

	<p style="text-align: right;">Date : 11/10/2007</p> <p><b>REPRODUCTION RIGHTS ORGANISATIONS (RROs): What we are and what we do</b></p> <p><b>Peter Shepherd</b> President, IFRRO</p>
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## RROs – what do we stand for?

This presentation aims to provide information concerning the activities of RROs and the framework within which we operate. At the highest level, the principles which underpin the operation of RROs can be clearly and simply stated. They are:

- To protect copyright
- To encourage creativity

RROs are governed and frequently owned by the rightsholders whose works they license and represent. Our commitment is to be open and transparent. We aim to balance the needs of the rightsholders with those of the users. RROs operate within national legal systems, and therefore should reflect the legal, cultural and economic issues and priorities of the society within which they function, within an overall international framework. RROs are governed by national rightsholders, owing a duty of care to foreign rightsholders whose works they may also represent. This principle of treating national and foreign rightsholders on an equal basis is known as “national treatment”. Fair and equal treatment for all rightsholders is fundamental to a healthy and flourishing creative economy.

## RROs – main aims and purposes

RROs' main purpose is to license collectively what rightsholders would find it difficult or impossible to license individually. That is to say, RROs provide legal access to copyright works when their rightsholders do not or cannot provide such access, because it would be impractical or uneconomic for them to do so. This is typically the case when multiple copies of fragments of works are required for use – for example in educational course packs, or for current information purposes in business and industry. RROs enable this process to take place at low overhead to both the rightsholders and the users. There is usually a balance to be struck between ease of use on the users' behalf, and the provision of data adequate for an equitable distribution of the remuneration collected on behalf of the rightsholders. This balance is frequently a matter for negotiation and compromise between the RRO and its licensees. The higher the level of confidence felt by the rightsholders in the system of data collection and

distribution, the greater generally speaking will be their willingness to grant mandates to RROs enabling them to issue licences.

## RROs – legal basis of operations

The legal basis for the operations of RROs lies at its root in the Berne Convention, specifically in Articles 9.1 and 9.2. The Berne Convention sets out what is within the exclusive right of the author, and also the limited exceptions which may be permitted to that right. The “fair use” and “fair dealing” types of exception, and also the “private use” exception, are instances where national law may permit use of an author’s work without consent, though not necessarily without remuneration. The volume and nature of copying permitted under RRO licences are such as to rule out fair dealing and similar exceptions. Remuneration for this use is legally obligatory. There are three main systems of collective management in place:

- Voluntary
- Statutory or legal
- Voluntary with legal backup (extended collective)

Each system reflects and respects the rights of rightsholders to exercise control over, and be remunerated for, the use of their works. Underpinning the activities of RROs is the principle of rightsholder mandates, giving RROs the legal entitlement to act on rightsholders’ behalf.

## Whom do we license?

RROs’ licensing activities cover all sectors: education at all levels, governmental bodies and agencies at local and national level, businesses and the professions, copyshops, charitable organisations, churches, document delivery organisations on a national and international basis, and rightsholder organisations. When licensing activity begins, it is usually focussed on educational institutions, because their need is frequently the greatest. This means that an early priority for a start-up RRO will be to contact the representative bodies of the schools, and of the further and higher education institutions, or the institutions themselves directly, or the responsible government department, in order to open a dialogue with a view to agreeing the terms and conditions of the educational licences. The fees will take into account national economic conditions, and the types of usage permitted will be in line with established practice internationally. In the educational sphere especially, it is vitally important to national creators and publishers to establish an orderly market for the copying of their works. The importance of educational publishing to national creative output as a whole cannot be over-estimated.

Textbooks frequently represent a highly significant percentage of the revenue of the national publishing sector. This means that a fair and balanced educational licensing system is one of the keys to the cultural and economic prosperity of the nation’s creators and publishers generally. Upon this foundation may be based the licensing of other sectors, such as the pharmaceutical industry, the law profession, commercial businesses of all types, and government structures, all of which need legal access to copyright materials for the purpose of copying.

## RROs – what is licensed

RROs generally operate on the basis of rightsholders’ mandates. This means that permission is granted by individual rightsholders, and through rightsholder bodies acting on behalf of their members, to RROs to license certain uses of their materials. The range of copyright materials licensed by RROs is very wide. Though varying from country to country, it encompasses books, learned journals, consumer, trade and professional magazines, newspapers, and music. The categories range from poetry, drama and fiction, through textbooks at all levels, to works of scholarship and professional reference. The rightsholders represented include authors of fiction and non fiction, poets, dramatists, journalists, translators, photographers, illustrators, fine

artists, composers, and publishers of all types and sizes, from the largest multinational to the smallest national or even local publisher, in many languages. The uses permitted may include photocopying, scanning from paper originals, and copying from digital originals, for circulation in hard copy to persons authorised under RRO licences, or for posting under agreed terms and conditions to intranets, for authorised users to view and download. The extension of RROs' activities from paper-to-paper copying, into paper-to-digital, and then into digital-to-digital, has been, is, and will continue to be, of major interest and concern to rightsholders and their representative bodies. This is to be expected in a field which is still fluid, and where primary business models are still in the process of emerging and solidifying. The principle of voluntary mandates means that RROs may proceed only with the explicit consent of the rightsholders. This naturally extends to the exchange of bilateral agreements between RROs, where each situation must be carefully evaluated on its own terms. Working closely with the international and regional rightsholder representative bodies of its membership, and with its RRO members, IFRRO has developed a set of core principles called the *Repertoire Exchange Mandate (REM) for the Collective Licensing of Digital Uses*. Individual RROs have begun successfully to exchange digital mandates, enabling them to extend their licences to include the digital uses of works by the rightsholder members of the co-signatory RROs.

### How licence fees are arrived at

Licence fees may be arrived at in a number of ways. Among the most common are the following:

- By negotiation between RROs and user representatives
- By statute
- By rightsholders directly

In voluntary schemes, the fees will usually be related to usage in some way. Factors taken into consideration may include the nature and value of material copied, the volume of copies made under the licence, the proportion of the work permitted to be copied, the form of copying whether paper only or paper and digital, and the uses to which the copies may be put. The volume and nature of usage may be determined through full reporting, or through some form of statistical sampling. Generally speaking, the more likely the licensed uses are to substitute for primary sales or licensing activities, the more rigorous will be the reporting requirements. There may be a statutory body, such as the UK's Copyright Tribunal, to adjudicate in the event that a settled agreement cannot be reached.

In statutory schemes it is common for governments to set tariffs based on similar considerations, drawing upon evidence provided by the various parties. The tariffs may be related to the capacity of machines to produce copies, or by reflecting the number of copies recorded on all machines, or a sample of machines, in an organisation over a whole year or part of a year, or by recognising the number of pages copied per student or per employee, related to the value of the works copied.

Fees may also be set directly by the rightsholders for particular uses, such as inclusion in certain types of course packs, or for the purposes of document delivery. Depending upon the type of mandate and the type of licence, the RRO may be allowed to set a default fee where the rightsholder expresses no instruction to the contrary.

### Types of licence

There are two main types of licence, and these are commonly known as blanket and transactional. Under a blanket licence, a portion of a work, typically in the region 5%-10%, a single chapter of a book, or a single article from a journal issue, may be copied by or on behalf of a student or employee. The licence should state clearly who may make and receive copies, what form the copies may take – whether paper or digital being an obvious example – and the

uses to which copies may be put, including the limits of such uses and whether, for example, copies made for research undertaken for commercial purposes are included, and whether copies may be supplied to Distance Learners, and if so in what form. The licence may also indicate whether and which rightsholders have opted in, or out, depending on the form of the licence, and which national repertoires are included. Negotiating and administering such licences frequently involves librarians, as the professional custodians of copyright in their user institutions, who are also responsible in a practical sense for the Virtual Learning Environment (VLE) or similar information repository in their organisations. For their part, RROs represent the interests of the rightsholders, and thus RROs and librarians each will represent the needs and interests of their communities at a high level, while generally cooperating to ensure that the licences function smoothly at operational level.

Transactional licences permit copying which cannot be carried out under the terms of a blanket licence. This could extend to the copying of whole works, but more usually applies to uses such as the copying of significant portions of works, for example for course pack use or for purposes such as document delivery nationally and internationally. As already mentioned, it is usual for rightsholders to set prices for these types of use, which may include making multiple copies systematically on a large scale, with RROs permitted to set default prices under certain circumstances.

### How fee revenue is distributed

The high level rules for the distribution of fees may be set by statute, or may be agreed between the rightsholders themselves. It would not be uncommon for there to be a split of 50 / 50 between creators and publishers at a national level. Each national RRO would expect to distribute the fees due to its rightsholders on the terms set by national law, or agreed between national rightsholders, whether those fees came from within the country, or through its bilaterals with other RROs. In other words, RROs generally would expect to distribute, not according to the rules in the country of collection, but according to their own national rules. This is an important principle in that it reflects the right of national rightsholders to determine how the fees for the copying of their own works should be apportioned.

Complete openness and transparency are essential in the handling and distribution of fee revenues. The split between the groups of rightsholders having been determined at a high level, national rightsholders may decide the basis on which fees will be allocated to categories of works, to individual works, and to the rightsholders whose works have been copied. This will almost universally involve the collection of data on works copied, through sampling, full reporting, or the auditing of works available for copying, and in some cases relating this data to a larger pool of data, aggregated over time, from which it may be possible to allocate fees on a title-by-title basis according to actual or statistically estimated usage. The higher the level of confidence that the distribution data reflects actual usage, the greater will be the confidence of the rightsholders in the relevant licence, to the extent that they may be more willing to participate by grant of mandate in the relevant scheme. This is particularly so for example in the case of pedagogic materials, where course pack use may be seen as substituting directly for the purchase of textbooks authored and published specifically for the courses in question. Detailed reporting is a frequent requirement in such cases.

### Bilateral agreements between RROs

Users generally need access to works produced, not only by their national creators and publishers, but by writers and publishers internationally. The normal way of achieving such access is by the exchange of bilateral agreements between RROs, thereby enabling each RRO to grant licensed access to the repertoire of the other. Generally the terms and conditions of

the licences on both sides are such that rightsholders are quite willing to permit such exchanges for the purposes of photocopying.

The advent of the digital era reinforces the need for openness, and for an understanding of exactly what is being licensed, to whom and for what purposes. By focussing on openness and clarity, RROs plan to ensure that the mutual confidence which has characterised the licensing of photocopying is sustained in the digital environment. As mentioned above, individual RROs are now successfully negotiating digital bilaterals, and IFRRO in consultation with its members has formulated a set of principles to guide the exchange of digital repertoires – the Repertoire Exchange Mandate referred to above.

To the extent that the distribution of fees reflects the actual usage of materials under the relevant RRO licences, so the proportion of fees allocated to national rightsholders will reflect the proportion of usage of nationally authored and published materials. This usage of local materials will in turn be affected by the strength of the local creative industries, and by the industry's ability and willingness to invest in the creative and production processes. Industries which may otherwise be weakened by unauthorised and unremunerated copying, may be strengthened by the introduction of well-regulated licensing schemes, to the national benefit socially, culturally and economically.

Rightsholders worldwide generally recognise the mutual benefit that lies in fostering creative activities, and are prepared to support the establishment of national RROs in a number of ways. For example, it is not uncommon for established RROs to agree to waive the payments for the copying of their rightsholders' materials for a period, allowing the fees to be retained in the country where the copying has taken place. This is a voluntary decision taken by the rightsholders, generally in the belief that it makes sense culturally and economically to encourage the growth of national copyright industries. When payments begin, it is not uncommon for the foreign rightsholders to continue to waive a percentage of the payments due to them for a number of years. This "payments holiday" frequently helps the national RRO to get on its feet during its early years.

## Governance of RROs

While RROs owe a duty of care to all rightsholders whose works are copied under their licences, the governance of a national RRO rests with its national rightsholders. It is sometimes a challenge for national rightsholders to organise themselves and to establish a cooperative framework such as to sustain an RRO over the long term, but experience shows that without such organisation and cooperation, the RRO will stand little if any chance of success! With the support of its national rightsholders, the RRO will have the credibility and legitimacy to enter into licensing agreements with its national users, and into bilateral agreements with other RROs. The national rightsholders will normally form the governing body, Board or Council, of the RRO, on which will be appropriately represented the relevant categories of rightsholders: writers, visual creators, music composers, and publishers. The governing body is responsible for determining policy and strategy, and for the appointment and monitoring of the executive. The governing body may act under some form of government oversight, and will be accountable for the good governance of the RRO to the rightsholders at large. Although not a normative body, IFRRO has issued a Code of Conduct, which it strongly recommends its members to observe, and which may be seen on the IFRRO website.

## Roles of IFRRO

IFRRO plays an active role in the development and support of RROs and copyright activities generally. The RRO members of IFRRO may voluntarily contribute part of their fee revenue to a development fund, which is used in a number of ways. On a regional and national basis, IFRRO's involvement encompasses a range of activities including awareness raising, capacity

building, and financial support for new RROs which are able to demonstrate a suitable level of commitment among their rightsholder communities. IFRRO members and its secretariat contribute not only financially, but also invest time and resources in such activities as organising and attending conferences, assisting national rightsholder bodies in addressing their politicians and legislators, advising on enforcement matters, and providing planning, training and mentoring support to RROs when requested. IFRRO works with WIPO under a joint agreement, with UNESCO, and with regional bodies such as ARIPO and CERALC. IFRRO also has a number of structures, such as technical committees and fora, in which members participate on a regional and international basis. Recent emphasis has been upon the development of technical standards for interoperability between RROs themselves, between RROs and their members, and RROs and their users. The aim in such standards development is that none should be excluded, even when local technical capacity is at an early stage of development, from the benefits of prompt, unambiguous and accurate exchange of data and payments.

### Importance of a healthy national IP industry

The health and success of its national IP industry is, it goes without saying, of enormous importance to a country socially, culturally and economically. Cultural diversity is enriched through the stimulus of creators and producers, expressing the unique aspects of their heritage, interpreted through personal voice and experience. The print media – now increasingly to be thought of as the print and digital media – represent a major contributor economically among the IP industries, typically in the top two alongside software and databases. To this industry, the importance of the education sector can scarcely be overestimated. Textbooks typically represent as much as 25% of the value of national book publishing revenue. Within the textbook sector, school textbooks are pivotal. The damage done to the sales of school textbooks by unauthorised and uncompensated use may be so grave as to discourage local writers and publishers from participating in this market, to the detriment of the creative industries generally. The effect is the same, it may be said, whether the cause is illegal copying, or legal exceptions.

### Current areas of cooperation

There is a long history of cooperation between RROs and libraries. Two current examples are in the areas of standards development and digital libraries. Representatives of IFRRO, together with those of the library and other interested communities, are working towards the development of a new standard, the ISNI or International Standard Name Identifier. The aim of the ISNI would be unambiguously to identify the parties involved in the creation and rightholding of a work of intellectual property, through the name or names by which they are publicly known. The name could be that of a natural or a legal person, or an alias. The issues are numerous and complex, and the exchange of ideas, knowledge and informed opinion is rich and fruitful. IFRRO is also involved with library representatives and a similar mix of interested parties in the development of solutions related to the European Commission i2010 project. To date IFRRO's particular involvement has been in the fields of Orphan Works and Out of Print Works. The aim is to enable libraries, using interoperable databases and online search and licensing capabilities, to seek and obtain permission to digitise works which would otherwise remain inaccessible in digital form. Once again the goodwill and complementarities of RROs and libraries has resulted in real progress in these important areas.

### Custodians of intellectual property

That we find ourselves cooperating from time to time is hardly surprising since, as mentioned above, while RROs and libraries may find ourselves on occasion on the opposite sides of the

table in negotiating licences, we surely share a common position or at least a common outlook upon certain matters of principle. To illustrate, I would like to quote some phrases which you may recognise:

- “ . . . offer learning services, books and resources that enable all members of the school community to become critical thinkers and effective users of information in all formats and media . . .
- “link to the wider library and information network . . .
- “support the use of books and other information sources, ranging from the fictional to the documentary, from print to electronic, both on-site and remote . . .
- “complement and enrich textbooks, teaching materials and methodologies . . .
- “achieve higher levels of literacy, reading, learning, problem-solving and information and communication technology skills . . .
- “services must be provided equally to all members of the school community, regardless of age, race, gender, religion, nationality, language, professional or social status . . .
- “adequate and sustained funding for trained staff, materials, technologies and facilities.”

These quotations are taken from the IFLA / UNESCO School Library Manifesto, and I can see nothing in this statement of principles with which RROs or their members the rightsholders would disagree – provided, of course, that the recommendation that access to school libraries should be free of charge to users, which occurs later in the document, is accompanied by the understanding that there should be entitlement to appropriate remuneration for rightsholders at some point in the value chain! Creators and publishers pursue their goals so that their works may be read, and so that readers may enjoy and benefit therefrom. Librarians surely share in that goal of providing and enlarging access to works of culture and knowledge, within a properly regulated framework of legal access. Both RROs and libraries are in a sense custodians as well as disseminators of works of intellectual property.

## Project Enhancing a Book Culture

IFRRO has a long tradition of joint activities with other bodies, and in this mould is a project to establish a broad cooperation among interested parties to enhance a national book culture. The project aims to achieve measurable results in a number of key areas, including national writing and publishing including in local languages, enhancement of affordability and availability of books through various means, and support for an enhanced library structure including their role in IT access provision. The aim is to pilot the project in 3-4 selected countries. Natural partners are creators and publishers and their representative bodies, RROs, governmental and intergovernmental bodies, and libraries. IFRRO, the European Writers Congress (EWC) and the International Publishers Association (IPA) have confirmed their commitment. UNESCO has not yet been formally approached, but has already expressed an interest. We are hopeful that IFLA too will cooperate in this programme to enhance a national book culture, a project in which libraries are surely natural stakeholders.

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