



How to negotiate with your national Reproduction Rights Organization An EIFL Guide

How to negotiate with your national Reproduction Rights Organization (RRO) is intended as a practical guide for libraries if they are approached by an RRO, or when they need to approach an RRO themselves. It sets out the role and tasks of an RRO, the types of licences on offer and highlights issues to consider when negotiating a licence. The Guide offers tips and provides support for libraries to obtain the most suitable terms of use and value for money for the institution.

It is available online at: www.eifl.net/copyright.

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What is an RRO?

A Reproduction Rights Organization (known as an “RRO”) is an organization that licenses mainly the photocopying (reproduction) of published copyright protected works on behalf of its members, as well as some digital uses. RROs are set up and governed by rights holders - usually authors and publishers jointly - who mandate the RRO to administer certain rights on their behalf. RROs derive their authority from mandates from rights holders, often supported by national legislation. RROs specializing in the management of reproduction rights were first established in Europe, the United States and Australia in the 1970's. By 2013, there are RROs in more than 75 countries.

Rights holders represented by RROs will include some or all of the following:

- Fiction and drama writers
- Non-fiction authors, including authors of teaching material
- Journalists
- Translators
- Visual artists: painters, sculptors, graphic designers and illustrators
- Photographers
- Composers and songwriters
- Publishers of books, journals, periodicals, magazines, newspapers and sheet music

RROs provide licences for the **right of reproduction** (copying), not to be confused with other types of collective rights organizations that manage other rights, such as the right of public performance e.g. for music played in a restaurant, or the right of broadcasting e.g. for a film shown on television.

What are the tasks of an RRO?

The main task of an RRO is to license the copying of printed material, known as reprographic reproduction. Reprography is a form of reproduction i.e. making a physical copy of a work, for example, by photocopying or printing. An RRO may also have a mandate from rights holders to license certain digital uses, such as scanning.

Examples of types of printed material are fiction and non-fiction books, journals, periodicals, magazines, newspapers, works of visual arts, photography and sheet music.

The operational tasks of an RRO include:

- monitoring where, when and by whom copyrighted works are being used;
- negotiating licences with users, such as libraries or their representatives for the use of such works, including the licence fees (remuneration);
- collecting the licence fees;
- distributing the collected remunerations to the rights holders that they represent.

Potential market sectors for RRO licensing are:

- the education sector at all levels;
- libraries of all types e.g. research, public, special;
- cultural institutions e.g. museums and galleries;
- public administration e.g. government and local;
- business and commercial sectors;
- copy shops and other places with public photocopying facilities;
- religious bodies.

How do RROs operate?

In many countries, RROs operate under national legislation that provides a basis for their activities. This can take many different legal forms, depending on the legislation in the country¹.

RROs usually obtain licensing authority from mandates granted to them by authors and publishers individually or through national authors' and publishers' organizations, which in turn hold mandates from their members. Mandates from foreign rights holders are usually obtained through bilateral agreements with RROs in other countries, based on principles of reciprocal representation and national treatment (whereby foreigners and locals are treated equally). Such agreements give the national RRO authority to act on behalf of rights holders represented by the foreign RRO. In such cases, the library may copy from these foreign works under their national RRO licence.

The International Federation of Reproduction Rights Organizations (IFRRO) has a voluntary Code of Conduct (2007) for its members that sets out the standards of service that rights holders and users can expect to receive when dealing with RROs². RROs should be responsive to the needs of its rights holders and customers (such as libraries); minimise their costs while providing efficient services; act with integrity in the collection and distribution of funds received; develop fair and effective procedures for handling complaints and resolving disputes; be accountable and transparent. IFRRO has also developed recommendations on the Relationship between Reproduction Rights Organizations (2010) to promote best practice in the operations between RROs³.

Licence types

The main types of licences on offer to libraries through an RRO are:

Ad-hoc transactional licence

This is a licence, applied for by the library, to authorize specific transactions such as the copying of a specific number of pages, or an illustration from a named work in a one-off ad hoc situation e.g. for an exhibition. Where such a licence is needed frequently, it might be better to include this activity within a blanket or sector licence.

Blanket licence

A blanket licence gives permission to the library to copy material from any work in the RRO's catalogue of works (known as the "repertoire"). Some blanket licences are offered as standard off-the-shelf products to individual organizations. They are usually developed in different versions for business and educational establishments, and may be offered at a discount to schools and charities. They generally have standard price lists based on the size and type of organization and the extent of the copying, and are mostly non-negotiable. However, if these licences do not suit, it is worthwhile to approach the RRO together with other libraries to discuss changes.

Sector licence

A sector licence gives permission to a whole sector e.g. higher education institutions within a country, to copy material. Licences will normally cover all published works by rights holders who are represented by the RRO (although some rights holders may choose to opt out of the licence, and some titles may be excluded). The licence may be a type of framework agreement whereby individual institutions can opt-in or opt-out.

¹ For a description of the different models, see *Collective Management in Reprography* (2005) www.wipo.int/freepublications/en/copyright/924/wipo_pub_924.pdf

² <http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations-1>

³ <http://www.ifrro.org/content/relationship-between-reproduction-rights-organisations>

Extended collective licence

Normally a Collective Management Organization (CMO), such as an RRO, can only negotiate licences on behalf of rights holders who have expressly mandated the RRO to represent them. An extended collective licence, set out in law, extends the effects of the licence to include the works of other rights holders who have not granted a mandate to the RRO, but who belong to a category of rights holders who have given mandates and are represented by the RRO. Adopted originally in Nordic countries, as yet this legal technique is not in widespread use.

Statutory/compulsory licence

In some countries, a licence to copy is given by law and the rights holder is entitled to a payment that is collected by the RRO. **In this case, the library does not need to obtain additional consent from the rights holder.** If the royalty rate is set down in the law, this is called a 'statutory licence'. If the law permits rights holders to negotiate the royalty rate with users, this is known as a 'compulsory licence'. Check your national copyright law to see if such licences apply in your country.

If the licence offered by the RRO is not suitable, you should re-negotiate the terms so that they meet the library needs.

Which EIFL member countries have RROs?

RROs are becoming established in an increasing number of countries around the world. Here are some RROs and/or collective management organizations that cover reproduction rights that are found in EIFL member countries (list updated from time to time).

Country	RRO	URL
Cameroon	Société civile des Droits de la Littérature et des Arts dramatiques (SOCILADRA)	www.sociladra.com
China	China Written Works Copyright Society (CWWCS)	www.prccopyright.org.cn
	Music Copyright Society of China	www.mcsc.com.cn
Georgia	Georgian Copyright Association	www.gca.ge
Ghana	CopyGhana	---
Kenya	Reproduction Rights Society of Kenya (Kopiken)	www.kopiken.org
Lithuania	Agency of Lithuanian Copyright Protection Association (LATGA-A)	www.latga.lt
Malawi	Copyright Society of Malawi (COSOMA)	www.cosoma.org
Moldova	Asociația "ReproMold"	---
Nigeria	Reproduction Rights Society of Nigeria (REPRONIG)	www.repronig.org/
Poland	Association of Copyright Collective Administration for Authors of Scientific and Technical Works (KOPIPOL)	www.kopipol.kielce.pl
	Society of Authors and Publishers (POLSKA KSIAZKA)	www.polskaksiazka.pl
Russian Federation	Russian Rightsholders' Society on Collective Management of Reprographic Reproduction Rights (CopyRus)	www.copyrus.org
	Sàpmi (based in Norway - represents Saami rights holders in Norway, Sweden, Finland and Russia)	www.samikopijja.org
Slovenia	Slovenia Organization of Authors and Publishers for Reproduction Rights (SAZOR GIZ)	www.sazor.si
Tanzania	Tanzania Reproduction Rights Society (KOPITAN)	www.kopitan.org
Uganda	Uganda Reproduction Rights Organization (URRO)	nabotu.or.ug/programmes/copyright-management
Zambia	Zambia Reprographic Rights Society (ZARRSO)	facebook.com/ZARRSO
Zimbabwe	ZIMCOPY	www.zimcopy.org

Checklist – negotiating with an RRO

Be prepared

It's a good idea to be aware of developments in your national copyright law or plans to establish RROs in your country. Investigate the following:

- Is there an RRO in my country (or maybe more than one)?
- Or are there any collective management organizations for other rights that cover copying as well?
- Are there plans to set up an RRO in my country?
- Have any other libraries been approached by the RRO about taking a licence?
- Ensure that senior management in your institution consult the library if the institution is approached by an RRO, and that the library is directly involved in any licence negotiations that concern library resources.

What to do if you are approached

Step 1. If the library is approached by an RRO, enquire if anyone else in your institution has also been approached e.g. the Vice-chancellor's office or other senior management.

Step 2. Find out about the RRO.

- Under what legal authority is the RRO established e.g. by law, a limited company?
- Who owns the RRO and which national right holders does it represent?
- Does it represent foreign rights holders through bilateral agreements with other RROs?
- Where do the licence fees go e.g. how much is distributed to rights holders (national and foreign), what happens to monies that cannot be distributed because the rights holders cannot be located, what are the administrative costs?
- Does the RRO publish an annual report or audited annual accounts?
- Ask your national copyright office to verify the credentials of the RRO (in some countries there may be registration requirements).
- Check if the RRO is a member of IFRRO.

Remember, it is legitimate to establish the *bona fides* of the RRO as you are committing funds from the library or institution's budget, more especially if the funds come from the public purse.

Step 3. Check if a licence is required from the RRO.

- What library services involve copyright protected content e.g. copying for users by library staff, inter-library document supply to end-users, self-service copying by users?
- How do these services fit within national copyright law and/or licences already held by the library, such as for e-resources?

A licence on offer from an RRO should be for copying that is over and above what is already permitted in your national copyright law, not as a substitute for what is in the law. Check if the law includes relevant statutory or compulsory licence provisions. Check also any licences held by the library for electronic resources as these usually include printing, downloading and other common activities.

A. A licence is not required

If, after careful appraisal, you conclude that the library does **not** require a licence, inform the RRO in writing giving reasons why such a licence is not required.

You must ensure that your library's copying is compliant with the law and/or any existing e-resource licences. If necessary, you may need to adjust your practices accordingly.

Developing a library copyright policy can provide guidance to staff and users on the copyright aspects of library services and the use of library resources, and can help to ensure compliance in managing the copying of copyrighted materials⁴.

From time to time, you may choose to buy in individual items that are copyright cleared from a document supply service⁵, or to purchase permission through a pay-per-use service (if available) to copy content already in your collection. As these options can be expensive, you should weigh up the costs and benefits.

B. A licence is required – does the licence on offer meet the library needs?

Step 1. Check if the licence covers works in the library collection i.e. does the RRO represent the rights holders of the works? (For published works held in libraries, this is usually the publisher). For foreign rights holders, this means asking if the RRO has bilateral agreements with RROs in the other countries. Are any major works, authors or publishers excluded from the licence? This will help to determine how much of the library collection is covered by the licence on offer.

Step 2. Does the licence give full warranties and indemnities in respect of copying? If there are none or if they are inadequate, it might not be worth taking the licence because you are still at risk of being sued by the rights holder (see Warranties and Indemnities below).

If you are satisfied with the answers from steps 1 and 2 above, then you are ready to start negotiating the detailed licence terms and the fee.

Getting started

The objective is to obtain the most suitable terms and conditions for the needs of library users, and value for money for the institution.

As the library is not usually a separate legal entity, it is usually the institution that will sign the licence agreement on the library's behalf. Therefore it is essential to discuss the licence at an early stage with the authorities in your institution e.g. senior library management, the library or institution's legal adviser (If there is one), or the institution's law school (if there is one).

To get started, broadly specify:

- Materials and activities that should be included in the licence with regard to physical copying and, if you need it, digital copying for virtual learning environments and so on;
- The amount of copying required for the activities (not otherwise permitted by copyright law or by e-resource licences) e.g. how many copies per user, multiple copying of course packs, etc.

⁴ See Developing a Library Copyright Policy An EIFL guide. <http://www.eifl.net/developing-library-copyright-policy-eifl-guide>

⁵ Such as the British Library Document Supply Service <http://www.bl.uk/reshelp/atyourdesk/docsupply/index.html>

Once signed, both parties are bound by the terms of the licence so it is important to try to get this right from the beginning, since the original agreement will be the starting point for negotiations when it is up for renewal.

Licence clauses

The following should be set out in the licence:

Materials covered

- What percentage of the library collection is covered by the licence?
- Are there excluded works and categories? If yes, which are they, specific titles, specific publishers, or classes of materials e.g. electronic journals and databases licenced directly from the publisher?
- How does the RRO keep the library informed of any changes to excluded works?

Authorized users

The licence should ideally give equal access to all categories of users.

However, you might need to specify the authorised users including academic and administrative staff, students on campus and distance learners, walk-in users (if applicable). Note that where the fee is calculated on users, it is usually based on the number of Full-time Equivalents (FTEs)⁶ in the institution, not on the number of authorised users that use the material.

Authorized uses

Consider the uses that should be covered. Some common uses could be:

- multiple copies of articles, book chapters or illustrations for course packs, handouts for classroom use or distance learning materials;
- printed copies for written presentations or lectures (using presentation software, slides or acetates, interactive whiteboards or projectors);
- scanning material for virtual learning environments (VLES) or sending them to users by email or fax.

Note: if digital scanning is covered in the licence, check for any restrictions e.g. is the scanning limited to national works only?

The RRO may ask for a pre-licence statistical survey to estimate the amount of copying that takes place. Try to agree the criteria and methodology for the survey so that the data collection is accurate and robust, or else insist on using the number of FTEs.

Licence fee

The fee, fee calculation formula and payment currency must be acceptable to your institution. It can be based on the volume of materials covered, the types of uses, the estimated number of copies made, full-time equivalent (FTE) number of users, or a combination. Calculations that have been used include a flat annual fee per FTE authorised user or for low volume copying, it could be a flat fee per transaction.

Do not to pay for any free use copying permitted in national copyright law. Do not pay for copying already paid for under e-resource licences (or else you are paying twice for the same thing). Ensure that publications not covered by the licence are not included in the calculation for the licence fee e.g. any works by foreign publishers that are not part of the RRO's repertoire.

⁶ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Full-time_equivalent

Warranties and Indemnities

It is important that the licence includes a warranty that the RRO has the authority to grant the licence.

Tied in with the warranty, there should be an indemnity. The indemnity that is most important for the library is an indemnity from the RRO against losses, damages and expenses in case of an action by a rights holder over the intellectual property rights licensed.

If a licence has no warranty or indemnity clauses or if they are ambiguous, the library (or institution) is still at risk of being sued by the rights holder for the use of their work and so could end up paying twice, once to the RRO for the licence fee and again to the rights holder, that might additionally include damages for infringement and other legal costs.

Reporting requirements

Often RROs will want you to cooperate with periodic copying surveys, or to provide data on what copying is done in the library by staff and users. It is important that any reporting mechanisms are not onerous and do not place an administrative burden on the library. For example, sampling and periodic surveys may often be preferable to item-by-item reporting.

Reporting requirements should be reasonable so that the library can manage and deliver on them. Also agree upon the acceptable frequency of such surveys.

Safeguarding library rights in copyright law

To ensure that the licence extends, not limits, permissions granted in national copyright law for libraries to copy (so that you do not therefore pay unnecessarily), the following clause should be included in the licence:

“This Licence shall be deemed to complement and extend the rights of the Licensee under the national Copyright Act and nothing in this Licence shall constitute a waiver of any statutory rights held by the Licensee from time to time under that Act or any amending legislation.”⁷

Parties bound by the contract

This is usually the institution and the RRO.

Note that only the parties signing the licence are bound by its terms. Individual library end users should not be asked to further agree to the terms in a separate sub-licence.

Licence term

Every licence has a duration, so always check the term of the licence. Blanket licences are normally renewed annually, while fully negotiated licences are often offered for longer periods, such as three to five years. A provision for monitoring and renewal arrangements should be included.

Libraries and RROs

Organize for negotiation

Decide whether to go-it-alone or to work together with other libraries e.g. the library consortium could be an ideal vehicle for negotiating blanket licences from national RROs.

As renewal of the licence can take many months, especially if amendments are sought, consider setting up a negotiating committee which meets at regular intervals with the RRO to monitor performance of

⁷ Licensing digital resources – How to avoid the legal pitfalls. 2nd ed. 2001 by Emanuella Giavarra LLM

the licence, produce joint information materials and to agree on any amendments to meet changed needs and technological developments that arise.

Working through the library consortium brings collective bargaining power to licence negotiation and is likely to improve the deal you can get. It may also increase library standing if you need to get support from the national copyright office.

RRO licences can bring a number of benefits such as:

- enabling libraries and their users to legally copy more than is provided for by national copyright law;
- easing the burden of rights clearance, such as for works with multiple rights holders or to avoid having to contact rights holders individually for permission to copy;
- providing indemnity from unintentional infringement in relation to the licensed works.

However the business approach, repertoire and services of RROs can vary greatly so the experience of libraries can differ considerably, for example:

- the licence on offer may not include necessary works in the library collection;
- it can be difficult to negotiate suitable terms in licences, or to agree the licence fee;
- the principles underlying the fee calculation, the fee distribution or the administrative costs may not be clear;
- standards of customer service may not be sufficient.

Try to get support from your institution, and always get legal advice if anything is unclear. The national copyright office should be able to provide information and advice on authorized collective management organizations, supervision requirements or dispute settlement mechanisms, if you are unhappy with the terms of the licence or an aspect of the service. The library consortium or library colleagues may be able to share their experiences, and EIFL members may seek support from EIFL.

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January 2013