

## CMOs as Intermediaries between Rights Holders and Libraries – Current and Future Licencing Models

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### The New Library Landscape

Libraries are important institutions for dissemination and preservation of works of mind in the field of art, knowledge and entertainment. Wide dissemination of works is important for rights holders, provided that their intellectual property rights are respected. It is important to maintain a balance between technology, access to knowledge and culture and rights of authors and publishers in the digital environment. Sustainable development can only be based on solid copyright legislation and contractual arrangements.

Libraries are rapidly moving into the digital age. In public libraries, people can download copyrighted works to their devices. The use of digital rights management (DRM) systems eliminates unauthorised copying and makes unreturned loans a history. For example in Sweden, the Stockholm City Library started lending of texts, first to PCs and later to palm pilots, the latter being now more popular. Statistics show that this service has attracted new customers to the library, thus enhancing the overall use of libraries.

In research libraries, repositories of works in digital form can offer new services for researchers. Digitization and offering online access necessitates the consent of rights holders, as both the right of reproduction and the right of communication to the public/making available to the public is at stake.

Recent developments by commercial actors like Google, Yahoo, Microsoft and Amazon have brought copyright issues to the front line. Rights holders in the United States, the Authors' Guild and five US publishers supported by the Association of American Publishers, have initiated legal action against Google in the United States. The International Federation of Reproduction Rights Organisations (IFRRO) has stated that the Google Library Project violates fundamental copyright principles. According to IFRRO, benefits of search engine uses of databases of copyrighted works can be achieved through licensing by individual rights holders and/or the services of collective management organisations which already license digitization by libraries.

### The European Initiative

The European Commission published in 2005 a Communication "i2010: Digital Libraries", an ambitious initiative to address preservation and use of European cultural heritage. One important issue in this initiative is suitable copyright framework. As digitisation of works demands rights clearance on a massive scale, it is tempting to think about legislative solutions, i.e. some kind of shortcuts to eliminate copyright in part or in whole. However, this would not be a lasting solution, as sustainable development demands respect for contracts and legislation.

During the work ahead of the European initiative it is important to find out how current licensing practices support digitization and making available of works in digital form. Also the

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<sup>1</sup> IFRRO brings together 45 reprographic collecting societies, commonly known as Reproduction Rights Organisations (RROs) and 59 associations of authors and publishers from all continents.

issue of “orphan works”, i.e. works where it is impossible to locate the rights holder for copyright clearance, is on the future work agenda.

IFRRO and its members have pointed out that preservation of cultural heritage and making it available is in the interest of all rights holders. As an invited member of a High Level Expert Group on Digital Libraries, to be chaired by Commissioner Viviane Reding, it will be my task to contribute in finding workable solutions to current technical, organisational, financial and legal challenges that impact the pace and efficiency of the “i2010 Digital Libraries” initiative.

## The EU Information Society Directive

The EU Information Society Directive from 2001 forms the foundation for national legislation. According to the Directive, national legislators have a possibility to legislate exceptions and limitations for certain library activities, both in the analogue and digital environment.

The right of reproduction can according to Article 5, 2 (c) be subject to an exception or limitation “in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage”. Based on this provision, many countries have enabled digitisation for preservation and similar purposes. The right of communication to the public/making available to the public can be restricted, based on Article 5, 3 (n), only “for the purpose of research and study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2 (c) of works and other subject matter not subject to purchase or licensing terms which are contained in their collections”.

In practice this means that online communications of works between libraries and their customers need to be based on permissions from rights holders, i.e. licensing in one form or another, individually or collectively. In many countries, implementation of the Information Society Directive has brought new opportunities for rights holders and libraries to negotiate licensing agreements for digital uses, with certain support mechanisms in the legislation.

In 2002 in Denmark, an extended collective license provision was introduced under section 16 (b) of the Danish Copyright Act in light of technological developments. The aim of the provision is to facilitate public libraries’ copyright clearance in relation to interlibrary loans. An interlibrary loan is the process by which a library requests material from, or supplies material to, another party. The purpose of this is to enable a library user to obtain material not available in the user’s library. A framework licensing agreement was negotiated and concluded in 2004 between the Danish National Library Authority on behalf of public research libraries and Copy-Dan Writing, a sister society to OSDEL and Member of IFRRO. Based on the provision in the Danish law, the effect of this agreement is extended also to rights holders not represented by Copy-Dan Writing.

## Collective rights management

Reproduction Rights Organisations (RROs) as representatives of authors and publishers can play a major role in licensing. Providing access in a legal manner is a key task for RROs, building a bridge between rights holders, intermediaries and end users. RROs and libraries have longstanding relations in many countries. New partnerships have been formed to facilitate digitization and network uses of material protected by copyright.

In the following, some current and future licensing models are described using members of IFRRO and their licensing schemes as examples.

## Photocopying licenses

In Canada, legal photocopying of published works by library patrons and staff is simple and straightforward with an Access Copyright Public Library Photocopying License. Under the license libraries receive permission in advance for most copying by paying of a license fee. Licensing is based on a blanket licensing model which is most common in case of photocopying. The model license for public libraries was developed in consultation with representatives of the Council for Large Urban Public Libraries (CALUPL), the Provincial and Territorial Library Directors' Council (PTLDC) and Access Copyright. The general rule is that 10 % of a published work can be copied. The agreement also includes rules for rare and damaged works in the library's collection. – Apart from photocopying licenses, Access Copyright also offers several digital licensing programs.

#### Document delivery

Document delivery is an old phenomenon which has taken place by physical supply of photocopies by post. Today, the license of Copyright Licensing Agency (CLA) in the United Kingdom covers also secure intermediate electronic transmission of works, provided that no electronic copy is maintained for permanent and further usages. Licensing is based on a transactional model. CLA's bibliographic database contains a total of 4 million UK and international titles; 3 million book titles and 1 million journal titles. Records for each title include all necessary rights data information. The function of the database in relation to licensing is to record the publisher set page rate for books or journal articles that is used whenever the works are cleared for use by Document Suppliers. – The principle of rights holder set prices is a cornerstone in IFRRO's Principles for International Document Delivery, endorsed in 2004.

#### Retrodigitisation

In Germany, the law includes stipulations on equipment levy for copy-machines, fax machines, reader printers, CD burners, DVD burners and scanners, and operator levy for schools, universities, educational institutions, research institutions, public libraries, copy-shops and press cuttings. According to German Law, electronic storage is permitted by law only for private or own scientific use. Apart from collecting the levies, the German VG WORT is engaged in several digital licensing projects, such as the "Digizeitschriften Project"; retrodigitisation by libraries. - Digitisation of older material poses a copyright clearance situation where the services of collective management organisations have proven useful in many countries.

#### Licensing and network delivery of content

In Finland, KOPIOSTO is a partner in a project testing network delivery of Finnish scientific articles via copyright controlled system. The ELEKTRA service has been available since 1997 and today the database contains 11.000 articles from 48 scientific publications with over 5.000 authors. A site-license contract has been concluded with all universities, polytechnics and public libraries in Finland. The service is now open for students, scholars, teachers and other personnel through the local network from their own workstation. This initiative has a high value for rights holders in enhancing the availability of national scientific material and thus cultural diversity.

#### New partnerships

Copyright Clearance Center (CCC) in the United States has been in the forefront of developing new services for its customers. CCC licenses photocopying usages of different users, both corporate and individual. CCC also licenses digital uses on limited-access, internal corporate and academic networks, and for Internet and e-mail dissemination via its

Digital Permissions Service (DPS), Republication Licensing Service (PLS) and via Rightslink, its end-to-end digital rights licensing and reprint service.

A new partnership was formed in 2004 to simplify copyright compliance. CCC secures Copyright Integration Service partnerships with library service providers, Sirsi Corporation and Innovative Interfaces, to bring copyright permission for research, interlibrary loan and other content uses directly into the customer's workflow. This is just one example of new types of partnerships that integrate copyright permissions with information services.

#### Compensation for private use and voluntary licensing

In Spain, the law provides for an equipment levy. Article 31 of the Spanish Copyright Act states: "The reproduction of the work may be carried out with no specific and prior permission of the right holder when it is made for the private use of the copier and these copies are made neither for profit nor for collective use." Article 25 provides for compulsory remuneration to rights holders as compensation for private use of these copies. Since no operators' levy is included in the Spanish legislation, the Centro Español de Derechos Reprográficos (CEDRO) operates a voluntary licensing system outside private copying.

CEDRO thus operates a mixed system that runs in parallel: an equipment levy compensates rights holders for private copies, while voluntary licenses are made available for copying that falls outside the scope of the exception and is thus subject to authorization. Libraries, copyshops and educational establishments are among licensees. Since 2004, the members of CEDRO have also given a mandate to license digital uses of their printed works as well as their electronic publications. Libraries are at the very heart of CEDRO's licensing activities, not only for their copying volumes, but because libraries are considered as major disseminators of information and as examples of good copyright compliance.

#### Future perspectives

Copyright and libraries share a history of long-term relationship. Modern libraries can be at the heart of the Information Society. The creative economy and copyright based industries and modern libraries are at a crossroad. Both need to adjust their activities to provide valuable services also in the future.

One concrete issue is common for libraries and collective management organisations. It is of paramount importance for both to maintain accurate information on works and rights holders with high quality bibliographic metadata. Both have sophisticated databases to support their key activities.

The digital future of libraries can be made possible by contractual arrangements with rights holders and their representatives, such as OSDEL and other members of IFRRO. Current licensing models are just a beginning, but they show the variety of services that RROs can provide.

Reproduction Rights Organizations (RROs) – as representatives of authors and publishers worldwide – serve rights holders, users and the society at large by:

- Creating a compliance culture: It is easy to obtain the necessary copyright licenses from one source – the RRO – for large-scale photocopying and many digital uses.
- Securing a healthy print and publishing market: Licensing and enforcement support each other, both striving for the same goal through different means.
- Encouraging and protecting creativity: Ensuring remuneration for authors encourages creativity and provides incentive for publishers to invest in new products and services.

- Promoting national culture and cultural diversity: In smaller language areas, the local market provides the only livelihood for national creators and the only return on investment for publishers. Securing a healthy market is a prerequisite for a flourishing national culture and the sustainability of cultural diversity.