

WIPO/CR/DAM/05/2

ORIGINAL: English

DATE: April 2005



SYRIAN ARAB REPUBLIC



WORLD INTELLECTUAL
PROPERTY ORGANIZATION

WIPO NATIONAL SEMINAR ON COPYRIGHT AND RELATED RIGHTS FOR LAWYERS AND JUDGES

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Ministry of Culture

Damascus, April 27 and 28, 2005

THE IMPORTANCE AND FUNCTIONING OF COLLECTIVE MANAGEMENT ORGANIZATIONS

*Mr. John-Willy Rudolph, Executive Director,
Norwegian Reproduction Rights Organization (KOPINOR), Oslo,
and Chairman, International Federation of Reproduction Rights Organisation's
(IFRRO) Development Committee for Africa and the Middle East, Brussels*

THE IMPORTANCE AND FUNCTIONING OF COLLECTIVE MANAGEMENT ORGANIZATIONS

*Mr. John-Willy Rudolph, Executive Director,
Norwegian Reproduction Rights Organization (KOPINOR), Oslo,
and Chairman, International Federation of Reproduction Rights Organization's
(IFRRO) Development Committee for Africa and the Middle East, Brussels*

1. INTRODUCTION

It is a great pleasure for me to speak at this seminar, and to meet Syrian lawyers and judges who are interested in authors' rights. The last time I was in Damascus was in 1967, and I am most pleased to be back!

I manage Kopinor, the Reproduction Rights Organization of Norway, a society of rights holders which manages rights collectively. In 1980 Kopinor was given the task by authors and publishers of dealing with the unauthorized photocopying of books, journals, newspapers, sheet music, etc. in Norway. Tomorrow I shall share with you in more detail some of our experiences in this field. Today, however, I have the task of speaking on the overall importance and functioning of collective management organizations in general.¹ But allow me to make some general comments first.

The creator and the consumer

One way to understand the value of authors' rights is to look at it from the perspective of the author or creator. These individuals devote their lives to the creation and dissemination of art, knowledge and culture. They write novels, they paint, they compose music or make films. They are talented individuals who have something to say through the expression of ideas. That expression, protected by copyright, contributes in many ways to the well-being of our societies. These creators have to struggle to stay alive like most other people. It is therefore of paramount importance that they can benefit financially from their work. Copyright provides the mechanism for this benefit. As a result, consumers everywhere can enjoy cultural products and services in a wide variety of formats and media.

As consumers, we are exposed to culture in our day-to-day lives – so much so that we hardly think about where it comes from. We read our morning newspaper, and we listen to music on the way to work. We learn with the help of books in schools and universities. We watch television at home, or go to the cinema or a concert in the evening. We may have a pile of books on our bedroom table, or a stack of magazines in the living room. All of these products of creativity that surround us nourish us as human beings. We learn new things. We appreciate art. This is why these works were created in the first place: for our education, our enjoyment, our enrichment, for improving the quality of our lives.

Creative works not only enrich us, they also collectively make up our national cultural and heritage, an essential part of each nation's identity. Overall, the economic contribution of the cultural industries to a nation's economic wealth is considerable.

The role of the copyright industries

The 'copyright industries' are among the most important contributors to cultural independence and diversity, and to the economic growth of nations. No culture can be created

¹ Tarja Koskinen-Olsson : *From Artist to Audience*, WIPO pub. No. 922(E) is a main source for this paper, and which I recommend for further studies. It contains many concrete and interesting examples of collective management.

or kept alive without them. Intellectual development and growth is put at risk when they are not allowed to evolve properly.

The copyright industries contribute significantly to economic development, and generally make up 4-6% of the Gross Domestic Product in most nations. In industrialized countries they represent the main growth areas and are also major contributors to the creation of new jobs. In many countries, these industries are growing at speeds substantially higher than those of other industries, and have over the past decades been the only sector showing a steady and unbroken growth in employment rates.

The legal basis

Simply put, copyright or authors' rights law provides a basic right to receive credit as the author, and to receive remuneration for one's creative work. The protection of this basic right provides the essential basis for pursuing creative activity – recognition and fair reward. Copyright protects not only the fruits of creative work but also the investments made in bringing the resulting products and services to market.

Copyright legislation also provides the basic mechanism to prevent unauthorized use of works protected by copyright, such as piracy. Creators, performers and producers have rights based on copyright and related rights legislation. Copyright protects their property, even though this property is sometimes in intangible form. Copyright is based on national legislation which should be in harmony with accepted international norms, manifested in international copyright treaties such as the Berne Convention for the Protection of Literary and Artistic Works. Technological development forces us constantly to upgrade legislation both on the international and national level.

What do we mean by rights holders?

Those individuals who create works are called, in copyright terms, authors. They may create literary works such as novels, poems and scientific texts, or artistic works such as paintings, musical compositions and films. Performing artists – singers, musicians and actors – perform works and are known as performers.

Publishers and producers invest in works and bring them to the marketplace. This can involve selling books, newspapers, records and DVDs, or using the Internet as a delivery channel. Broadcasters play an important role in the dissemination of works. Cultural institutions – museums, concert halls, theatres and libraries likewise contribute to making cultural works available to the public.

In principle, rights holders can decide how and by whom their works are used. It is in their interest that their works are enjoyed by the widest audience, provided that they are rewarded for their work. This requires efficient mechanisms to manage creators' rights so that they can concentrate on their creative activity.

Collective management

In some sectors, copyright can be managed through individual contracts between the authors and users. However, in many cases it is impossible to negotiate individual licenses or permissions for dissemination of works. Think of playing songs on a radio station, showing a movie on a cable network, performing a play in theatres around the world, or photocopying from books: there is no way each user could remunerate each individual creator or rights holder every time a work is accessed or enjoyed. In many of these cases rights are managed through the system of collective management.

Rights holders will in such cases authorize a collective management organization (CMO) to administer their rights. CMOs can take different forms, but the general rule is that the organization is owned, managed and controlled by rights holders of the territory in which it operates. In most countries there is also some form of government supervision of CMOs.

In his important work *Collective Administration of Copyright and Neighboring Rights*, Dr. Mihály Ficsor, former Assistant Director General of the World Intellectual Property Organization (WIPO), defines collective management as follows:

In the framework of a collective administration system, owners of rights authorize collective administration organizations to administer their rights, that is, to monitor the use of the works concerned, negotiate with prospective users, give them licences against appropriate fees and, under appropriate conditions, collect such fees and distribute them among the owners of rights. This can be considered as the definition of collective administration.²

We shall look at how collective management of copyright provides those services, particularly in regard to the following key cultural industries:

- Dramatic works and theatre
- Film and television
- Visual arts and photography
- Music and sound recordings
- Print and publishing

2. DRAMATIC WORKS

Collective management in the field on dramatic works dates back to the 18th century in France, when in 1777 the predecessor of *Société des auteurs et compositeurs dramatiques* (SACD) was founded to ensure recognition and respect for authors' economic and moral rights in theatres. In the field of dramatic works – such as plays, musicals, ballets and operas – a large number of artists usually collaborate: dramatists and script writers, directors and choreographers, scene designers, actors and singers. All of them are entitled to at least some form of remuneration based on copyright. In some cases, collective management organizations function as a sort of agent: brokering an agreement between the playwright and an organization of theatres or theatre producers. These agreements establish terms for the performance of a work, ensuring that appropriate payments are made.

3. THE AUDIOVISUAL INDUSTRY

The Film Industry

The mixing of sound and images on film began with the first movies at the end of the 19th century. In the early decades of the industry, multitalented individuals like Charlie Chaplin and Buster Keaton wrote the stories, directed the films, and played the leading roles. The industry today – known variously as the film, movie or audiovisual industry – has changed dramatically.

Creators and performers are drawn from a large number of professions, including script writers, directors, directors of photography, narrators and actors. Their work is enjoyed in cinemas and on television, via satellite and cable, as home-video or DVD rentals, and now even through delivery of files over the Internet. Because of the large number of participants in

² Dr. Mihály Ficsor, *Collective Administration of Copyright and Neighboring Rights* (Geneva: WIPO, 1990.)

these productions, as well as the heavy investments involved in film making and distribution, legislation in many countries contains specific rules concerning the ownership of copyright in audiovisual works. Audiovisual authors have also established their own collective management organizations in many countries to manage their interests in areas such as the rental of videotapes and DVDs, the private copying of audiovisual works, and the distribution of television channels over cable.

Television

Television plays a major role in disseminating audiovisual works to a large audience. Broadcasters produce a great number of television programs themselves; they also acquire rights for showing films and other independent productions on their channels. This involves an enormous amount of individual rights. A single television channel may broadcast more than 10,000 programs a year, including films, documentaries and animated cartoons, produced both in-house and independently.

For national broadcasters the domestic market is the primary market and broadcasters frequently buy rights to broadcast works in their own countries. Whereas rights in audiovisual works are in most cases governed by direct contracts between authors, actors, producers and broadcasters, cable transmission of whole television channels outside the home country is often a matter of collective licensing.

Television channels are relayed to other countries through satellites and cable networks. In copyright terms, this involves a new use and therefore a separate clearance of copyright is required. Collective management organizations facilitate the clearing of multiple copyright licenses of thousands of individual programs transmitted via satellite and cable. The rights cover those of original creators, performers, film producers and broadcasters – all of whom benefit from cable revenues.

4. VISUAL ARTS AND PHOTOGRAPHY

In the field of visual arts we find a wide variety of creators, such as painters, sculptors, graphic artists, illustrators, and photographers. They all have copyrights in their works. Artists and photographers usually sell their works through individual contracts. A painter, for example, sells his painting to an art collector, and a photographer gives a right to publish her photograph in a book through a licensing contract. There are many cases in the visual arts and photography however, where individual contracts are impossible and where collective management offers viable solutions. A few examples:

Auction sales

Paintings and other works of art are generally sold to private individuals, companies, or museums. Most works of art rarely stay with the same museum, gallery or family collection, and are in fact often auctioned or sold through art dealers several times over the years as the works increase in fame. In many countries, the rights of artists in these cases are respected over the course of repeated sales by means of a so-called resale right (*droit de suite*). This right is based on Article 14^{ter} of the Berne Convention and contributes to the artist's wellbeing by guaranteeing a small percentage of the resale price that goes to the artist.

The resale right was first introduced in France after World War I to benefit the widows and orphans of artists who died in the war. The system is now spread among countries in all regions, with over 40 countries' legislation recognizing the resale right. However, in many of these countries the right is not yet effectively implemented. The scope of the resale right varies from country to country, but most frequently covers any graphic, photographic or

cultural work sold in an auction or gallery. The percentage paid to an artist or his heirs varies between two and five percent of the resale price.

Museums and publishers in the art business

Museums play an important role in the dissemination of art, through their permanent collections and temporary exhibitions. Their collections are increasingly available online as well, where consumers can view and enjoy them regardless of where they live. Several artists' works have become popular through reproductions as posters and postcards, as well as art books and exhibition catalogues. Indeed, art is merchandised in an increasing number of creative ways. All of this requires copyright clearance, which has led to the establishment of collective management organizations in the field of visual arts and photography.

5. MUSICAL COMPOSITIONS, PERFORMANCES AND SOUND RECORDINGS

Music is perhaps the most universal, accessible and widespread of all copyright-based creative expressions. It is used in many different media, such as films, videos, and theatres, and is performed on radio and television. Digital recordings are delivered via the Internet. Music is played everywhere – in restaurants, nightclubs, and shopping malls. Every country has some form of local music. The music itself is created by composers and the words of a song are created by lyricists. The publisher and the producer bring their compositions to the market.

Singers and musicians, as performers, have rights based on copyright and related rights legislation as well. Phonogram producers invest in making music available through recordings and online delivery. In copyright terms, the rights of performers and producers are called related rights or neighboring rights.

Collective management of musical works

Taking into account the innumerable places where music can be played, both nationally and internationally, it is in most cases impossible to license the use of musical works individually. This is why music creators and publishers have established collective management organizations in more than 100 countries, in all regions, and organized in *The International Confederation of Authors and Composers (CISAC)*, headquartered in Paris. These organizations license the public performance and broadcasting of musical compositions, thus they are also called performing rights societies. In pure financial terms they make up the most important collective management sector, collecting more than US\$ 6 billion annually world-wide. The oldest of these societies, a predecessor of *Société des auteurs, compositeurs et éditeurs de musique (SACEM)* was founded in 1850 in France.

Music is performed in radio and television studios, concert halls, restaurants, discotheques, cinemas and numerous other places. Music also plays an important role in the new digital delivery channels such as the Internet and as ring tones in cellular phones. On radio, music often accounts for more than 70 percent of airtime. It would be close to impossible for individual broadcasters to clear the rights with each and every owner of copyright and related rights.

Collective management organizations act as intermediaries between copyright holders and users. They manage the licensing of works to users, collect the payments, and pass them on to the copyright holders. This makes it easy for users to get permission to perform music in many different places. By establishing a network of representation agreements with similar organizations in foreign countries, collective management organizations can offer an international music repertory for licensing in their country, representing approximately 2 million composers, songwriters, music arrangers and publishers world-wide.

Musical works and sound recordings

Producing sound recordings requires many copyright clearances. In general, composers and other copyright owners – such as music publishers – receive royalty payments from the sale of copies of sound recordings such as CDs. Their rights in many countries are managed by collective management societies. As these concern what are called mechanical reproduction rights in musical works (i.e., recording, manufacture and distribution), the organizations are often called mechanical rights societies.

In some countries the same societies manage both performing and mechanical rights; in other countries there are separate organizations for each purpose.

Collective management of performances and phonograms

When recorded music is played publicly on radio and television, performers and producers of sound recordings are entitled to receive remuneration. In many countries, the same rights apply to the playing of phonograms in discotheques and other public places.

Often, performers and phonogram producers establish joint management organizations to manage these rights; sometimes they are handled by separate organizations. These organizations work closely together to make it easy for users to pay the necessary fees.

Private copying of music

An enormous amount of music is copied for private purposes every day. Under copyright legislation in most countries, this copying may be done legally, without consent of the copyright owners. Due to high volumes of private copying, however, legislators in many countries have considered it reasonable and fair to provide for an indirect remuneration to creators, performers and producers of music, in the form of fees on blank media, such as cassettes and discs. Recording equipment is also subject to a royalty fee in many countries. The revenue collected from blank media and equipment is distributed to the owners of copyright, usually via collective management organizations.

6. PRINTED PUBLICATIONS

Prior to the invention of the printing press in the 15th century, there was no mass market for publications, as books were copied by hand. The introduction of this new technology led to the rise of mass publishing, which brought about the introduction of the first copyright law, the Statute of Anne in 1710 in England. Today, print and publishing is the biggest single cultural industry in many countries, covering books, newspapers, magazines, periodicals and scientific journals.

Consider just a few statistics: Some one million book titles are published yearly. Some 6,600 newspapers are circulated every day. More than 110,000 magazine titles are on offer to both the consumer and business markets, and more than 100,000 scientific journals are published in paper form and on-line. The contents of these publications is created by writers of fiction and nonfiction, translators, journalists, scientists and other professional writers. Their works are brought to the market by publishers: book, newspaper, magazine, periodical and journal publishers in many different formats.

Generally, a writer enters into a publishing contract with a publisher and gives the company a right to bring the work to the market. In return, the writer gets a share of the sales price as a royalty and thus benefits from the economic success of the work. Journalists are often employed by newspaper companies and their copyrights are dealt with in an employment contract. A scientist may entrust a scientific journal to publish his work. While copyright in print and publishing is mainly dealt with through direct contracts, there are cases where copyrights are managed by collective management organizations.

Libraries as disseminators of literary works

The dissemination of knowledge through books has an immense impact on our civilization. Libraries play a tremendous role in this chain. A well-functioning library system is crucial for creators and publishers in making their books available to the public. On the other hand, one can argue that such a system deprives creators of income, and causes a market dysfunction.

A normal royalty share from the sale of books generally does not correspond to the wide dissemination achieved through library loans. For this reason, many countries provide additional reward to writers through a public lending right. In other countries legislation outside the sphere of copyright secures such payments. As the number of yearly loans – and publications lent – are huge, it is nearly impossible for writers to manage their copyrights individually. Thus, collective management organizations administer these rights in many countries. Public lending rights fees can also cover audio, video and multimedia works borrowed from a library.

Photocopying: Mass use of printed works

Photocopying is common nearly everywhere and represents an enormous use of printed materials. If photocopying is left unremunerated and copying takes place without the consent of authors and publishers, it would represent a threat to all involved in the print and publishing sector.

Consider common examples such as photocopied course-packs in universities, and collections of articles from newspapers, journals and other periodicals used for research and information purposes in the private sector. How can one obtain permission from the owners of such works, and ensure remuneration as well? Certain types of collective management organizations called reproduction rights organizations (RROs) act as intermediaries and facilitate the necessary copyright clearance. Similar to private copying levies in the music sector, photocopying for private and personal use is remunerated in some countries through a levy system on photocopying machines and other equipment used in copying.

Reproduction Rights Organizations function in close to 50 countries today. They collect more than US\$ 0.5 billion world-wide and their number is rapidly increasing. *The International Federation of Reproduction Rights Organisations (IFRRO)*, headquartered in Brussels, organizes these societies.

7. COLLECTIVE MANAGEMENT ORGANIZATIONS – SERVING BOTH RIGHTS HOLDERS AND USERS

Through this overview I hope that I have demonstrated that the system of copyright and related rights and collective management of these rights plays an important role in providing legal access to works for users and securing just rewards for creators. I also submit that the overall result of this system is that the creation of new works is stimulated, to the benefit of society in general.

Thank you for your attention.

The author hereby authorizes the unaltered reproduction of this paper in paper form. John-Willy Rudolph, E-mail: kopinor@kopinor.no Web: www.kopinor.no
--

More information:
www.cisac.org
www.biem.org
www.ifrro.org