canadian licence will provide continuing permission to copy for a period of five school years, starting in September 1999. This sampling plan addresses sampling requirements for the first three years of the licence only: 1999-2000, 2000-2001, and 2001-2002.

Sampling distribution

Educational institutions

In developing this sampling plan, CANCOPY is assuming that the amount of copying done in educational institutions is directly related to enrolment size. As such, jurisdictions with larger school populations will need a larger number of schools sampled in order to have the same degree of representation in the sample as jurisdictions with smaller school populations.

Using the most recent enrolment data provided by each jurisdiction, CANCOPY has calculated the number of educational institutions to sample within each jurisdiction during the three-year sampling plan. The number of educational institutions to be sampled in each jurisdiction, by school year, is shown in Table 12. Because of its size, Ontario will be sampled every year.

Table 1. Jurisdictions to be sampled and corresponding number of educational institutions

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The above requirements are premised on historic rates of bibliographic data collection for this sector. However, the licence and sampling protocol that will govern sampling during the tenure of this plan are expected to impose a range of obligations related to sampling that are designed to increase the amount of useable data collected through sampling to over and above historic rates. It is also possible that the jurisdictions will undertake certain other initiatives during this time.

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1 Jurisdiction refers to every province or territory across Canada, with the exception of Quebec, and in the case of Ontario, the school boards collectively.

2 Enrolment figures used in the calculation for Nunavut and Northwest Territories were estimates provided in 1998 by educational authorities of the then Northwest Territories.
the effect of which could be to bolster further the effectiveness of bibliographic sampling. If CANCOPY does detect a substantial increase over historic rates during the tenure of this plan, it will offer to decrease the amount of sampling in educational institutions accordingly. This will be addressed more specifically in the sampling protocol.

School boards
Ten percent of the total number of school boards (rounded up to the nearest whole board) will be sampled in each jurisdiction. In each school year, the school boards sampled will be in the same jurisdictions as the educational institutions being sampled. In jurisdictions where no school boards exist (such as New Brunswick), no school board sampling will take place.

Ministries of Education
In each school year, the ministries sampled will be in the same jurisdictions as the schools being sampled. In jurisdictions where the ministry of education is not covered by the licence (such as Ontario), no ministry sampling will take place.

Length of sampling
Sampling at each site will last for five weeks. Past experience indicates that five weeks seems to be a reasonable compromise between yielding an adequate sample without being an undue burden to the sampled sites.

Stratification
No stratification will be made within each jurisdiction.

Sample draw
CANCOPY will select the sample using data provided by jurisdictions in accordance with a data request made by CANCOPY. The data will be the most recent data available. CANCOPY will select the educational institutions and school boards to participate in the sample in accordance with the agreed sampling design. (Ministries will be dealt with under the section on “Implementation” of this document.)

Educational institutions will be drawn with probability proportional to size. CANCOPY will draw a set of educational institutions along with the initial sample, which will be used as substitutes in the order drawn.

School boards will be drawn with probability proportional to size. CANCOPY will draw a set of school boards along with the initial sample, which will be used as substitutes in the order drawn.

With the exception of Ontario, which will be sampled every year, no individual jurisdiction will be required to participate more than once during the tenure of this sampling plan. In the case of Ontario, no individual educational institution or school board will be required to participate more than once during the tenure of this sampling plan.

In addition, for every jurisdiction other than Ontario, educational institutions sampled in the last bibliographic sample in that jurisdiction will be removed from the pool before the sample draw. In the case of Ontario, in each year of this plan, educational institutions sampled for bibliography three years prior to that year will be removed from the pool before the sample draw, such that:

For SY 1999-2000:

For SY 2000-2001:

For SY 2001-2002:

For all jurisdictions, any previously sampled school board will be removed from the pool in each sampling year.

Substitution
As self-selection violates the objectivity of the random selection procedure, it is hoped that there will be very little need to substitute sites once they have been selected. However, substitution will be required in instances where it can be established that there are problems of a kind and degree that are capable of interfering with sampling. Procedures governing substitution will be set out in the sampling protocol.

Methodology
All sampling will be carried out using the extra copy method, which is described as follows.

For each instance of copying under the licence, teaching staff and other personnel are asked to:

1. make an extra copy of the page containing the most bibliographic information about the published work copied;
2. for copies made from published works containing works of more than one creator, in addition, make a copy of the

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\[\text{Site} \text{is a general term referring to educational institutions, school boards or ministries, as the case may be. In the case of ministries, site can be used to denote a single individual or a limited group of individuals at a location.}\]
first page of the individual extract copied to identify the creator, and attach it to the copy identified in (1);

3. complete and attach to the extra copy a sticker recording basic numeric and other information about the job; and

4. deposit the extra copy in a box provided by CANCOPY.

For sampling of Ministries only, personnel will be required to make extra copies of copies made in support of these three activities only: curriculum development, distance education, and testing.

Implementation

Educational institutions
A collection box, into which extra copies will be deposited, will be placed beside every copier in the educational institution. Extra copies will be deposited in the box each time a copy covered by the licence is made. For clarity, the sample is not restricted to photocopies, but also extends to all other types of copy made under the licence. Copying carried out for the school board but away from the school board premises will be included in the sample.

Ministries
Sampling of ministries of education will be confined to copying done in support of the following specific purposes and to locations involved in such copying: curriculum development, distance education, and testing. Ministries of education will identify these locations for CANCOPY, and assist CANCOPY in determining the feasibility of conducting a sample at each location. Sampling will not be conducted at ministry locations at which CANCOPY and a minister determine it is either not logistically feasible or inefficient to do so.

As is the case for educational institutions and school boards, copying carried out on behalf of but away from a ministry will be included in the sample.

Implementation procedures for sampling of ministry locations may be modified on a case-by-case basis, as appropriate, and this will be addressed in the sampling protocol.

For clarity, the sample is not restricted to photocopies, but also extends to all other types of copy made under the licence.

Sample implementation will be addressed in greater detail in the sampling protocol, to be agreed by the parties.
Glossary

Berne Convention
The Berne Convention for the Protection of Literary and Artistic Works, adopted in Berne in 1886, is a multi-national treaty in which sovereign nations undertake to recognise each other’s copyright regimes. It is administered by WIPO, the World Intellectual Property Organisation.

Bilateral agreement
In this context, an agreement between two RROs providing the terms under which they permit each other to use their respective repertoires. IFRRO provides two different types of model bilateral agreements, Type A and Type B. The difference between them is in the way the RROs exchange remuneration for the use of each other’s repertoire.

Blanket licence
A licence which entitles the licensee to use the licensor’s entire catalogue.

Compulsory collective management
A system in which the law precludes individual management of certain rights so that the rightsholder must delegate the management of these rights to a collective management organisation if he or she wishes to exercise them.

Copying
The process of duplicating a work, reproducing it in the same or another media. In principle, permission to reproduce a work must be sought from the rightsholder.

Copyright
Branch of intellectual property rights, protecting the use of creative works for a certain number of years by awarding the author a set of exclusive rights. This package of rights attaches to the work automatically upon its creation. Depending on the legal system, the author can assign these rights and/or grant licences over them. The Berne Convention contains a number of de minimis provisions for the copyright laws of individual countries.

Digital conversion right
The right to alter the digital format in which a work appears, for example by scanning a paper article and by converting a document from one digital format into another.

Digital copying
The process of duplicating a work by using digital means, i.e. from a digital original to a digital copy.

Digital Rights Management
Digital Rights Management (DRM) is an umbrella term for a number of different mechanisms by which a work can be made available to users in digital form while protecting IP rights, ranging from various technical protection measures (TPM) to purely contractual measures.

Digital uses
In the general field of RROs, digital uses include, inter alia: scanning (digitisation); posting a document onto an electronic bulletin board whether internet or intranet; e-mailing attached documents; converting the digital format of a document.

Digitisation
Converting a document into digital form by, for example, scanning.

Document delivery
The transfer of a document in hard copy or digital form – for example by a library to a user.

Equipment levy
A fee due from producers and importers of copying devices such as photocopiers and other copying devices (fax machines, reader printers, scanners, multifunctional devices, CD/DVD burners – the list varying from country to country) to remunerate rightsholders for a specific use permitted by law under specific circumstances.

Exclusive right
Copyright grants the author exclusive rights, i.e. those that at the outset only he or she can exercise to the exclusion of anyone else. Most copyright laws recognise the following exclusive rights: to reproduce a work; to translate it; to adapt, arrange or modify it; to perform it publicly; to communicate it and make it available to the public; to distribute it; and to rent it, although they may provide for further/other sub-categories.

Extended collective licence
Licence agreements between users and organisations representing a substantial number of rightsholders in a given category of works will be extended by virtue of law to cover all rightsholders in that category (extension effect).

Exception
Where an exception applies, a third party can use the protected work without the rightsholder’s permission in the way and to the extent the exception allows. The Berne Convention requires all exceptions to the exclusive right of reproduction to comply with the so-called three-step-test in its Article 9(2).

Fair dealing
Fair dealing is the commonwealth version of the US fair use doctrine. Both are defences against an action for infringe-
ment of copyright. Fair use and fair dealing are exceptions to the principle that only the rightsholder can grant or refuse uses of his work. The difference between them is the extent of the exception. Fair dealing, as for example provided for in the UK Copyright, Design and Patents Act 1988 enumerates an exhaustive catalogue of instances where the fair dealing defence will hold. Fair dealing cannot apply to any act which does not fall into the catalogue listed. Many civil law countries know exceptions to the exclusive rights of rightsholders. Most of them have an exhaustive catalogue of specific instances in which the exceptions apply.

**Fair use**
Fair use (in contrast to fair dealing) is not limited to specific instances. It has been codified in the 1976 Copyright Act, 17 U.S.C. Section 107 which provides four non-exclusive factors to consider in an analysis of the fair use defence. The analysis has largely been developed in court decisions.

**Free uses**
Where the law provides that a certain use is authorised under certain circumstances without the rightsholder’s permission and without the user having to pay remuneration for the use.

**Full reporting**
Where the licence agreement obliges the user to full reporting he or she must inform the RRO of each use made.

**Importation right**
The right to import materials from a computer database in digital form by any technological means, allowing: a) storing on a user-owned digital recording medium or personal computer or a user-controlled network; b) storing on a website; c) transmitting to a personal computer controlled by the user or within a user-controlled network only; and d) accessing, viewing and printing.

Rightsholders may include in their mandate to the RRO the right to license the further copying of the materials to licence limits.

**Legal licence**
Under a legal licence the law includes a licence to use the work under a set of conditions. In most cases a collective management organisation administers the licence and, depending on the way the licence is phrased in the law, negotiates a royalty rate with the user benefiting from this provision, or simply collects the royalty rate stipulated in the law.

**Library privileges**
Some laws stipulate certain exceptions for the benefit of libraries concerning the reproduction of works for the preservation of their collections, for example.

**Licence**
A licence is the (usually contractual but sometimes legal) permission to use a work in a way which would otherwise be unlawful, by, for example, reproducing the work. A licence may be exclusive or non-exclusive. The holder of an exclusive licence is the only person allowed to do what the licence permits, to the exclusion of every other person. A non-exclusive licence also allows the licensee to use the work lawfully within the terms of the licence but the rightsholder may have granted the same permission to any number of other persons.

**Mandate**
A mandate is the authority granted by another to act as his representative while following certain instructions. For an RRO it is the basis of all its activities: the rightsholder gives the RRO a mandate to act on his or her behalf to issue licences and collect and distribute royalties.

**Moral right**
Moral rights are personal rights of the author. They include the right to paternity, to integrity and to first disclosure.

**Multi-purpose organisation**
A collective management organisation granting licences for a number of different rights and purposes.

**National treatment**
The requirement that foreign rightsholders not be treated in a less favourable way than domestic rightsholders.

**Non-title-specific distribution**
Where an RRO allocates the shares of the funds it collected not to individual rightsholders but to more generic categories.

**Objective availability**
Where an RRO allocates the shares of the funds it collected for distribution to rightsholders on the basis of information it collects on which material was most likely to have been copied and to what extent.

**Operator levy**
A fee due from heavy users of copyright materials to remunerate rightsholders for a specific use permitted by law under specific circumstances.

**Partial reporting**
A survey method under which a certain sub-section of all users report a certain part of their uses over a certain amount of time.

**Personal use**
A non-commercial use by an individual but possibly within the confines of an institution for example for research purposes (in contrast to private use). There is some controversy over the terms personal and private use.
Press clipping licence
A permission to copy press articles and other materials and to incorporate them into periodical publications for internal or external use.

Private use
In contrast to personal use, private use is strictly for the private entertainment of the individual. There is some controversy over the terms personal and private use.

Remuneration right
Where the law provides that a certain type of user might use a certain type of work in a certain way without the consent of the rightsholder, it may remunerate the rightsholder for this use and create a right to receive remuneration.

Repertoire
The catalogue of rights and works a CMO is authorised to manage

Reprography
In a technical sense reprography is the reproduction of graphics through mechanical or electrical means, such as photography or xerography, i.e., the duplication of a document onto a graphical carrier by photocopying or a similar process of printing.

Reproduction
Reproduction takes place in many different forms such as printing, photocopying, scanning, digital copying (for instance storing a copy on CDs and DVDs) and electronic storage in databases.

Reproduction right
The reproduction right is an exclusive right subject to certain exceptions in some laws (permissible to the extent of the three-step-test of Article 9(2) of the Berne Convention).

Right of communication to the public
This right covers all communication to members of the public not present at the place where the communication originates. It covers any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting, but no other acts.

Right to make available to the public
The right to make available to the public covers all acts of making protected material available to members of the public not present at the place of issue in such a way that members of the public may access them from a place and at a time individually chosen by them. This includes posting documents on electronic bulletin boards.

Rightsholder
The person who is in possession of the relevant right to the work, either by virtue of having created it or by having received an assignment or licence in respect of it.

Royalty
The payment made to the rightsholder for the use of his or her work.

RRO
A Reproduction Rights Organisation is a collective management organisation which grants licences for certain defined acts of reproduction of published literary, visual and musical works, collects the royalties and distributes them to the rightsholders. It represents both authors and publishers. RROs are represented by the International Federation of Reproduction Rights Organisations (IFRRO).

Tariff
A tariff is a commonly applicable list of royalty rates in contrast to individually negotiated prices.

Three-step-test
The three-step-test is included in Article 9(2) of the Berne Convention:

Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder.

Title specific distribution
A distribution technique in which the RRO allocates a share of the funds collected to individual rightsholders. There are three forms: full reporting, partial reporting and objective availability.

Transactional licence
A transactional licence (also called work-by-work licensing or use/title/fee-specific licensing) gives the user permission to copy a certain part of defined works. This method is often used in licensing course packs and similar targeted compilations. Transactional licensing is widely used in the digital environment.

TRIPS
The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement. TRIPS is part of WTO’s dispute settlement mechanism.

Voluntary licensing
Under voluntary collective licensing, the RRO issues licences to copy protected material on behalf of those rightsholders who have mandated it to act on their behalf.

WIPO
The World Intellectual Property Organisation is one of 16 specialised agencies of the United Nations. WIPO, located in Geneva, Switzerland, was created in 1967 and is responsible for promoting the protection of intellectual property through-
out the world.

**WIPO Copyright Treaty (WCT)**
The WIPO Copyright Treaty, adopted in 1996, provides additional protection for copyright in the digital world. It provides authors with control over the rental and distribution (Articles 6-8) of their works and it prohibits circumvention of technological measures for the protection of works (Article 11) as well as the unauthorised modification of rights management information contained in works (Article 12).

**WTO**
The World Trade Organisation is an international organisation dealing with the global rules of trade between nations. It administers the WTO Agreements, including the Trade Related Aspects of Intellectual Property Rights (TRIPS).