



## INTERNATIONAL FEDERATION OF REPRODUCTION RIGHTS ORGANISATIONS

### IFRRO GENERAL PAPERS DISTRIBUTION OF REVENUE

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## **1. Introduction**

In the spring of 2011 the IFRRO Secretariat undertook a survey among RROs on distribution practices and the different methods of revenue distribution currently being used by the RROs who are members of IFRRO. Some half of them completed the questionnaire that was sent out. They represented a well-balanced cross-section of the RRO models of operation, reasonably close to the actual situation of the membership. The survey is therefore assumed to give a good picture of the current distribution practices among IFRRO members.

This publication highlights the main findings of the questionnaire. More detailed information from the survey is available to IFRRO Members on the IFRRO Members Only website.

## **2. RROs and IFRRO**

Reproduction Rights Organisations (RRO) are Collective Management Organisations (CMO) for text and image based works. Their main aim is usually expressed as to administer collectively what is impracticable or impossible to manage individually, and facilitate access to works which the authors and/or publishers have chosen to administer collectively.

The International Federation of Reproduction Rights Organisations (IFRRO) is the main international body which links together members of the copyright community in the print and publishing sphere worldwide. IFRRO's membership totals 131<sup>1</sup>, with 76 RROs, and 55 bodies representing authors or publishers nationally, regionally and internationally in all relevant categories of creation and publishing.

### **2.1. RRO Models of operation**

Various models of RRO operation have evolved to suit national cultures and legislative approaches. The three main models are usually described as (i) Voluntary; (ii) Voluntary with legislative support; (iii) Legal licence. While one model would prevail in a given country the models are often combined.

Under the voluntary system authors and publishers are free to choose whether they join a RRO, or not. The individual mandates which they grant to the RRO are generally non-exclusive, and they may opt in or opt out, according to the type of scheme.

The voluntary licence may be supported by legislation. In France, the decision to manage the reprographic right is voluntary on behalf of the authors and publishers, but by law may be exercised only through the national RRO.

The Extended Collective Licence (ECL) in the Nordic countries extends, on specific conditions, the voluntary concluded licence to comprise also works or authors and publishers who are not yet in the RRO catalogue, often with the right of those authors and publishers to opt out of licensing schemes.

Under a legal presumption it is presumed that the RRO represents all authors and publishers within defined categories, of works or authors or publishes, unless they have expressly declared that they do not wish to be represented by the RRO. Licences are signed on a voluntary basis.

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<sup>1</sup> September 2011

Under a statutory or legal licence, there is equal entitlement for all, and no opt out under law. Although their general effect is the same, there are differences in the ways in which the fees are set. Under the legal licence, the fees are set by law, under the statutory licence they are set by negotiation, and may be confirmed in law. The RRO is the legally designated collecting body in both cases.

A levy scheme is intended to ensure that authors and publishers are remunerated for certain forms of copying of their works. The system often comprises (i) an equipment levy, whereby a fee is added to the price of devices such as photocopiers, multi-functional machines, printers, scanners and PCs and (ii) an operator levy, whereby a user fee is paid by large-volume user organisations. Most countries with levy systems operate a combination of user and operator levies.

## **2.2. Types of licences offered by RROs; blanket, repertoire, transactional licences**

RROs administer generally secondary uses of already published works, normally for the reproduction, making available or distribution of portions of copyright works for internal, personal or private uses. The type of licence most commonly issued by RROs is the blanket licence. The blanket licence is normally characterised by an annual fee, an extensive repertoire, and no need to seek individual permissions for copying. Usage reporting may be by participation in a statistical sampling survey, or by full reporting. Blanket licences enable all students or employees to copy, within limits, without having to ask for prior authorisation and yet remain within the law. The statutory licence which operates in some countries is usually a form of blanket licence.

Similar in scope, intent and operation are the licences termed repertory and comprehensive.

Transactional licences require the licensee to account for individual acts of copying use by use, and to supply a record of what was copied and make a payment for each use. The works would normally be pre-cleared within a given repertoire, on an opt-in or opt-out basis by authors and publishers – though in some cases the RRO may need to obtain specific advance clearance for each use.

Most respondents administered rights on the basis of blanket or repertoire licensing schemes only with around a fifth offering both blanket/repertoire and transactional licences. Transactional licensing only is less used as is administering rights on the basis of copyright levies only.

Nearly all RROs which answered the questionnaire are licensing both analogue and digital uses. This shows that, generally, RROs are now mandated by authors and publishers or otherwise authorised to manage certain digital rights and uses.

## **2.3. Basic principles on distribution recommended by IFRRO**

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

These principles are also enshrined in the IFRRO Code of Conduct and the Relationship between RROs document, to which have subscribed RROs and the broadest possible range of author and publisher bodies in the text and image based works sector– national and international – in membership of IFRRO. The documents elaborate what is expected of a RRO in order to achieve *“the standards of service that rightsholders and users can expect to receive when dealing with RROs”*, describe the values to which RROs should aspire, and emphasise fairness and transparency in dealings with authors and publishers. Remuneration should be collected and distributed diligently and efficiently, and the basis of operations should be clearly communicated. Distributions should approximate actual use as far as possible, distribution plans should be publicised, administrative deductions should be reasonable and proportionate, and should reflect the services offered.

### **3. Methods of Distribution**

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

The IFRRO questionnaire examined the respondents' distribution practices on the basis of the currently used following four methods of distribution:

- Title specific distribution based on:
  - Full reporting (i.e. users record details of every copyright work that is copied);
  - Sampling (i.e. a defined number of users report their actual copying of works at agreed intervals);
  - Objective availability (i.e. distribution on the basis of possible copying of the work).
- Non-title specific distribution (i.e. based on the estimated copying of type of work) on the basis of surveys.

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

Full reporting means that users record details of every copyright work that is copied. It is being used for revenue distribution from transactional licensing schemes, both traditional photocopy and digital licences, and to a lesser extent for blanket/repertory licences.

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

When distribution is based on sampling, a defined number of users covered by the agreement, normally some 2%-5% who are selected statistically, report their actual copying of works at agreed intervals. When distributing remuneration, each author and publisher is paid according to the statistically calculated use of the works. Samples are designed to capture a cross section of the copying. Even though not as exact as receiving a record for all instances of copying (i.e. full reporting), data obtained from samples is regarded as being sufficiently accurate to enable the distribution of revenue to individual authors and publishers, also on a title specific basis.

Title specific distribution based on sampling/statistical surveys/partial reporting etc. is mainly applied for administration on blanket/repertoire basis. Just over half of the responding RROs used it for photocopying and around a third for digital uses. Fewer RROs use this method to distribute revenues to authors and publishers from transactional licences.

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

In some countries or licensing schemes, authors and publishers have decided that it would be impossible to collect data on the copying directly from users. A distribution method has therefore been developed based on the availability of the material in the market and the possible copying of the work.

This distribution method is predominantly used for revenue distribution from blanket and repertoire schemes - two thirds for photocopying and one third for digital - and by RROs which administer compulsory licences and levies.

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

In some countries authors and publishers have opted for non-title specific distribution of the remuneration collected by the RRO, based on objective availability or statistical surveys. Surveys are designed to collect generic, non-title-specific information regarding the volume of copying of the type of material and categories of publications, rather than identifying the specific publication, author or publisher that have been copied. Data is collected from a limited number of the users covered by an agreement for a limited period of time. Surveys are conducted less frequently than in a system based on sampling, normally not more often than every 4-5 years within each sector covered by an agreement, and the survey period is shorter than in sampling. The system provides for both individual and collective remuneration of authors and publishers.

Surveys are exclusively used for distribution from the administration of blanket or repertoire schemes, whether for traditional photocopying or digital copying, while objective availability is also used, to a minor extent, for revenue distribution from traditional photocopying and digital transactional licensing schemes.

### **3.5. Application of distribution methods**

The prevailing method of distribution among the respondents was title specific distribution to authors and publishers, most frequently title specific distribution only, and for some both title and non-title specific distribution.

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

A majority of the respondents replied that the distribution schemes for blanket and transactional licensing schemes are different. This is reportedly due to the fact that transactional licensing allows different (generally higher) tariffs; or that distribution of fees under a blanket/repertoire licence is based on sampling, surveys, objective availability, etc., while distribution under a transactional licence is being done according to reported actual use of specific titles.

## **4. Distribution to authors and publishers**

The split of the revenue between authors and publishers can be determined by

- national legislation
- the statutes of the RRO

- agreements

Among the respondents it was usually determined by agreements, followed by the Statutes of the RRO or the RRO Board. More rarely it is established by national legislation or according to contracts between the author and the publisher. If the split is decided by agreements, it is, in most cases not possible to override the agreed split in order to meet contractual obligations between authors and publishers.

## **4.1. Split of the revenue**

### **4.1.1. General split; author/publisher share**

The general split between authors and publishers of collected fees was as follows among the RROs who completed the questionnaire:

- 50% (author)-50% (publisher): 65% of the RROs
- 100% publisher: 9% of the RROs
- 100% author: 0% of the RROs
- Predominantly author: 22% of the RROs
- Predominantly publisher: 4% of the RROs

The most common general split of the revenues between authors and publishers is 50% to each of the categories. This varies slightly with the type of works and materials. Authors often get a higher share for general non-fiction books, fiction books and trade and consumer periodicals, whereas publishers tend to get a higher share for newspaper and similar publications.

### **4.1.2. Splits for standalone images**

Over two thirds of the respondents reported that there is not a different split for stand-alone images. Where there is a different split, it is predominantly the author who gets a higher percentage of the fee.

### **4.1.3. Split for Out of Commerce Works**

In most cases there is no specific revenue split for out-of-commerce (or out-of-print) works (whether fiction, non-fiction, textbooks etc.). In the few cases where there is a different split from what generally applies, the fee is either split 50-50%, regardless of how the split is for other work categories, or the author gets 100% because the rights have reverted to the author.

### **4.1.4. Split Regarding Digital Uses**

The digital sources permitted uses administered by RROs' may include (i) scanning from analogue original to digital format; (ii) digital to digital, including copying from carriers such as CDs and DVDs; (iii) copying from online sources and downloading and copying from the internet.

The corresponding uses and applications would typically cover (a) scanning and printing out on paper; (b) posting to internal networks (intranet), generally password protected, including access for students via Virtual Learning Environments; (c) viewing on screen by authorised persons,

and storing within limits; (d) emailing internally, and in certain cases externally; (d) inclusion in slide shows in PPT or similar; (e) display on white boards or smart boards; (f) some RROs license redirecting to publishers' content, and a few from their own content database.

Depending on the category, source or permitted uses, only two to four of the 35 respondents reported different splits for traditional photocopying and digital uses. When the split for digital uses is different from the one for traditional photocopying, the respondents reported that publishers tended to get a higher share for the scanning and for copying from Internet downloads, and when copies were distributed to users as attachments to an email.

#### **4.2. Disagreement on distribution**

A RRO must also establish procedures for the handling of disputes on the split of the revenue. The predominant mechanism is mediation and arbitration. Other common ways of settling disputes are decisions by the RRO Board or another decision-making body within the RRO, such as a separate distribution board.

In case of mediation/arbitration, in most cases all parties are responsible for the financial expenses, etc. More rarely it is the RRO who meets the costs. In some cases it is being decided by the court.

#### **5. Payment to authors and publishers**

In most cases, RROs distribute fees to authors and publishers directly, less frequently through authors' and publishers' associations or both directly and through the associations. Fees are generally distributed to both authors and publishers rather than to one category for further distribution to the other.

#### **6. Frequency of Distribution**

There are no particular regulations on the frequency of distribution. Undue delays in distribution may have a negative impact on relations between the RRO and national and foreign authors and publishers. IFRRO recommends that distribution to authors and publishers be made at least once a year. During the early stages of the existence of a RRO it may not be economically viable to make distribution more frequently.

RROs reported distribution of revenues yearly, half-yearly, quarterly, monthly or even more frequently. Just over half of the RROs distributed collected fees to authors and publishers once a year only. One RRO reported that it is distributing as soon as possible after receiving the remuneration, sometimes only days after.

##### **Frequency of distribution of collected fees**

<b>Frequency</b>	<b>Own collected fees</b>	<b>Fees from bilaterals</b>
Annually	58%	56%
Half yearly	8%	
Quarterly	5%	8%
Monthly	5%	5%
Other	24%	31%

## **7. Use of Funds for collective purposes**

Under half of the responding RROs allowed for some of the fees – in nearly all cases 10% or less - to be used for collective purposes. This could for instance take the form of copyright enforcement activities and workshops; promotion of reading cultures, a certain category of works or authors; prizes to authors and translators; school library campaigns; cultural funds; professional training; welfare activities; promotional and training activities, such as masters degrees at universities, courses for judges, attorney general, etc.

Some RROs informed that revenues used for collective purposes are funds not distributed within 10 years as the author or publisher could not be located, others that the deductions for cultural and social funds are decided by law.

## **8. Concluding remarks**

Among the roles of a RRO is the collection of fees for the use of copyright works for their distribution to authors and publishers. A number of methods is available and is being used to attain that objective and these are reflected in the different systems utilised by RROs, as established in consultation or agreement with their mandating authors and publishers or their representative organisations.

It is a matter for RROs to determine which system will be the most effective in meeting their objective of fair distribution of collected revenues, taking into account national legislation and the interests of the authors and publishers. Ultimately, a co-operative approach between authors and publishers, considering, when appropriate, also users and legislators is likely to result in benefits for all concerned.