

Collective Rights Management

What is Collective Rights Management?

Under copyright law, authors, performing artists, photographers and other rights owners have the exclusive right to authorise the use of their work. They may transfer the administration of their rights to organisations known as “collecting societies” or “collectives”, to manage their rights on their behalf. They may do this by a voluntary agreement or by statutory regulation. In effect, the rights are channelled through the collecting society, aiming to reach the end-user more efficiently than by contacting individual rights holders.

There are different collecting societies for different rights. In general, performing rights collectives provide licences to play lyrics in live and recorded music in public places such as radio and TV stations, restaurants and shops. Playing music in a public place, such as a bar, also requires a licence from a phonographic performance collective on behalf of the rights holder, usually record companies, for sound recordings. Collectives for “mechanical copyright” license the recording of music onto different formats, such as cover versions of songs that have already been released, sound tracks for wedding and home videos. Artist and designer collectives license the works of cartoonists, architects, animators and others. In addition, there may be collecting societies for specialist areas such as Christian music, TV and radio broadcasts for educational use, etc.

In general, the role of the collecting society is to:

- license the use of protected works to users *when this is not otherwise permitted by the law* e.g. individuals, libraries, broadcasting organisations, photocopying agencies, etc.;
- collect royalties and distribute the monies to their members, the rights owners;
- enforce the rights of their rights owners;
- establish reciprocal agreements with collecting societies in other countries to enable cross-border licensing.

No two collecting societies are exactly alike. They can vary in the legal framework by which they are established, in structure and operation, in the rights that they grant. Some collectives don't license at all. Instead, they collect revenue from the sale of copying devices such as photocopy & fax machines and computer hard disks, known as a “machine levy”. Collecting societies are usually not-for-profit organisations and are owned by their members, the rights holders, whom they represent.

Reproduction rights organisations (RROs)

Libraries may need to acquire licences from any of the above collectives during the course of their work. However, the collective that the library will usually have the most dealings with is a reproduction rights organisation (RRO). An RRO typically licenses photocopying for books, journals and other material in the print and publishing sectors, and may also license for digital copying.

An RRO, like other collectives, is an intermediary between rights owners and users. Rights owners such as authors and publishers mandate the RRO to administer their reprographic reproduction (photocopying) rights on their behalf. The collecting society may then issue licences to individuals and institutions for certain uses of the copyrighted material. The RRO collects the licensing fees, deducts administration costs and passes the remainder as royalties to the rights owners. There are RROs in approximately fifty-five countries in Europe, Asia/Pacific, Latin America and the Caribbean, and Africa. Many RROs negotiate bi-lateral agreements with each other so that they may license works from each other and pass the

royalties to the "sister" RRO in the other country e.g. fees for photocopying from an American work under licence in a South African university will be paid to the American collecting societyⁱ.

Practice

There are usually three main types of licences on offer. Some licences are non-negotiable with standard price lists based on the size and type of organisation and the extent of the copying. Licences for whole sectors, such as higher education, can usually be negotiated.

Individual licence. This is a licence that relates to a specific work used by an individual in a certain way, in other words, a one-off situation. For instance, a library may want to digitise an article from a print journal for an online student reading list.

Blanket licence. A blanket licence comprises works by all the rights owners in a certain category. For instance, a broadcasting company may obtain permission to use a certain genre of music for a specified period e.g. rock 'n' roll for a 1960's music celebration.

Legal licence. In some countries, a licence to copy is given by law and the rights holder is entitled to a payment, which is collected by the RRO. In this case, no consent from the rights holder is required. If the royalty rate is set down in the law, this is called a "statutory licence". If rights holders can negotiate the royalty rate with users, this is known as a "compulsory licence".

Extended collective licence. Normally a collecting society can only enter into licence agreements on behalf of the rights owners who are members of the collecting society. An extended collective licence extends the effects of a copyright licence to also cover rights holders that are not represented by the collecting society. This provides users with security to legally copy materials without the threat of individual claims from rights holders who are not members of the collective from which they have the licence. Adopted originally by the Nordic countries, it is now used in a small number of other countries.

Over time, the role of collecting societies has evolved to include compliance and enforcement of copyright. For example, the Copywatch campaign of the UK Copyright Licensing Agency entices members of the public to report unlicensed copying with rewards of up to €30k (\$40k)ⁱⁱ. The International Federation of Reproduction Rights Organisations (IFRRO) has a co-operation agreement with the World Intellectual Property Organization (WIPO) to "promote the protection of intellectual property rights throughout the world"ⁱⁱⁱ and includes worldwide seminars and training programmes.

Policy issues for libraries

For users, such as libraries and educational institutions, collecting societies can offer a number of benefits:

- they enable users to legally undertake copying, which *is otherwise not permitted by the law*. In other words, they allow libraries and their users to copy more than is provided for by statutory exceptions (for a fee, of course);
- they ease the burden of rights clearance for libraries, who do not have to contact individual rights holders to acquire a licence for a work. In many cases, this might be impossible (see Orphaned Works);
- they address the increased complexity of rights clearance as even a literary, not to mention a multimedia work, can contain a whole bundle of rights. Without an effective rights clearance process, legitimate access by well-intentioned users would be

cumbersome or even denied;

- they usually provide libraries with indemnity from unintentional infringement in relation to the licensed works.

In reality, however, the practice is not always the same. Although libraries are often the biggest customers of RROs, the relationship is not always easy. Authors and publishers are represented within all RROs, but users seldom are. An RRO functions as an intermediary between rights owners and users, but it is not a neutral party. The purpose of an RRO is to obtain maximum financial reward for its members (authors and publishers)^{iv} and to ensure that their interests are paramount^v.

Librarians have experienced a number of concerns regarding collectives:

- lack of efficiency. Sometimes collectives can be very slow in responding to library requests for licences;
- lack of transparency. It may be unclear according to which principles prices are calculated and administration costs may seem disproportionate, eating into the amount paid to the rights holder;
- libraries are in a weak bargaining position, in a similar way as when negotiating access to electronic resources with publishers. The RRO holds the monopoly rights on behalf of the rights holder and the library may have to pay the asking price in a "take it or leave it" fashion;
- the licence may include clauses unfavourable to libraries e.g. removing statutory exceptions under copyright law, thus requiring the library to obtain a licence and pay for such uses.

See also *The Relationship between Copyright and Contract Law: Electronic Resources and Library Consortia*.

To address some of these concerns, libraries support a code of conduct to ensure that collectives are open, accountable, transparent and efficient and demonstrate fair practice when dealing with all stakeholders. There should be easy procedures for handling complaints e.g. independent dispute resolution and a fair mechanism for their external supervision.

Libraries should:

- create or join a library consortium to acquire more bargaining power when negotiating licences;
- never sign a licence for anything you don't need to. A licence is only necessary for copying *over and above* what is permitted by the law. If the photocopying practice in the library falls within uncompensated national copyright exceptions, a licence is not required;
- never sign a licence that overrides statutory rights for usage under copyright law;
- insist that the library, not just the legal signatory, is party to any negotiations;
- insist that the internal administration, collection and distribution of funds are transparent and efficient.

The number of collectives involved in the licensing of a single economic use of a protected work is problematic. Certain categories of works, and even certain rights holders, may be excluded from the licence. Libraries may have to deal with multiple RROs for different categories of material e.g. books, maps, printed music, photographs. The RRO may not hold

the digital rights, which may lie with the rights holder. Libraries would therefore benefit from a one-stop-shop collective for all types of works and rights, including digital rights.

Challenges in developing countries

At its centenary meeting in 1996, the International Publishers Association (IPA) passed a resolution calling for the creation of an independent reproduction rights organisation (RRO) in every country of the world. IFRRO has established regional committees for Asia/Pacific, Africa and the Middle East, Latin America and the Caribbean, whose mandate is to assist in the development of a legal framework, to set up and encourage RROs and to combat all forms of illegal copying in the region.

IFRRO is aware that emergent RROs are being set up in countries with fewer resources and with many political, economic and social problems^{vi}. This makes it surprising that the first market sector to be targeted by emergent RROs is usually the education sector. This is partly because schools and universities may be heavy copiers of copyright material, but mostly because the decision-maker is easy to locate. As the goal is to generate the maximum return in the shortest time, publicly funded bodies, government departments, libraries, cultural and research institutions are also targeted.

Access to information and knowledge is critical to the education and training needs of poor countries, whose human capital is central to their development. It is vital that scarce funds are not diverted from basic educational needs, front-line activities or the purchase of primary resources by libraries, upon which students almost entirely depend.

Another factor is that regions, such as Africa, are net consumers of copyright goods, leading to a concern that African collecting societies might become "foreign revenue collectors"^{vii} i.e. sending more money out of the country than they receive in return. Although special bi-lateral licensing arrangements for emergent RROs may exist, vigilance is needed to ensure that negotiations with librarians, as well as the collection and distribution of royalties to local creators, is open and transparent.

It would be, however, more equitable if emergent RROs began their activities in the commercial sector such as financial services, pharmaceutical companies and the professions (law firms, accountants, architects, etc.), instead of targeting the poorest and most vulnerable in the non-commercial sector.

Library position statements

Australian Library and Information Association (ALIA) Copyright collecting societies: proposed code of conduct <http://alia.org.au/advocacy/submissions/code.of.conduct.html>

EBIDA Response to the European Commission Working Document on the management of copyright and related rights
http://www.eblida.org/position/CollectiveManagement_Response_July05.htm

References

Collective Management in Reprography (2005) IFRRO/WIPO
<http://www.ifrro.org/show.aspx?pageid=library/publications&culture=en>

Gervais, Daniel (2006). The Changing Roles of Copyright RROs. In Press.

Nwauche S. Enyinna (2006). A Development Oriented Intellectual Property Regime For Africa
www.codesria.org/Links/conferences/general_assembly11/papers/nwauche.pdf

ⁱ Robinson, Gérard Legal Access-The Mediating Role Of The RROs In Copyright Licensing

ⁱⁱ <http://www.copywatch.org/index.htm>

ⁱⁱⁱ Collective Management in Reprography WIPO/IFRRO

^{iv} www.ifrro.org/upload/documents/Emergent-RROs-1997.pdf

^v <http://www.cla.co.uk/about/vision.html>

^{vi} www.ifrro.org/upload/documents/Emergent-RROs-1997.pdf

^{vii} Nwauche S. Enyinna (2006). A Development Oriented Intellectual Property Regime for Africa