

# The Role of Collective Licensing

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## Table of contents

1. Executive summary	3
2. Free is costly	4
3. Collective management of rights in published works - the rationale; Why and when collective management is the preferred solution	4
3.1 Collective Management Organisations (CMOs), mandate and membership	5
4. Three main models of collective licensing in publishing	6
4.1 Voluntary collective licensing	7
4.2 Voluntary collective licensing with legislative support	9
4.2.1 The Extended Collective Licence Agreement (ECL)	9
4.2.2 Legal Presumption of Representation (LP)	11
4.2.3 Obligatory Collective Management (OCM)	11
4.3 Non-voluntary collective licensing/remuneration rights	12
4.4 Mixed and combined models	14
5. The RRO licence - What is authorised?	15
5.1 The repertoire licence	15
5.2 Transactional licensing	17
6. Meeting the needs of users and rightsholders	19
7. Special arrangements offered to developing countries	25
8. Examples of best practice licensing of education	27
9. Conclusion	30

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## 1. Executive summary

Educational institutions, students, teachers, researchers all depend on access to copyright works. Good local educational resources are needed, in addition to foreign materials. This requires adequate protection of rights, and a proper balance between user needs and the rights of authors and publishers.

Collective rights administration makes copyright work. It complements authorisation granted by authors or publishers directly to use their works when they do not want to or cannot administer the rights themselves. This is typically the case in respect of multiple copying of portions of already published works for use in education. Authors and publishers on all continents have agreed that if students need, for instance, a chapter or some pages only from certain works, it is necessary to find a smooth way to enable and legalise this. The answer to such legitimate requests from education and research was the establishment of RROs – Reproduction Rights Organisations.

RROs are the Collective Management Organisations (CMOs) in the publishing sector. Currently, there are 105 CMOs carrying out RRO activities in 85 countries worldwide. They operate under different legal regimes, which in turn has led to three main different models of operation. Those models are referred to as 'Voluntary Collective Licensing'; 'Voluntary collective licensing with back up in legislation' to also include, by law, works in the same categories by non-mandating rightsholders, e.g. the Extended Collective Licence Agreement (ECL); and the 'Non-voluntary (or Statutory) Licence', with or without a levy on equipment and devices.

RROs act as a "one-stop access point" to authorise on behalf of rightsholders<sup>1</sup> certain secondary uses of their already published works. They operate in almost any territory and have the ability to adapt to local conditions, education systems, economic circumstances and cultures. Mandates to include works of foreign rightsholders in the repertoire are acquired through agreements with sister RROs, and, where there is a back up in legislation or a non-voluntary licence, also by law. RROs offer repertoire licences with a blanket authorisation to use all works in the repertoire on standardised conditions, as well as transactional (case-by-case/pay-per-use) licences, for instance when there is a request to copy beyond the copy limit in the repertoire licence.

Generally, the authorisation administered by a RRO allows the reproduction from already published printed and digital works, on paper or in digital formats. The portion of the work allowed is typically 10-20%, a chapter of a book, or an entire journal article. Some RRO licence agreements admit a larger portion to be copied if the work is not available, for example because it is out-of-commerce. The selected portion may be photocopied or scanned and printed for distribution in the classroom. If the institution has opted for a licence on digital uses, the portion of the work may also be stored, accessed and distributed electronically in closed networks and made available on Virtual Learning Environment platforms (VLE). Tariffs are negotiated locally taking account of local conditions, needs and requirements. They are most often fixed as a price per page or per student, or set as a lump sum.

Collective rights management by RROs contributes to increased opportunities for a sustainable national creative and publishing sector. An objective is the creation of a range of teaching materials founded in local culture and traditions and adapted to local user needs. The benefit is not limited to education and research, the entire society profits. RROs have various ways to contribute to sustainable developments; it may be in the form of special bilateral or unilateral agreements, or as direct support.

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<sup>1</sup> 'Rightsholder' is used throughout as a generic term for authors and publishers.

## 2. Free is costly

On renewing its agreement with Copibec, one of the two Canadian RRO, in November 2018, the Université Laval acknowledged that *'collective licensing provides a framework that creates a balance between the needs of its users as well as authors and publishers.'*<sup>2</sup>

'Free' may be costly. In most circumstances, there is a huge difference between free and cheap. Copyright is no different. 'Free' would denote usages under an exception to exclusive rights granted to rightsholders by legislation, without payment to those rightsholders. The modification of the Canadian Copyright Act in 2012 introduced new wordings on exceptions and limitations. This resulted in institutions interpreting the law to allow broad use of copyright works without prior authorisation and payment to the rightsholders. When the University of Toronto subsequently cancelled its contract with the Canadian RRO, Access Copyright, a student magazine noted that some students had to *'buy [the] course pack for nearly double the price it cost last year due to the termination of the Access Copyright licence.'*<sup>3</sup> Other students saw their costs increase by nearly four times.

The alternative to this false 'free' use is affordable legal access and usages. Collective management of rights is about easy ways of obtaining authorisation to legally use published works protected by copyright at an affordable price. This paper explains how this works in practice.

RROs respond to user demands. The more articulate these demands, the easier it is for RROs, in collaboration with the rightsholders they represent, to search for adequate solutions. The needs of educational institutions are different, depending on the continent, country and even type of institution. Equally important, they have evolved differently. User requests in, for instance, African and Latin American countries, are different from those in, for example, Australia, Japan, New Zealand and European or North American countries.

This is also reflected in the licences signed by RROs. At the beginning of collective licensing of reprographic reproduction from published work by RROs in the 1970s and 1980s, all focus was on photocopying. The basic conditions for the usages that were authorised did not differ much from one RRO or one country to another. This has evolved over time, as the digital era enabled RROs to better address the needs of users and rightsholders' requirements. Therefore, rather than presenting common features of the RRO licensing and collective management arrangements only, this paper will offer examples of how RROs meet dynamic user needs to use published works on conditions agreeable to authors and publishers. Examples are thus both from RROs offering basic services and from those that have introduced more advanced ones.

## 3. Collective management of rights in published works - the rationale; Why and when collective management is the preferred solution

In the publishing sector, collective rights management is primarily concerned with certain secondary uses of already published works. It complements the rightsholders' own licensing; it does not compete with or supplant it. Authors and publishers might want their rights to be managed collectively, or individual direct management of rights may be impracticable, or outright impossible, i.e. there is a market failure. This is typically the case for large scale copying of portions of works, for instance a chapter, for internal, personal use in education. Normally, the user already has a copy of the work from which the reproduction will be made.

<sup>2</sup> <https://www.globenewswire.com/news-release/2018/11/14/1651190/0/en/Copibec-and-Université-Laval-resolve-their-legal-dispute-over-copyright.html>

<sup>3</sup> <https://thevarsity.ca/2014/09/21/after-access-copyright/>

### 3.1 Collective Management Organisations (CMOs), mandate and membership

RROs are not-for-profit societies, usually set up jointly by authors and publishers, often in close collaboration with their trade associations. Membership and mandates to grant authorisation to use works are acquired by some RROs directly from individual authors and publishers, by others via the authors' and publishers' trade associations, or their CMOs. Depending on the legal and other traditions and the interest of the copyrightsholder, mandates may be granted on an exclusive or a non-exclusive basis. In some countries, mandates are also granted by legislation. This is typically the case where usages are authorised by law against an obligation to pay remuneration to authors and publishers. A RRO approved by the national authorities will then collect the remuneration and distribute it to the rightsholders. There are also examples of combinations of the alternatives listed above.

#### Establishment of RROs

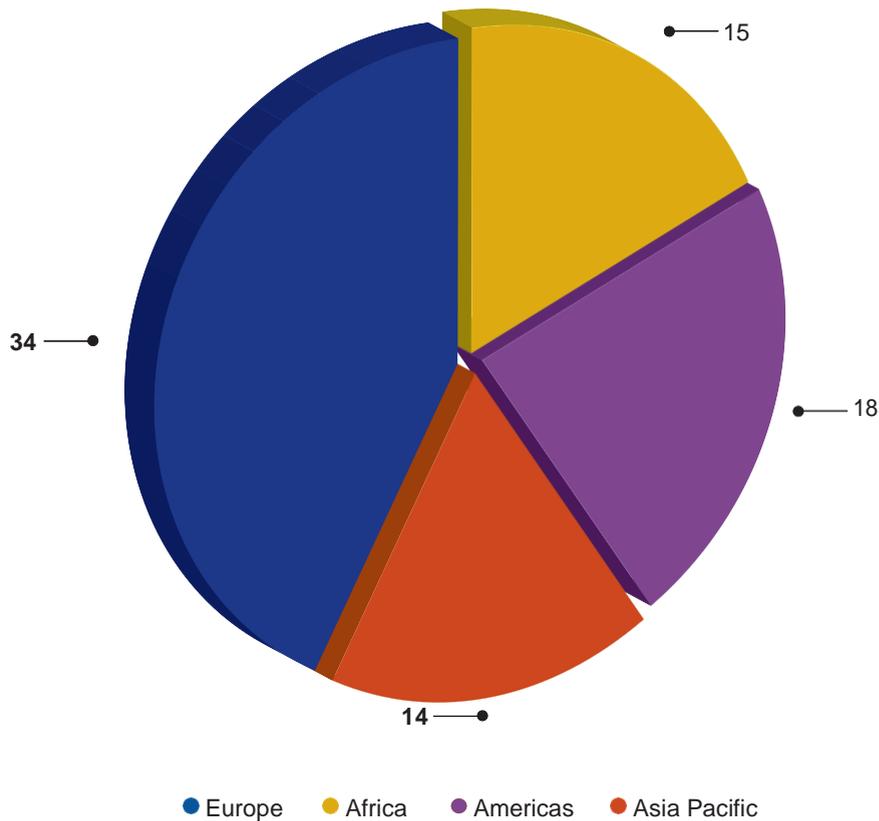
RROs were initially set up in response to requests from educational institutions for easy, affordable access to published works in education when the whole book or journal was not needed. Worldwide, as at September 2019, there are, at least, 105 CMOs in 85<sup>4</sup> countries carrying out RRO activities. Of those, 101 RROs in 81<sup>5</sup> countries are members of IFRRO (International Federation of Reproduction Rights Organisations). This means that there are RROs in nearly half of the 174 UN Members States that are parties to the Berne Convention. In 2017, the RRO members of IFRRO collected and distributed to rightsholders some USD 1.1 billion:

The RRO Market					
	Africa	Americas	Asia Pacific	Europe	Total
<b>No of countries with RROs</b>	15	18	14	34	81
<b>Total fees collected 2017, Million USD</b>	4	320	124	615	1,063
<b>Total fees distributed 2017, Million USD</b>	3	246	114	746	1,109

<sup>4</sup> ECCLA (The Eastern Caribbean Copyright Licensing Association Inc), covers the six countries Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines.

<sup>5</sup> For RROs in membership of IFRRO, see <http://ifrrro.org/RRO>; Besides, RRO activities are also carried out in, at least, Algeria, Estonia, Portugal and Tunisia.

### The RRO Market: Number of countries with RROs



### Rights administration by RROs

RROs administer rights of reproduction, making available for distribution already published works. This would, for instance, be in the form of ordinary photocopying; making works available on intranets; Internet downloads; digital copying and certain other digital uses. Authorisation is usually granted by the RRO on behalf of authors and publishers jointly. The user will normally already have acquired legal access to the work in question.

The RRO licence agreement typically grants the user a pre-authorisation to make multiple copies of portions of publications, for a limited number of copies, and for the internal use by institutional bodies such as schools and universities, as well as private corporations and government departments. The copy is not meant for students who have not enrolled in the course and is, as a rule, not allowed to be transmitted or transferred to another institution or commercialised in the marketplace.

### 4. Three main models of collective licensing in publishing

The choices of authors and publishers and the national legal system determine the way in which a RRO operates and is structured. It is customary to distinguish between three main models of operation, although there are also other variations:

## 4.1 Voluntary collective licensing

Countries that are parties to the Berne Convention grant authors the exclusive right to reproduce or authorise the reproduction of their works. Upon ratifying the WIPO Internet Treaties, this is extended to include the right to make the work available, communicate it to the public, or distribute it. The basis for *Voluntary collective licensing* is the exclusive rights granted by legislation to the rightsholder, and the mandates from authors and publishers to the RRO on an individual basis. The RRO issues licences on behalf of those authors and publishers who have mandated it to act on their behalf.

### COUNTRY EXAMPLE: ARGENTINA

**Centro de Administración de Derechos Reprográficos (CADRA)**, the Argentinean RRO, offers licence agreements both for reprographic and digital reproduction. The repertoire is made up of mandates from 1,588 national authors and publishers, and thousands of foreign rightsholders through bilateral agreements with 40 RROs, including other Latin American, French, Spanish, US and UK RROs. Of 121 universities, other higher education institutions and libraries that have taken up a repertoire licence with CADRA, 43 have opted to add a licence for digital uses. CADRA's annual fee per student is USD 4 for reprography and USD 8 for the digital licence. In addition, CADRA has licensed 429 copy centres, which also serve educational institutions, at the rate of USD 415 per device per year.

The CADRA licence agreements permit the reproduction of up to 20% of a publication, or a full chapter of a book, or a full journal article, whichever is the greater. If there is a need to copy more than the limits fixed in the repertoire licence, CADRA assists in seeking permission from the author or publisher on a case-by-case (transactional) basis.

International treaties also allow a country's legislation to establish certain exceptions or limitations to the exclusive rights granted to rightsholders, provided the three-step test in article 9(2) of the Berne Convention is observed. Education and research are often beneficiaries. Even when educational exceptions and limitations are considered to be broad, they are not likely to meet the full needs of dynamic educational institutions.

### COUNTRY EXAMPLE: COLOMBIA

In the Colombian copyright legislation, there are rather wide exceptions and limitations in favour of education. They do not, however, prevent educational institutions from requiring licensing of usages of printed copyright materials. The national RRO, **Centro de Derechos Reprográficos (CDR)**, has signed a total of 1,670 licences covering reprographic reproduction. Fifteen universities and higher education institutions have also taken up licences for digital uses, with an umbrella organisation representing the country's 87 major universities currently negotiating a digital licence (as of September 2019).

In addition to mandates from national authors and publishers, CDR has signed bilateral agreements with several other RROs. This allows CDR to authorise the licensed educational institutions to also copy from foreign works, including those of Mexican, Spanish, UK and US origin. The licence permits the reproduction of up to 20% of a published work. A full

article of a scientific journal or other periodical publication may, however, be copied. The digital licence allows institutions to store a digital copy of the portion of the work in a database and make it available to the students enrolled in the relevant course, as well as to pedagogic personnel and researchers. The copy may also be made available on a virtual platform.

For reprographic reproduction, tariffs vary from USD 33 (COL 115,000) to USD 146 (COL 502,000) per photocopier per year, depending on the location of the institution. An additional fee of USD 0.23 (COL 800) per student is charged for digital copying in primary school, up to USD 1.75 (COL 6,000) per student in universities. A rate of COL 30 per page is charged for case-by-case licensing, for instance, if there is a need to copy beyond the limits of the licence agreement.

## Licence override

In many countries, especially those which are inspired by the UK's copyright legislation, the right to use works under an exception may not apply if a suitable licence agreement is available ('licence override')<sup>6</sup>. This means that if the educational institution knows or should know that a licence agreement is offered for the use in question, it may not copy, or use works under the exception. Rather, it has an obligation to negotiate a licence agreement, normally with the RRO, or refrain from using the work. This mechanism applies, in addition to the UK, in countries or economies such as Barbados, Ghana, Hong Kong, Ireland, Jamaica, and Trinidad and Tobago. It is also enabled in general in EU Member States by the EU Directive on *copyright and related rights in the Digital Single Market*.<sup>7</sup>

## COUNTRY EXAMPLE: GHANA

Section 19.1(c) of the Ghanaian Copyright Act contains certain educational exceptions. However, Section 21(4)(a) of the Act establishes that the right of a library or an archive to make a reprographic copy under an exception only applies '*if there is no collective licence available under which copies can be made*'<sup>8</sup>, while Section 18 of the Regulations states that '*A reprographic rights collecting society shall determine a fee in respect of photocopying of works protected by copyright and related rights by educational institutions and any other outlets where reprography is carried out commercially.*'<sup>9</sup>

**CopyGhana** is the national RRO. It licenses national and foreign works by virtue of mandates from national authors and publishers and agreements with other RROs, including with CCC in the USA and CLA in the UK. Current licensing in education focuses on tertiary education.<sup>10</sup> Fifteen public and private universities, including technical and polytechnics institutions have taken up the licence.

<sup>6</sup> The UK Copyright, Patent and Design Act, Section 36, grants certain exceptions and limitations in favour of usages by educational establishments, including reproduction of up to 5% of a published work. Section 36.6 specifies, however, that 'Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.' <https://www.legislation.gov.uk/ukpga/1988/48/contents>.

<sup>7</sup> <https://eur-lex.europa.eu/8legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=EN>, Article 5.2

<sup>8</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh012en.pdf>

<sup>9</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh018en.pdf>

<sup>10</sup> In addition, there is a levy on relevant devices also for private copying of published works, which is administered by COPYGHANA on behalf of text and image authors and publishers.

The licence agreement covers photocopying and digital copying, for instance copying from the Internet. Up to 10% of the publication may be reproduced, a maximum of 30% if the work is not available. The per-page rate is 10% of the market price of a photocopy, equalling USD 0.004 (2 pesewas). A statistical survey has determined that, after the deduction of 10% for permitted uses under exceptions, subscriptions, etc., the average number of copies of copyright material that a student shall pay for annually is 280 pages. The rate per student per academic year thus amounts to, in 2019, USD 1 (GHC 5.60). Nevertheless, it has been agreed with the students' union that, at least for the moment, they shall be charged USD 0.55 (GHC 3) only. The total collection from licensing last academic year was USD 40,000, with an additional USD 460,000 collected from a private copy levy.

## 4.2 Voluntary collective licensing with legislative support

In respect of multiple copying of excerpts of published works, some national legislators have concluded that voluntary collective licensing does not suffice. Instead, the national copyright law provides a back up to voluntary collective licensing. The motive may be to ensure that non-mandating rightsholders are treated no less favourably than the mandating ones, to provide legal certainty to users, or a combination of the two. Currently, there are three mechanisms in use to extend usages authorised by a voluntary collective licence agreement to also include non-mandating ones: The Extended Collective Licence Agreement (ECL); the Legal Presumption of representation (LP); and the Obligatory Collective Management of rights (OCM). All three mechanisms require a high degree of rightsholder representation by the RRO.

There are two key differences between the ECL and the other two mechanisms. Under an ECL, prior mandate to the RRO from a large number of the rightsholders concerned for the specific uses covered by the collective licence agreement is required for the agreement to be extended. Secondly, the starting point is the voluntary licence agreement; it is this licence agreement that is being extended. Under an LP and an OCM, the starting point is the extension of the RRO representation. The main difference between the LP and the OCM is that, under an LP, the rightsholder who chooses to withdraw from the collective licence agreement can sign an agreement directly with the same user as covered by the collective licence agreement, for the same type of use, and on different conditions. This is not possible under an OCM.

### 4.2.1 The Extended Collective Licence Agreement (ECL)

The ECL is a method for the rightsholder to exercise exclusive rights granted by the law and thus an element in the administration of the normal exploitation of the work. It is a construction to facilitate voluntary collective licence agreements where it is impossible or impractical to assume that the CMO can pretend to represent all authors, publishers, or other rightsholders to the works in question.

The ECL emerged in the Nordic countries in the 1960s. Currently, it applies to a number of usages of already published works authorised through collective management, including in education. Also, countries other than the Nordics have adopted ECL for specific usages, or are considering doing so.<sup>11</sup>

<sup>11</sup> There is an ECL in the Malawi Copyright Act. It is also proposed as a means to facilitating voluntary collective licensing agreements for certain special uses in, for instance, EU Member States, and it is being discussed other countries, including in Australia, China and the U.S.A.

The ECL requires that:

- a) the organisation, which signs the agreement, must be representative of the (national) rightsholders and works in question;<sup>12</sup>
- b) a large number of rightsholders concerned must grant voluntarily a prior mandate to the RRO for the use covered by the licence agreement for the extension effect by law to be granted;<sup>13</sup>
- c) on this basis, the RRO signs a voluntary collective licence agreement with the user;
- d) the law subsequently grants the agreement an extended effect, authorising users to use works of non-mandating rightsholders (i) of the same category of works; (ii) for the same type of usages; and (iii) on the same conditions as covered by the voluntary licence agreement;
- e) rightsholders who opt out, or withdraw works from the voluntarily signed agreement, where this right is granted, may choose to negotiate terms and conditions, and thus sign licence agreements themselves directly with the same users for the same type of use as covered by the collective licence agreement.

### COUNTRY EXAMPLE: MALAWI - Licensing under an ECL

Article 58(3) of the Copyright Act of Malawi reads *inter alia*: ‘A collective licence agreement permitting the use of works of authors represented either directly or through their associations by the Society, representing, as confirmed by the Minister, a substantial part of the authors concerned whose habitual residence is in Malawi, shall, subject to the terms and conditions of the agreement, extend to the use of works of authors whom the Society does not represent.’<sup>14</sup> The Article further specifies that the ECL applies to reproduction ‘for use in education’. It also sets out the conditions for its applicability.

The ‘Society’ referred to in the law is **COSOMA (Copyright Society of Malawi)**, the combined copyright office and national multipurpose CMO and RRO. The basis for COSOMA’s licensing of educational institutions, including secondary schools, vocational training centres and universities, is the exclusive rights granted to authors in the law, and mandates from authors and publishers and the ECL.<sup>15</sup> Both reprography and certain digital uses are covered by the licence agreements. The copy limit is 15% of the publication, extended to 30% if the materials are not locally available. The fees to be acquitted are set at 10% of the market photocopying rate, which in turn is multiplied by the number of pages copied as revealed by a statistical survey. Hotels and business centres pay an annual per-reproduction-device rate, depending on its size.

COSOMA’s total revenue collection for copying in education in 2018, for distribution to rightsholders, was USD 62,000. Over the years, the COSOMA licensing activities have led to increased local production of copyright works.

<sup>12</sup> Extension must be from the representation of the works of many national rightsholders to include the few, not the opposite, i.e. including the many on the basis of mandate from few national rightsholders.

<sup>13</sup> The mandate may be granted as a general mandate to the licensor, or as a specific mandate as long as it is clear that it comprises the specific use covered by the licensing agreement.

<sup>14</sup> <https://cosoma.mw/index.php/media-centre/downloads/documents/1-malawi-copyright-act>

<sup>15</sup> COSOMA also licenses Business centres, which includes Copy shops and Hotel business centres.

## 4.2.2 Legal Presumption of Representation (LP)

The Legal Presumption of Representation (LP) implies that:

- a) the RRO, which is granted the right to sign a licence agreement based on the LP, must document that it is sufficiently representative of the rightsholders concerned; otherwise it will not be approved and authorised by the appropriate authorities to enter into the agreement with an extended effect;
- b) the extension effect by law is on the representation and mandate to administer rights of non-mandating rightsholders of the same category of works;
- c) the signing of the agreement between the RRO and the user is on a voluntary basis;
- d) rightsholders who opt out or withdraw works from the voluntary collective licence agreement, may choose to negotiate terms and conditions, and thus sign agreements themselves directly with the same users for the same type of usages as covered by the collective licence agreement.

The Legal Presumption model is not much used as a 'stand-alone' mechanism for licensing of education by RROs, rather it is combined with, for instance, non-voluntary licensing or obligatory collective management.<sup>16</sup>

## 4.2.3 Obligatory Collective Management (OCM)

The Obligatory (compulsory or mandatory) Collective Management model has similarities with both the ECL and the LP models. However, it also includes features that make it distinct from those two mechanisms, established through:

- a) sufficient representativeness of rightsholders concerned is a prerequisite for the RRO to be approved by the appropriate authorities as a RRO to administer licence agreements, which are granted an extended effect to also cover works of non-mandating rightsholders;
- b) mandates are granted by law on an exclusive basis;
- c) the extension effect by law is on the mandate to administer rights of non-mandating rightsholders of the same category of works;
- d) rightsholders who opt out or withdraw works from the voluntary collective licence agreement cannot choose to negotiate terms and conditions and thus sign licence agreements themselves directly with the same users for the same type of usages as covered by the collective licence agreement.<sup>17</sup>

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<sup>16</sup> It is, however, frequently used for the licensing of other of out-of-commerce works [http://www.ifrro.org/content/german activities](http://www.ifrro.org/content/german%20activities), for example in Germany for the national Library and other cultural heritage institutions' licensing of making available -legislation-orphan-and-out-commerce-works.

<sup>17</sup> By definition, only the approved CMO can sign the licensing agreement for the specific uses covered by the licensing agreement signed under the OCM.

## COUNTRY EXAMPLE: FRANCE

The French legislation on the administration of reprographic reproduction rights establishes that *'The publication of a work shall imply assignment of the right of reprographic reproduction to a society governed by Title II of Book III and approved to such end by the Minister responsible for culture. Only approved societies may conclude an agreement with users for the purpose of administering the right thus assigned, subject, for the stipulations authorising copies for the purposes of sale, rental, publicity or promotion, to the agreement of the author or his successors in title. Failing such designation by the author or his successor in title on the date of publication of the work, one of the approved societies shall be deemed the assignee of the right.'*<sup>18</sup>

Le Centre Français d'exploitation du droit de Copie (CFC) is the CMO appointed by the French Ministry of Culture to manage reprographic reproduction rights. By virtue of the law, it represents all French and foreign works (books and periodical publications, such as journals, magazines, newspapers, as well as sheet music, whether printed or born digital). Permission to copy is granted to educational establishments on the basis of an agreement with the Ministry of Education for primary and pre-school. Each secondary school or higher education institution is licensed individually on conditions that have been negotiated collectively. Permitted reproduction is limited to extracts of up to 10% of a book and sheet music, and up to 30% of a periodical.

All educational establishments, from kindergarten to higher and further education, whether public or private institutions, are covered by a CFC licence. The licence allows teachers to reproduce and distribute extracts of works from an unlimited repertoire to support their teaching, to the benefit of 15 million pupils and students. The average tariff per student per year varies from USD 1.22 (1.10€) in primary schools to USD 2.78 (2.50€) in higher education, depending on the number of copies made, with a maximum rate of USD 5.42 (4.88€).

In addition to the licensing of reprography, CFC also licenses digital uses under a combination of legal and voluntary licensing.<sup>19</sup> In 2018, rightsholders to 90,000 books and periodicals received 30 million USD (€27 million) for reprographic reproduction of their works, essentially from licensing in education.

### 4.3 Non-voluntary collective licensing/remuneration rights

In a non-voluntary, or statutory (legal) licensing regime, the right to reproduce the work is granted by law. Therefore, no consent from the rightsholders is required, they only have a right of remuneration. The usages are allowed under a limitation to exclusive rights granted to the rightsholders. In the EU Member States, for example, authorising reprographic reproduction by law under an exception or limitation, is only possible if the rightsholders *'receive fair compensation.'*<sup>20</sup> Substantial representation of the rightsholders concerned, through membership and/or mandate, is required for the RRO (or other CMO), to be authorised to administer the remuneration right and thus sign the licence agreements with users and collect and distribute the remuneration therefrom.

<sup>18</sup> [https://www.legifrance.gouv.fr/content/download/1959/13723/version/3/file/Code\\_35.pdf](https://www.legifrance.gouv.fr/content/download/1959/13723/version/3/file/Code_35.pdf); [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=435178](http://www.wipo.int/wipolex/en/text.jsp?file_id=435178)

<sup>19</sup> Since 2006, digital uses as illustration for teaching are allowed through a combination of exception and voluntary licensing (in respect of schoolbooks). A national agreement with the Ministry of Education and Research as well as licences with educational institutions outside of its scope completed the existing scheme for reprography. Teachers have a simple and comprehensive authorisation, which allows reprographic reproduction, in classroom representation and digital reproduction and communication of printed and born digital works. The national agreement also includes use of music and audio-visual works. Licensing limits are consistent across uses.

<sup>20</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Article 5.2(a): 'In respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightsholders receive fair compensation' (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF>)

In respect of reprographic reproduction of an excerpt of a published work and, in some countries, also for certain comparable digital usages, several countries have opted for statutory licensing. It applies both in African countries, for instance in Tanzania; in Asia, an example is Singapore; in Europe, for instance in France (digital uses in education), the Netherlands (reprography), Spain (higher education), and Switzerland (reprography and digital uses); and in Australia for usages in education.

## COUNTRY EXAMPLE: TANZANIA

In Tanzania, the legislation authorises the reproduction of portions of copyright works for teaching and learning purposes against an obligation to pay remuneration to the rightsholders. In accordance with the Copyright (Reproduction and Rental Rights) Regulations, Part II, the copy limit is 15%, or one chapter of the book per student per year. If the book is ‘out of stock’ or ‘out of print’, the copy limit is extended to 50%. The Regulations’ Article 2 clarifies that ‘Reproduction’ means ‘photocopying and such similar reproductions of a copyrighted work, and includes printouts from digital processes’<sup>21</sup>

The remuneration to be paid to rightsholders is fixed in the Regulations as a lump sum per institution, depending on the number of registered enrolled students:

	From	To
Universities:	USD 176 (< 500 students)	USD 77,400 (> 95,000 students)
Colleges:	USD 156 (< 500 students)	USD 68,700 (> 95,000 students)
Secondary schools:	USD 23 (< 100 pupils)	USD 1,160 (> 2,500 students)
Primary schools:	USD 15 (< 100 pupils)	USD 774 (> 2,500 students)

The **Copyright Society of Tanzania (COSOTA)**, which is the combined copyright office and multipurpose CMO and RRO, signs the licence agreements and collects the remuneration for distribution to authors and publishers. Since the approval of the regulations in November 2018, COSOTA has, as at September 2019, invoiced 33 universities and higher education institutions for USD 195,000 (TZS 449,479,000).

## Copyright levies for published (text and image) works

Copyright levies are a way of remunerating authors and publishers for defined usages authorised by law under a limitation to exclusive rights. It implies that a fee be paid on equipment, devices and media, for instance, photocopiers, printers and PCs, which can be used to reproduce copyright works. The model was first developed for reprography in Germany in the 1980s and has since been implemented in many countries in Europe, including in the Czech Republic, Romania and Slovakia, as well as in Africa, for instance in Algeria, Burkina Faso, Côte d’Ivoire, Ghana and Malawi. A list of countries, which remunerate authors and publishers of published works through a levy as at 2016, is found in the IFRRO-WIPO report *International Survey on Text and Image Copyright Levies*.<sup>22</sup>

In many countries, the equipment levy is combined with a voluntary licence, with or without back up in legislation, as in Ghana and Malawi, or with a statutory licence, which is the case in Spain. In other countries, such as in Austria, Germany, Hungary and Lithuania, the levy on equipment and devices is supplemented by a fee for the copies made. The ‘operator fee’ is payable by those who own or operate the equipment and reproduce or authorise the reproduction of copyright works on a large scale on that equipment. This includes educational institutions that own relevant equipment and devices.

<sup>21</sup> <https://tanzlii.org/content/copyright-licensing-reproduction-and-rental-rights-amendment-regulations-2018>

<sup>22</sup> [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1042\\_2017.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1042_2017.pdf), see in particular page 30. Since 2016, Spain has reintroduced the levy.

Burkina Faso is an example where the law institutes both an equipment levy and an operator fee:

### COUNTRY EXAMPLE: BURKINAFASO

The legislation in Burkina Faso provides for remuneration to be paid to authors and publishers to compensate for the reprographic reproduction of published works. It instigates a two-pillar mechanism: a levy on reprographic devices, such as photocopiers, scanners and printers; and a fee to be paid for copies made, payable by institutions that use reprographic devices on a large scale (operator fee). This includes private and public educational institutions. A decree to implement this part of the legislation is currently being prepared. It is scheduled to come into force in 2020, with tariffs proposed as a per-device fee ranging from USD 50 -100 (CFA 30,000-50,000) per year, depending on its capacity.

The equipment levy is set at 0.25% of the import value of the device. It is collected on import by the customs authorities. Yearly collection amounts to some USD 56,000 (FCFA 34.5 million). After the deduction of a small administration fee, the levy is passed on to the **Bureau Burkinabé du Droit d'Auteur (BBDA)** for its further distribution to rightholders. BBDA is the combined national copyright office and multipurpose CMO. It is mandated by law to administer copyright and related rights. It will also manage the operator fee.

## 4.4 Mixed and combined models

The models may, of course, be combined. This is the case, for instance in France, where reprography is licensed *inter alia* on the basis of obligatory collective management, and digital uses on the basis of a legal licence combined with voluntary licensing.

It will also apply to digital uses in education, at all levels, in Japan from 2020-2021. New legislation instigates a remunerated compulsory licence for occasional reproduction, digitisation, circulation, transmission, electronic storage and online sharing of excerpts of all types of copyright materials – text and images, audio-visual and musical works – both of national and foreign origin. The reproduction made under the legal licence must (a) not be from a textbook, reference or professional works or other materials intended for the educational market; (b) be done by the individual teacher or student; (c) be limited to the extent necessary for the teaching or learning purpose; and (d) not unreasonably prejudice the interest of the rightholder. The copy must be intended for the specific class; usage in multiple classes, unless it is by the same teacher/lecturer for the same purposes. Systematic or periodic reproduction, or the making of course packs is not permitted.

The compensatory remuneration must be approved by the authorities. A single remuneration collector, the Society for the Administration of Remuneration for Public Transmission for School Lessons (SARTRAS) was incorporated in January 2019.

Usages, which are not covered by the statutory licence, or cannot be made under other exceptions or limitations in the law, requires prior rightholder authorisation. Three Japanese RROs – Japan Academic Association for Copyright Clearance (JAC), Japan Publishers Copyright Organisation (JCOPY) and Japan Reproduction Rights Center (JRRC) – supplement the compulsory licence and authorisation granted directly by authors and publishers by licensing educational institutions under voluntary collective licensing arrangements based on mandates from rightholders.

Spain is another example of a mixed system.

## COUNTRY EXAMPLE: SPAIN

Universities and public research institutions are authorised by law, under defined conditions, to use up to 10% of a published work, or a chapter or a full article.<sup>23</sup> This includes reprography and digital copies. The institutions must pay remuneration to the authors and publishers via the approved RROs. In September 2019, the rate is USD 9.29 (€ 8.39) per student per year for the combined photo- and digital copying. Nevertheless, an agreement has been reached allowing the universities to pay in the form of an agreed lump sum, to which each university contributes according to the number of enrolled students. CEDRO (Centro Español de Derechos Reprográficos) is the legal licence administrator for textual works, VEGAP (Visual Entidad de Gestión de Artistas Plásticos) for images.

Schools benefit from a much narrower exception, without obligation to remunerate rightsholders, as copying from textbooks, university manuals or similar publications is not permitted. They therefore also depend on licensing to make multiple copies of protected works.

Through voluntary collective licensing via its Internet-based platform, conlicencia.com (<https://www.conlicencia.com/>), CEDRO offers educational institutions usages of protected works that are not covered by the legal licence. Individual mandates from authors and publishers and bilateral agreements with the French, UK, US and other RROs provide access to more than 20 million national and foreign works.<sup>24</sup> Annual and case-by-case (transactional) licence agreements are enabled.

In addition to copying from the work, the institution may store the portion of it, make it available to students and staff on a password-protected network, distribute it via email, and integrate it in a document prepared by the institution for internal use. The annual cost of the licence per student, in 2019, varies from USD 2.40 (€ 2.16) in primary education to USD 9.77 (€8.91). Depending on the education level, it will rise to a maximum rate of USD 11.5 (€10.35) per student per year in 2022.

In addition to the statutory and voluntary licensing, the law establishes a levy to be acquitted on relevant reprographic and digital equipment and devices for reproduction for all uses of copyright works for private purposes. CEDRO manages the levy for texts, VEGAP for images.

## 5. The RRO licence - What is authorised?

RROs offer two types of licence agreements: repertoire licences and transactional licences.

### 5.1 The repertoire licence

A repertoire licence is characterised by the RRO granting the institution a preauthorisation to reproduce and use the works in its repertoire on a blanket basis under predefined conditions and uniform price structures. The repertoire consists of the works of the mandating rightsholders, including those who are represented through agreements with other RROs. In countries with statutory provisions, the work of non-mandating rightsholders – national and foreign – are also included.

<sup>23</sup> <https://www.boe.es/buscar/pdf/1996/BOE-A-1996-8930-consolidado.pdf>; articles 32.3 and 32.4.

<sup>24</sup> 6 million works available for transactional licensing.

## Standard conditions in a repertoire licence

The reproduction authorised through a repertoire licence is to copy a portion of the work for internal and personal use only. The portion that may be copied varies from country to country, depending *inter alia* on user needs. Most frequent proportions are 10-15% of the work, or a full chapter from a book or an article from a journal, whichever is the greater.

There are also examples of agreements that allow larger portions to be copied. For instance, in Finland, the Kopiosto university and higher education licence allows up to 20%, normally maximised to 20 pages, to be reproduced. The copies may be made from analogue or electronic sources. In Ghana and Malawi, if a work is not available, the copy limit is extended to 30%, and in Tanzania to 50% of the work.

The RRO licence agreement permits institutions to reproduce portions of the work through photocopying, scanning, printing or similar methods. Provided the institution has also taken up a licence for digital uses, it will typically be allowed to download materials from the Internet, store and make portions of materials accessible through password-protected internal networks, which are accessible online. The copied works may also be used in PowerPoint presentations, projected to smartboards, etc., and posted to Virtual Learning Environment (VLE) platforms.

## Remuneration, tariffs and tariff setting

Fees may be fixed in legislation or set unilaterally by the RRO. More often, however, they are established through negotiations between the RRO and the educational institution. Rather than negotiating on an individual basis, whenever possible, the institution will leave the negotiations with the RRO to an association or other body representing them, for example, a consortium of deans.

Tariffs are established taking account of, among other things, the type and amount of copies made and the economic and other local conditions. Therefore, tariffs vary considerably. Examples are offered in the country examples throughout this paper.

The tariff may be set as a price per page copied, multiplied by the number of copies made as revealed by investigations, as in Malawi. The basis for the calculation of the per-page rate could be the purchase price of the works used, or the cost of copying. More frequently though, the tariff is set as an annual fee per student, potentially also per staff member, or employee. Occasionally, the remuneration collected by the RRO on behalf of the authors and publishers is in the form of (a sometimes agreed) lump sum, as, for instance, in Tanzania. The fee to be paid is established taking account of the copies that the institution or the student is permitted to make legally, whether under an exception, authorised by the author or publisher directly through direct licensing or authorisation, or otherwise permitted.

The remuneration collected by the RRO is distributed to rightsholders on the basis of an agreed distribution method and split between creators and publishers. In 2017, more than USD 1.1 billion was paid out to rightsholders worldwide. There is no doubt this has an important impact on the possibility for local creation and publishing. And by contrast, the serious drop in payment from the RROs in Canada following changes to the legislation in 2012 has had serious negative consequences for the national authors and publishers there.<sup>25</sup>

Before the monies are distributed to authors and publishers, a percentage of the collected remuneration, which would normally not exceed 30% and is often much lower, is deducted by the RRO to cover its expenses. The distribution may be based on full reporting from the institution on the use of material. However, under a repertoire licence, given the huge amount of copies made, it is more common to base it on extrapolation from sophisticated statistical surveys and samplings.

## EXAMPLES OF COMPREHENSIVE REPERTOIRE LICENCES

### Universities

- Norway: <https://www.kopinor.no/articles/licence-agreement--higher-education>
- France (in French, reprography and digital uses):  
<http://www.cfcopies.com/copie-pedagogique/etablissement-superieur/universite>

### Schools

- France (in French)
  - (i) Primary schools (reprography and digital uses):  
<http://www.cfcopies.com/copie-pedagogique/etablissement-primaire-public-et-privé>
  - (ii) Secondary schools (reprography and digital uses): <http://www.cfcopies.com/copie-pedagogique/etablissement-secondaire/etablissement-secondaire-public-et-privé-sous-contrat>

## 5.2 Transactional licensing

RROs offer to assist in obtaining authorisation from authors or publishers on a case-by-case, pay-per-use basis, for example when institutions need to copy beyond the limits fixed in the repertoire licence. There are several examples of this service in this section, see, for instance, country examples Argentina and Colombia. In this case, the RRO often acts more like an agent for the rightsholder. Fees and other conditions are often set by, and the remuneration transferred back, to the individual rightsholder who grants the mandate to the RRO. Further distribution to other rightsholders concerned would be the responsibility of the mandator.

Transactional licensing may also be a part of the standard authorisation or the main service granted by the RRO. Licences offered to academia by Copyright Clearance Center (CCC, USA) include a number of pay-per-use services.

### EXAMPLE: CCC (USA) LICENSING SERVICES FOR ACADEMICS (INCLUDING K-12 AND HIGHER EDUCATION)

**Copyright Clearance Center (CCC)**, like other RROs, strives to offer services tailored to meet the needs of the academic market. This includes an **Academic Annual Copyright Licence (AACL)**, which provides comprehensive coverage for most content uses on campus as well as convenient 'check & go' copyright permissions. The AACL covers a broad spectrum of standard content uses, including course packs, electronic course materials and class handouts, library reserves, administrative photocopies, internal e-mail, and intranet postings. This broad coverage enables faculty and staff, researchers, off-campus copy shops and course pack providers to collaborate freely while respecting intellectual property rights. As a further benefit, the AACL greatly reduces the time spent securing copyright permissions. Via the searchable online catalogue RightFind Academic, users can verify coverage instantly.

In addition, CCC offers several **Pay-Per-Use Services**: Beginning with the **Transactional Reporting Service (TRS)** for Inter-Library Loan (ILL) borrowing and document delivery permissions, and then the **Academic Permission Service (APS)** for including copyrighted works in print course packs, in its earliest days, CCC provided a compliance mechanism for the photocopying of copyrighted materials. In the late 1990s, the **Electronic Course Content Service (ECCS)** was added to these, essentially as an adaptation of the APS for emerging digital environments including e-course packs, e-reserves, and Learning Management System (LMS) postings.

**Get It Now.** In 2010, representatives from the California State University (CSU) System approached CCC and asked for its cooperation in the development of a cost effective, academic document delivery system to use in place of borrowing journals articles via interlibrary loan (ILL), which they considered to take too long and be too costly. In response, CCC developed Get It Now which provides library patrons with rapid fulfilment of high-quality, full-text, colour PDF journal articles not subscribed to by their library, 24 hours a day, 7 days a week. It supplements traditional ILL processes and is tightly integrated with leading library applications and workflows.

With over 17,000 journals and tens of millions of articles available for purchase, Get It Now expands an academic library's 'virtual collection' by ensuring content is available to patrons when they need it, saving libraries time and money and improving patron satisfaction.

The **Student Assessment Licence (SAL)** was developed by CCC in response to a need identified by the Smarter Balanced Assessment Consortium (SBAC), a K-12 (primary and secondary education) assessment consortium of the United States. SBAC's challenge was that it needed permissions to re-use thousands of copyright protected passages in 'high-stakes' assessments for nearly 8 million students and had limited time to do so since the tests needed to be administered that spring (some 10 months away). As the SBAC assessment was to be computer adaptive (students are presented different passages and questions based on their responses to previous passages and questions), SBAC did not know the number of students who would be exposed to any specific passage, so they ran the risk of either obtaining too few or too many rights for any passage within their bank. For the rightsholders, the SBAC's permissions requirements did not fit within traditional permissions pricing models, leading either to prolonged negotiations or to SBAC having to rely on public domain or synthetic content (i.e., content created for the test) to fill its needs.

In response, CCC worked with SBAC to create the first collective licence designed for adaptive learning. The SAL is an annual licence that provides coverage for states and school districts – and their contracted test developers – to re-use excerpts from millions of copyrighted works in summative, interim and formative assessments and related preparatory materials. Today, the SAL has been expanded beyond the original SBAC states and now covers more than 75% of test-eligible students in the USA.

## 6. Meeting the needs of users and rightsholders

RROs are close to the market and work continually to meet user needs to facilitate activities under their agreements. As demonstrated, also with the evolution of CCC's services, licensing by RROs is in constant development to meet progressing demands - from users and rightsholders. The following offers an example from Canada with respect to licensing of schools, and one from the UK regarding higher education.

### COUNTRY EXAMPLE: CANADA

**Copibec**, the RRO in Québec (Canada) licenses public and private education at all levels on a voluntary collective licensing basis.<sup>26</sup> Mandates are obtained from authors and publishers, and for non-Canadian works from RROs in other countries through bilateral agreements. The licence agreements cover the reproduction of excerpts from print and digital books and periodicals on paper and digital formats, with the exception of those works, which the right holders have excluded from the mandate.

The general copy limit is 15%, or a full chapter, article or musical score. For pre-tertiary level institutions, the authorised reproduction of publications developed specifically for preschool, elementary, high school or adult education or vocational training purposes, is limited to 10% of the publication, and no more than 25 pages. If a copy of a greater portion of the work is required, Copibec may assist in obtaining authorisation via a transactional 'get permission' online service. The copies may be used for teaching and learning purposes, including distribution by handouts in the classroom, making available on closed networks and projection on smartboards, etc. Students may print out or copy onto a USB or other local storage media.

SAMUEL<sup>27</sup> (Simplified Access for Multidisciplinary Education and Learning) is a digital platform that Copibec offers to educational institutions at pre-university level, at no extra fee under the Copibec-Minister of education licence and the Copibec-Cégep (Colleges) licence, to further facilitate their legal use of published works in education. It proposes an online catalogue of, currently, some 30,000 works in full-text format. This comprises books, periodicals, press photos, artistic works, illustrations, song lyrics and musical works. Within the copy limits of the licence agreements, the teacher/school may browse and consult the entire work in the database, select the pages required, download the portion opted for, and share it with students and colleagues, for instance by posting on an intranet, printing out for the handing out in the classroom, or by projection on a smartboard.

SAMUEL is a proven success. Since its launch in 2014, more than 3 million copies have been used by 2,075 teachers and teaching professionals from 920 schools in Québec. It is also offered, by subscription, to educational institutions outside of Québec.

<sup>26</sup> <https://www.copibec.ca/en>

<sup>27</sup> <https://www.copibec.ca/en/samuel>

## COUNTRY EXAMPLE: UK UNIVERSITIES - the CLA digital content store

The Copyright Licensing Agency (CLA) is the recognised UK RRO for licensing text and images from print and digital books, journal and magazine content to the education, business and public sectors. It licenses all schools and universities in the UK, as well as most further education colleges, under the licence override provisions in section 36 of the UK Copyright, Designs and Patents Act 1988. Students registered with an educational establishment can access and copy works covered by the CLA licence wherever they may be in the world.

In addition to works for which UK CMOs<sup>28</sup> grant mandates, CLA licenses works from all over the world by virtue of its bilateral agreements with other RROs. The licence agreement allows extracts from published works to be copied, unless a rightsholder chooses to exclude the work(s). In higher education, for example, the copy limit is 10% or one chapter, whichever is greater. The repertoire licence fee per full-time student per year varies from USD 2.44 (£2.01) in primary schools to USD 9.10 (£7.51) in higher education. A transactional permissions service is offered if users want to copy beyond the repertoire licence limits.

In 2016, CLA launched the Digital Content Store (DCS) for universities. The DCS streamlines the process of creating copies and license checks for universities, removing the need to report usage as CLA collects data automatically at the point of use. Currently 115 universities use the DCS, which together account for 68% of the digital copying data reported to.

In terms of RRO services, requests from educational institutions vary considerably from country to country, and, often, also among institutions. RROs, in close collaboration with the authors and publishers they represent, make efforts to address the various user needs. Here is a list of different scenarios which RROs deal with.

So, what if the user request is for the:

### **A: ...licence agreement to meet the 'basic' needs of the institution only**

Worldwide, there are between five and six million schools, some 22,000 universities and an undisclosed number of colleges and other higher education institutions. Considering it carefully, on a country-by-country basis, how many educational institutions have departments or campuses outside their own country, or even outside their city or location? Is it fair to assume that many institutions (if not most of them) have national campuses only, even within a narrow geographical area; that they have no department or own no subsidiary outside the main location? Those institutions may require a RRO licence agreement to allow for classroom and on-campus use only. They will, however, request that the RRO offers the possibility to copy both national and foreign works and that it helps out on a case-by-case basis, when usages are not covered by the licence agreement.

The most apposite way to address those user needs, while, at the same time, observing rightsholder requirements, is in most cases, for the institution to sign a licence agreement with the national RRO. The local RRO is best able to respond to local conditions – domestic laws, user needs, copying practices, negotiating the appropriate licence conditions, including tariffs, as well as dealing with technological changes – while at the same time delivering benefits to all stakeholders in the value chain. It will ensure mandates from the local authors and publishers and enter into agreements with RROs in other countries to enable the institution to also use foreign materials.

This is the way that the large majority of RRO licensing is done.

However, the request may be for...

**B: ...students, teachers, researchers to access the licensed material from outside the institution**

RRO licences will typically allow the institution's employees and students who have been admitted to the course, paid a tuition fee and given legal access to the institution's network, to access the licensed material, also from outside the campus, from wherever they are in the world. Further use of the material will, however, follow the law of the country where the work is accessed. A student enrolled in a course at Oxford University (UK) moving for a shorter or longer period to another country will have full access to the materials, for instance through the institution's network.

**C: ...the licence to cover campuses in multiple countries**

The institution has three alternatives. The obvious one and the one that is most frequently used, is for each individual campus to sign an agreement with the RRO in the country where the campus is located.

The institution may, alternatively, include non-national campuses in the licence agreement with the RRO where the main institution is located. As an example, CLA, the UK RRO, offers, at an additional fee, an optional add-on for universities that wish to include those students enrolled in courses at their campus outside the UK.

The third option would be for the institution to negotiate a multi-territory licence, with follow-up services undertaken locally by the RRO of each campus location. This has been the choice of the Universities of the West Indies (UWI) in the Caribbean:

### EXAMPLE: THE CARIBBEAN MULTI-TERRITORY LICENCE AGREEMENT

In respect of usages of copyright works in education, the Jamaican Copyright Act provides for a licence override.<sup>29</sup> This means that, when a licence agreement is available, the institution has an obligation in the law to refrain from copying under the exception and negotiate an agreement. Similar stipulations exist in the laws of Barbados and Trinidad and Tobago.

**CARROSA** was established as a regional organisation tasked to facilitate multi-territory licensing in the Caribbean by the five RROs in the region<sup>30</sup>. It is situated in Jamaica and operates under Jamaican Law. The first licence agreement being negotiated by CARROSA is with the University of the West Indies (UWI) and is to go into effect during the 2019/2020 academic year.

UWI is the largest and oldest fully regional institution of higher learning in the Commonwealth Caribbean. An international university with faculty and students from over 40 countries, UWI serves 17 countries of the English-speaking Caribbean<sup>31</sup>. It has three physical campuses, at Mona in Jamaica, St Augustine in Trinidad and Tobago, and Cave Hill in Barbados, together with the Open Campus through which teaching is delivered to these and the other 13 countries. Within this framework, there is a sub-structure that includes a tangible presence in those countries. The regional headquarters of UWI is located in Jamaica. Students move between the three campuses depending on the programme of study; in some instances, starting in one country and completing their programme in another. In addition, UWI has exchange partnerships with multiple universities worldwide.<sup>32</sup> These partnerships allow for the movement of UWI students to these foreign universities for parts of their course of study.

CARROSA's pan-Caribbean licence for UWI allows it to make copies for all purposes within or in support of the mandate of the Institution and extends to all the university's students and faculties regardless of location. This eliminates any potential problems that could arise when students move between campuses in the region or to one of the partnering universities outside of the Caribbean. Through mandates extended through its member organisation JAMCOPY, CARROSA is able to deliver a worldwide repertoire to UWI. By virtue of bilateral agreements with other RROs, JAMCOPY's repertoire currently includes the works of 41 countries, in addition to the national ones. The copy limit is up to 20% or a full chapter of a licensed work, in sufficient number of copies to provide one for each student, two for each staff member and such number required by UWI for administrative purposes. The licence agreement also provides for the making of accessible format copies as well as copies for the purpose of interlibrary loans. It is applicable in all the relevant countries regardless of their compliance with the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) or the Marrakesh Treaty.

<sup>29</sup> [https://www.jipo.gov.jm/sites/default/files/PDF\\_Files/CopyrightAct.pdf](https://www.jipo.gov.jm/sites/default/files/PDF_Files/CopyrightAct.pdf), Art. 59(3). See also footnote 6.

<sup>30</sup> JAMCOPY (Jamaica), TTRRO (Trinidad & Tobago), BCOPY (Barbados), BECLA (Belize) and ECCLA (OECS Member States).

<sup>31</sup> Anguilla, Antigua & Barbuda, The Bahamas, Barbados, Belize, the British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago and Turks and Caicos.

<sup>32</sup> <https://www.mona.uwi.edu/iso/university-partnerships>

## D: ...address special research purposes; Text and Data Mining (TDM)

Licensing of usages of copyright works has time and again proven to be far more flexible than unremunerated exceptions and limitations. For instance, specific research requests, such as TDM, was addressed in licence agreements by rightsholders and RROs long before any exception could be implemented in national legislation.

### COUNTRY EXAMPLE: FINLAND

**Kopioisto**, the Finnish RRO, licenses all levels of education, for both private and public institutions. All agreements are signed on the basis of the Extended Collective Licensing Agreement (ECL). Works of national and non-national rightsholders who have not mandated Kopioisto directly may thus also be reproduced and used on the same conditions as those which apply for the mandating ones.

The copy limits depend on types of uses, level of education and type of copying. Educational institutions, at all levels, may photocopy up to 20 pages of a publication per term, provided this does not exceed 50% of the entire work. Universities and other higher education institutions may scan up to 20% of a publication, maximised to 20 pages. Digital copying and printouts from Internet sources, when the use is not authorised directly by the rightsholders or through CC (Creative Commons) and similar licences, is limited to 20 images or pages corresponding to an A4 size per website per student per course or term.<sup>33</sup> The annual per student rate for copying in university and higher education is up to USD 16.10 (€14.56). Scientific research is covered by the university and higher education licence agreement. However, the copy limits applicable to education, for instance the maximum of 20 % / 20 pages of a publication, does not apply to scientific research activities. The condition is that the materials cannot ‘*be acquired commercially or otherwise through conventional acquisition methods*’. Moreover, *Copies created for research purposes may be:*

- *saved on the licensee’s closed network or server so that they can be accessed by the research group for which the copies were made; and*
- *distributed to the research group via email*

*‘Copies made for research purposes may be made available to the research group until the research is completed’.*<sup>34</sup>

Kopioisto signed a licence agreement on TDM for the first time in 2012. It was a separate agreement concerning specific research projects. Provisions favouring research became a permanent part of the Kopioisto’s university and higher education licence in 2014. To further assist research, Kopioisto has also licensed, since 2012, FinClarín, which offers tools and a database for TDM.<sup>35</sup> A pilot agreement has been signed with the Finnish National Library, granting researchers access to its database with all digitised Finnish newspapers and magazines. The publications may be downloaded for TDM and other research purposes.

<sup>33</sup> Other copy limits in Kopioisto’s licensing agreements for education: Primary education may scan up to 5 pages, maximum 50% of the publication, while secondary education can scan 15% of the publication, but no more than 15 pages. More narrow limitations than referred to below apply for the reproduction of special material, such as sheet music and the Finnish Standard Association standards, and for copying in preschool.

<sup>34</sup> See Article 8: [https://www.kopioisto.fi/app/uploads/2018/11/11095521/Brochure-The-Kopioisto-copying--licence-Universities\\_19.pdf](https://www.kopioisto.fi/app/uploads/2018/11/11095521/Brochure-The-Kopioisto-copying--licence-Universities_19.pdf)

<sup>35</sup> Fin Clarín is ‘the Finnish part of the European CLARIN collaboration building a research infrastructure for language-related resources in Humanities and Social Sciences’ [https:// www.kielipankki.fi/organisation/fin-clarin/](https://www.kielipankki.fi/organisation/fin-clarin/).

Kopiosto's licensing of research, *inter alia* through the university and higher education licence agreement, documents with all clarity how the flexibility of collective licensing trumps and will always outperform an exception in the law.

### **E: ...licensing of Massive Open Online Courses (MOOCs) and Open Education Resources (OERs)**

MOOCs are large virtual classrooms that are accessed online by students worldwide and often sponsored by leading academic institutions of higher education. Increasingly, the list of course readings for MOOCs includes published content such as book excerpts, journal content and magazine articles alongside materials produced by instructors and staff.

Although RROs have declared a readiness, and some have also offered to include MOOCs in their licensing arrangements, there has not been much request for it. A reason may be the high dropout rate, at about 96% on average over five years according to a Massachusetts Institute of Technology (MIT) study published in early 2019<sup>36</sup>. A MOOC does not necessarily have to be considered a failure because of the low completion rate. Rather, many sign up to MOOCs to investigate course options, without intending to complete them.

Another, and perhaps the main reason for the low completion rate may be that the institution offering a MOOC clears rights directly, be it with university professors or other rightsholders. If the aim is to offer a certificate, then often a MOOC also implies the need to access and use published copyright material in closed networks. Access then depends on the student being authorised to sign into a protected not-open section of the course platform. If so, and the institution offering the course has a licence agreement with a RRO, the use could be covered by that agreement.

In the words of Achieve OER Institute, OERs '*are teaching, learning and research resources that are either placed in the public domain or contain an open licence that permits others to share, re-use, and modify them.*' Among the challenges that OERs meet, are selection of quality materials and copyright compliance. In the USA, CCC has co-operated with OER platforms on secondary school programs to address those issues.

Subject to mandates, RROs can assist rightsholders in clearing rights for the use on open networks. Requests for MOOC licensing has mainly come from institutions in the USA. Copyright Clearance Center (CCC) offers licensing in relation to both MOOCs and OERs.

### EXAMPLE: THE USA - CCC MOOC and select text agreements

A simple, cost-effective way to secure content and permissions for MOOC course materials, developed with CCC's long-time course materials partners Study.net and XanEdu. Designed by CCC specifically for use in academic MOOCs, this service makes it possible to include published content in course readings and ensure enrolled students use those materials responsibly. Further, it alleviates the burden on the sponsoring institution of having to absorb the cost of permissions on a large scale by passing those costs onto the MOOC participants.

**SelectText:** The introduction of college and career readiness standards combined with a movement towards OER is driving states and large school districts in the US to develop their own curriculum and course materials. The challenge with OER for reading-intensive disciplines such as social studies, language arts, and history, is that, while the standards call for 'authentic content' to be used, the content that can be legally posted online without charge is quite limited. The State of Louisiana faced this when it created the most complete K-12 (primary and secondary school) OER reading program in the US. In response, CCC worked with the State and a course materials partner, XanEdu, to enable school districts to purchase print or electronic versions of readings on demand, bound and packaged for classroom use. This enables the districts to save money and to acquire content in a faster cycle than is typical. This curriculum is now used throughout the country, and CCC works with other school systems, such as Washington DC Public Schools, on similar projects.

### F: ...arrangements to address the needs of print-disabled persons

Upon request, RROs have for a long time addressed the special needs of print disabled persons in a learning environment. This could include authorisation to reproduce works beyond the copy limits of the licence agreement or to manipulate the text to enable accessible formats.<sup>37</sup> The Copibec school licence, in Québec (Canada), allows the institution to reproduce documents in large print; modifying the original colours; adjusting the legally purchased document to enable students to enter answers or annotations by using software or an application; and digitally reproduce a document in a format that allows optical character recognition (OCR) software to be used.<sup>38</sup>

RRO services for print-disabled persons have also evolved. For instance, Copibec offers DONA,<sup>39</sup> a service, which provides '*accessible digital content for students with perceptual disabilities*'. A flat service charge of USD 4.50 (CAD 6) is applied for each document, regardless of the number or copies provided. Since August 2017, Copibec has received more than 1,370 requests for accessible content. The growing need for this service is leading Copibec to develop a new digital platform further facilitating the process to obtain accessible digital content.

## 7. Special arrangements offered to developing countries

An important objective of RROs' work is to contribute to the stimulation of local creation and the publishing sector. To this end, RROs may sign agreements, which allow a developing RRO to retain fees collected for the use of the works represented by another RRO, at least for a defined period. The purpose of such arrangements is to help strengthen the developing RRO and, eventually, fostering the local creative and publishing sector.

<sup>37</sup> Also, IFRRO, the global network of RROs and organisations in the public sector offers assistance: <http://ifro.org/content/access-persons-print-disabilities>

<sup>38</sup> <https://www.copibec.ca/en/agreement-elementary-highschool>

<sup>39</sup> <https://www.copibec.ca/en/>

## THE CCC (USA) MILESTONE AGREEMENT

CCC offers extensive support to RROs in the developing world to help them with their own academic and educational licensing programs. The 'milestone bilateral' was introduced several years ago specifically for small and nascent RROs. It conveys to suitable RROs CCC's full repertoire of rights, identifies particular development milestones, and in some cases allows royalties due to CCC to be retained for a fixed period by the developing RRO for re-investment locally. CCC also operates a development program for new and nascent RROs known as the International Advancement Program (IAP). RROs can apply for tailor-made support such as training, mentoring, and specific bespoke resources. In recent years, the IAP has supported RROs in Ghana, Jamaica, Zambia, the Philippines, and Argentina.

## CLA (UK) PILOT BILATERAL AGREEMENT

CLA offers the 'pilot bilateral' to developing RROs in order to assist them in establishing an effective licensing framework. The pilot bilateral generally has an initial term of one year, although it is renewable. The agreement is usually limited to named institutions in a given territory, such as education institutes where the RRO thinks it will be able to sell a licence. The developing RRO is required to establish a policing and anti-piracy programme and all revenue collected for UK rightsholders under the licences sold can be used towards the policing and anti-piracy programme, rather than being distributed to CLA. The developing RRO provides regular updates on progress with licensing and CLA assists with development and training requirements where required. To date, CLA has entered into pilot bilateral agreements with, among others, RROs in Malawi, Ghana, Chile, and the Philippines.

In collaboration with local stakeholders and its own constituency, a RRO may also assist in nurturing the local creative and publishing sector in a more direct way. This is an example from Malawi:

## THE MALAWI SCHOOLBOOK DEVELOPMENT PROJECT

The schoolbook development project aims at enhancing and creating a local educational publishing industry that is skilled, sustainable and functional in serving the needs of local secondary education. It is a pilot project intended to show fine practice in local schoolbook production in a country under development. Funded by the Norwegian RRO, Kopinor, it is administered by the Copyright Society of Malawi (COSOMA), with support from the local Ministry of Education Science and Technology. Other partners and members of the Steering Committee, chaired by COSOMA, are the Book Publishers Association of Malawi (BPAM), the Malawi Union for Academic Non-Fiction Authors (MUANA) and the Malawi Institute of Education

The project is being implemented from 2017 to 2021. Specifically, it seeks to create a publishing industry that serves the needs of local secondary education, focusing on selected textbooks for English, Chichewa, Agriculture, Geography and History. Through *inter alia* capacity building activities directed towards the various players in the value chain, the aim is to locally create and produce 70,000 textbooks, to be distributed to 60 secondary schools across Malawi. The expected outcome includes continued cooperation on contracting and editorial work, an improved reading culture and a step towards a sustainable local textbook sector in Malawi.

## 8. Examples of best practice licensing of education

This section offers best practice examples from three RROs licensing the whole educational sector, although operating under different legal regimes.

### NEW ZEALAND

#### How licensing of education and research institutions works in Aotearoa New Zealand

**Copyright Licensing NZ (CLNZ)** has been licensing New Zealand education institutions for over 25 years. Based on mandates from authors and publishers and bilateral agreements with RROs in other countries, CLNZ operates a series of licensing schemes for the education system:

- 1.1.1 Universities;
- 1.1.2 Institutes of Technology and Polytechnics (ITPs);
- 1.1.3 Wānanga (training undertaken *according to tikanga Māori or Māori custom*);
- 1.1.4 Private Training Establishments;
- 1.1.5 Schools – primary and secondary.

All of these schemes have terms and conditions that enable access to the material copied under the licence via a ‘secure system’. This means that, regardless of where those who are authorised to receive copies are located, they can log in to the institutions’ systems (e.g. a learning management system such as Moodle) to view, read and download content. *Authorised persons* are the academic and general staff of each institution. The *authorised purposes* of the licences are the educational purposes of the licensee, including study, research and use in the course of educational instruction.

Up to 10%, or one chapter of a book, whatever is the greater, 15 pages from books of short stories and poetry, or a complete magazine or journal article may be copied. Materials copied relying on the CLNZ licensing schemes can be provided to students in either (or both) digital and paper formats. Any legal hardcopy of a copyright work owned by the institution, or a member of staff, may be copied. The education licensing schemes all include access to New Zealand and international newspapers in both print and digital formats. The access to New Zealand newspapers (and magazines) is provided under an agreement that CLNZ has with the local newspaper licensing agency, PMCA.

The licensing schemes for the tertiary education sector were last settled in 2015. At that time, Text and Data Mining was not considered during the negotiations. Similarly, use of the licensed content for MOOCs was not of interest to the licensees and was not provided for in the licence (note the reference to online access for enrolled students above). Negotiations for the university and ITP schemes are conducted with each sectors’ appointed negotiating teams. Licence fees are priced on a per equivalent full-time student basis in tertiary and a per-student basis in schools, for instance USD 2.14 (\$NZ 3.36) per secondary student per year in 2019. Total licensing revenue for the New Zealand education sector was USD 3.6 million (\$NZ5,582,000) in 2018.

Access to copying of music and broadcast materials is provided by other CMOs that license into the tertiary sector separately. New Zealand schools can access all three licences (print, music, video) through one agency in a combined campaign each year known as *Get Licensed*.<sup>40</sup>

All CLNZ licensees have access to its online copyright eLearning Modules and Knowledge Base that provide professional development in understanding copyright and responses to questions on copyright – both the law and in practice. Workshops are provided free of charge to licensees. A range of video and other resources that explain the licence terms and that put a face to the licence – those of New Zealand writers – are provided online.<sup>41</sup>

<sup>40</sup> <http://www.getlicensed.co.nz/>

<sup>41</sup> <http://copyright.co.nz/licences-and-permission/resources>

## NORWAY

### How the Extended Collective Licence helped collective licensing of education in Norway

All types of educational institutions are offered easy access to knowledge via Kopinor licences:

- KS, the Norwegian Association of Local and Regional Authorities has negotiated a model licence agreement on the reproduction and use of copyright protected material in elementary schools, secondary schools, municipal music and cultural schools. The licencees are the school owners, which are all the municipalities and county municipalities that are members of KS;
- The association Universities Norway (UHR) has negotiated a model licensing agreement on the reproduction and use of copyright protected material at universities and university colleges. The licencees are the members of UHR;
- Individual private educational institutions at all levels, including kindergartens and adult education are also licensed.

Kopinor licenses text and image-based works; all kinds of texts and literature, pictures, illustrations and musical scores. All published material, Norwegian and foreign is included, as the licences are supported by ECL in the Norwegian Copyright Act. Musical and audio-visual works (sounds and moving images), computer software, computer games, interactive learning tools, and original works of visual art and photographs, are excluded from the Kopinor agreement. Educational use of such works is licensed by other CMOs, such as Norwaco and Tono, or the individual rightsholders.

The Kopinor licence agreements cover copying and making available for pupils, students, employees (including librarians and researchers), members of the institution's committees, boards and councils, or others with a special link to the institution. Enrolled students and employees at institutions situated in Norway are covered by the agreement and have access to the institution's internal network (e.g. LMS), even when the individuals are not physically on campus or in Norway. Further copying and making available in another country, must follow the law and licensing system of that country.

The licence agreements cover reproduction (from and to both print and digital material) and internal distribution and making available of the copies both in analogue and digital form, within certain limitations; typically, one may copy 15 % of a book. Reproduction shall not replace but be a supplement to the purchase of published material. Reproduction and uses agreed directly with authors and publishers or representatives of these parties are not covered by Kopinor's licence agreements. Any subscription/licence and purchase conditions by which the institution is bound must be respected and takes precedence over the Kopinor licence agreement.

The Kopinor agreements cover internal uses. The copying must, however, not have the character of a publishing activity and works may not be made available on open websites. The production of course packs is permitted in higher education if the book extracts which are copied and made available to students and course participants are registered in Kopinor's digital solution *Bolk* for clearance.

The rates are set through negotiations, inter alia based on statistical surveys on copying and use. The full-time equivalent student rate ranges, in 2019, from USD 20.43 (NOK 192.47) per year in schools to USD 22.43 (NOK 204.94) per semester in universities and other higher education institutions. Price per full-time employee per semester is USD 20.46 (NOK 183.66). The total collection for educational usages in 2018 was USD 31.2 million (NOK 280 million), of which the Higher Education sector generated USD 12.7 million (NOK 114 million). The administration cost in 2018 was 11.9 % of the collected remuneration.

## SINGAPORE

### How the 'Golden Triangle' led to a win-win situation in Singapore under a legal licence

Addressing appropriately the needs of education through licensing in Singapore, could not have been achieved if not for what a RRO executive has described as the 'Golden Triangle' of co-operation involving the Government, rightsholders (publishers and authors) and CLASS, the local RRO. This golden triangle starts with good laws from the Government which makes it fair for both creators and users of copyright works, especially in education, through a statutory regime. Among other things, Section 52 of the Singaporean law provides a statutory licence for the reproduction and usages of excerpts of more than 5% of a published work in education.

Next, the RRO fits into the triangle by making it simple and convenient as a 'one-stop' reasonably priced knowledge buffet for users and creators – in 2019, from USD 0.04 in lower primary school up to USD 22.35 per full-time student per year. Finally, the creators, both local and foreign, involving publishers and authors who support CLASS contribute to make the golden triangle shine.

This golden triangle of co-operation is now a success story. Still, it was a difficult start for CLASS when it first launched its licensing in 2000. For three years, no licence was signed because in Singapore, despite its good laws, illegal copying without permission was rife and book pirates had infested the publishing industry. CLASS was the result of the commitment of local and foreign book publishers and authors who set it up to try to 'sanitise' a then very bad publishing market.

Using the strategy of reasonable licence pricing and convenient one-stop shop for users of books and journals, CLASS was able to show why it was worthwhile to pay for a copyright licence to use copyright works, rather than face the risks of being labelled as copyright thieves, especially for civil servants who were teachers and principals in Government schools.

Education is paramount. Asian societies are no exception to that. In Singapore, the education system is managed, if not controlled by the Government. This proved to be helpful to CLASS's activities. The backing from the Ministry of Education resulted in support also from the other involved in Government schools and education institutions. When CLASS was able to demonstrate to the authorities its 'not-for-profit' credo and reasonable licence fee pricing, it was also easier to convince more schools to take up a CLASS licence.

The result is that, in 2019, all Government primary, secondary schools and Junior Colleges are licensed. The semi-Government or Mission schools, usually managed by Christian missionaries, local clan groups, as well as the less academically inclined attending the Institutions of Technical Education (ITEs, or trade schools) run by the Government, are also licensed. So are all the polytechnics and Government universities. Finally, non-Government schools, such as those run for expatriate children living in Singapore, have also taken up a licence with CLASS.

In 2017, CLASS started to license the commercially run education centres, the Private Education Institutions (PEI). Unlike the Government and non-profit institutions, which are charged annual licence fees based on student enrolments, the PEIs are charged based on 0.3% of their annual revenue.

A CLASS licence agreement allows licensed institutions to make copies of works belonging to their members or those of sister RROs up to 10% or a chapter of the book, whichever is the greater. Use of the works are restricted to students and teachers involved in the courses in Singapore institutions only. It does not cover those providing instruction to locally based students from abroad unless the school concerned has prior licence with the rightsholders. When required, CLASS also assists institutions in seeking permission to reproduce from audio or visual works.

## 9. Conclusion

WIPO has facilitated studies on the impact of the copyright sector on the national economy and employment. A report from WIPO summarising 40 of the national studies<sup>42</sup> concluded, among other things, that:

- *'There is a positive relation between the contribution of copyright industries to GDP and the GDP per Capita.'* (page 12)
- *'This relationship [between the Contribution of Copyright Industries to GDP and the Global Innovation Index] implies that innovation and creativity are inherently and positively connected.'* (page 14)
- *'There is a strong and positive relationship between the contribution of copyright industries to GDP and the Global Competitiveness Index.'* (page 15)

The efficient contribution from the copyright sector to development requires both easy legal access to intellectual property and substantial local production of copyright works. This in turn implies reasonable protection of the creators and producers of intellectual property from infringement on their efforts. Exceptions are important, but unremunerated exceptions should be limited to the instances where primary and secondary markets cannot fulfil a market need efficiently and effectively.

Unremunerated exceptions and limitations cannot respond to dynamic user requests for seamless uses of published copyright works. Agreements with authors, publishers and RROs can! Access to copyright material – from academic works, through newspaper articles, novels and illustrations – through agreements with rightsholders and RROs, is what best meets the needs of educational institutions to legally access high quality teaching and research material in constantly changing environments. Collective rights management assists educational institutions to obtain and help rightsholders to provide easy legal access to published copyright works at an affordable cost.



### **Olav Stokkmo**

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