

International  
Federation of  
Reproduction  
Rights  
Organisations



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### **COPYRIGHT (AMENDMENT) BILL 2010**

Our member organisation in India – the Indian Reprographic Rights Organisation (IRRO) - has made us aware of the Copyright (Amendment) Bill 2010. We hereby submit comments to the proposed amendments to Section 33 of the Copyright Act which deals with collective management of rights and collective management societies. We strongly urge that the proposed amendments are not voted. They are out of step with the way collective management in text and image based works (printed material) has been carried out over the past 35 years and will be accomplished also in the future. We also urge that the proposed amendments to Section 52 be reconsidered.

### **INTERNATIONAL FEDERATION OF REPRODUCTION RIGHTS ORGANISATIONS (IFRRO)**

IFRRO's membership consists of 125 organisations in 64 countries, made up of two categories of members: On the one hand IFRRO represents and links 72 Reproduction Rights Organisations (RROs) world-wide including in the US, Canada and Australia; Japan, India and several other Asian countries; numerous African, Latin American and Caribbean countries; and most European countries, including the UK. RROs administer reproduction and other relevant rights, including certain forms of digital uses, in copyright text- and image-based works on behalf of both publishers and authors including visual artists. These rights are normally referred to as reprographic rights.

In addition to RROs, national and international associations of creators and publishers are members of IFRRO. These include the European Writers Council (EWC), International Publishers Association (IPA), European Newspaper Publishers Association (ENPA), International Association of Scientific, Technical and Medical Publishers (STM), European Visual Artists (EVA) and International Federation of Journalists (IFJ) at the international level.

IFRRO co-operates *inter alia* with the World Intellectual Property Organization (WIPO) and UNESCO, and with regional intergovernmental bodies such as the European Commission (EC), African Regional Intellectual Property Organisation (ARIPO) and Centro Regional para el fomento del Libro en America Latina y en el Caribe (CERLALC).

### **RROs – COLLECTIVE MANAGEMENT SOCIETIES FOR TEXT AND IMAGE BASED WORKS**

RROs are collective management societies in the text and image based works sector **created, owned and governed jointly by authors and publishers**. They are not-for-profit organisations operating at a

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low administrative cost on the basis of specific mandates from both authors and publishers. Key facets of their tasks are awareness building, copyright compliance, licensing and collection and distribution of revenues to rightholders.

A RRO is generally mandated to administer certain secondary uses of copyright works through reprographic reproduction, i.e. anything that can be reproduced on paper such as a photocopy, and certain forms of digital uses. Mandates to represent and manage rights of foreign rightholders are usually acquired through bilateral arrangements.

One of the main purposes for setting up a RRO is to enable publishers and authors to offer enhanced legal consumer access to their works and get the unauthorised uses of copyright works under some control. Since their first establishment in the 1970s, the number of RROs has soared. And so has the number of services they deliver to publishers and authors and to consumer groups. Furthermore, the number of RROs continues to grow adding annually new ones on all continents to an already established and recognised phenomenon of a well functioning world-wide RRO network.

RROs started their activities in response to requests for authorisation to photocopy portions of works of multiple rightholders for institutional uses. The main reasons for such copying are (i) users considering that it is “unreasonable” to ask them to buy the complete work if only a portion is needed; (ii) users wanting to update information quickly; (iii) the material is not available or no longer on sale; (iv) the need for flexibility in the form of putting together material piecemeal and from various sources for defined purposes.

The licensing of the reproduction and making available of portions of works such as chapters, articles and other separates fits perfectly into business models of, in particular, publishers but also authors. However, compiling material for course packs and teaching material in educational establishments and information material in any institution or administration requires copying from numerous different works from a large number of rightholders. It would be an impossible task for any user to contact each and every-one of the publishers and authors concerned to obtain the authorisation required by legislation. Collective management is therefore the only practical solution to offer this service that benefits both rightholders and consumers, and the society at large. And most importantly, the carrying out of this activity by a RRO requires mandates from both authors and publishers.

### **PROPOSED AMENDMENTS 18-23**

We therefore urge that the proposed amendments 18 to Section 33 of the Copyright Act be withdrawn so as to maintain that a collective management organisation may lawfully be established by “a person or an association of persons”, and that “owner of copyright” be maintained. The proposed amendment 18 would be contrary to the development of collective management societies as expressly requested internationally, for instance, by the European Commission, and also to the actual situation of collective management of text and image based works through RROs worldwide.

Correspondingly, we request that the proposed amendments 19, 20, 21, 22 and 23 be withdrawn.

### **PROPOSED AMENDMENTS 31**

Amendment 31 proposes to insert “personal” in clauses (a)(i) and (i)(i) of Section 52. The concept of fair dealing cannot be considered independently of the possibility offered to users to consume copyright works. This fundamental principle forms the basis for provisions in copyright legislation in general. Indian authors and publishers have jointly established IRRO, the Indian RRO to provide users with lawful access to copyright works through licensing mechanisms. This is line with the development also in other parts of the world. The licences would aim to include a worldwide repertoire enabled by bilateral arrangements which IRRO has signed or is negotiating with other RROs in membership of IFRRO.

Inserting “personal” in Section 52 introduces legal uncertainty while removing an incentive to ensure that reproduction is covered by licensing arrangements. This will send a negative signal to copyright holders worldwide. Alternatively, a new clause could be introduced in the Copyright Act to align the Indian copyright law regime with that of countries such as the UK<sup>1</sup>, Ireland<sup>2</sup>, Hong Kong<sup>3</sup>, Jamaica<sup>4</sup>, Mauritius<sup>5</sup> and others where reproduction under fair dealing provisions is made subject to a licence not being available.

Such a regime would also be consistent with European Union legislation. The European Union Directive 2001/29 obliges the EU Member States to either remove any exception to the exclusive right in respect of reprography or alternatively ensure that the rightsholders are guaranteed a fair compensation. Article 5.2b of the Directive states that exemptions to the exclusive right may be granted, “*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 rightsholders receive fair compensation*”.

We therefore strongly urge that the mentioned proposed amendments in Amendment 31 to Section 52 be reconsidered. This would contribute to providing an incentive to develop a healthy copyright industry in India which can produce cultural and scientific works both for the public and for the education and scientific communities. It would also contribute to maintaining the Indian copyright legislation in line with current legislation in other parts of the world.

We ask that the points raised in this submission be considered in the further work on the Copyright (Amendment) Bill 2010. If required, I will be pleased to expand further on them in meetings in New Delhi.

Yours sincerely,



Olav Stokkmo  
Chief Executive

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<sup>1</sup> UK Copyright and Design Act, Section 36 (3),

<sup>2</sup> Irish Copyright and Related Act, Section 57 (3)

<sup>3</sup> Hong Kong Copyright Ordinance, Provision 45

<sup>4</sup> Jamaica Copyright Act, Section 59 (3)

<sup>5</sup> Mauritius Copyright Act, Section 15(1)(b)