1. Introduction

New technologies, from photocopiers, to printers, scanners, PCs and the Internet, have allowed new forms of use of copyright protected works. Some uses, such as small scale photocopying are either difficult to control or to administer individually, act by act. Authors and publishers therefore often mandate organisations to manage their copyrights collectively, either through a voluntary private agreement (with or without legislative support) or through a legal license system enshrined in national law.

The collective management of copyright is performed by various types of organisations, often referred to as collecting societies, collective management organisations or reproduction rights organisations. These bodies negotiate licenses for, and gather and distribute royalties to the copyright owners they represent.

Collective rights management schemes have existed for almost as long as copyright law itself. The first collecting society developed in France in 1777 when the playwright Pierre Beaumarchais formed a “Society of Dramatic Authors”. In 1791 the French Assembly officially recognized the concept of author’s rights in legislation which led to the creation in 1829 of the Société des Auteurs et Compositeurs Dramatiques, a collecting society for authors which still exists today.

In the twenty-first century the concept of collective rights management is accepted worldwide. For a variety of reasons (historical, cultural, legal and economic) collecting schemes are structured and regulated in different forms. This IPA report considers a range of national approaches to collective licensing, looking at the recent experiences of Denmark, the United Kingdom, the United States and Australia and assessing how schemes are evolving in response to the digital era.

We also include guidance from IFRRO, the international non-governmental organization which represents collective management organisations worldwide, on how national organisations can be set up and governed to best effect. The report concludes with IPA’s opinion on what the future may hold for collective licensing.

2. Collective Management Organisations

Collective Management Organisations in the text and image sector are referred to as RROs – Reproduction Rights Organisations. They exist in more than 80 countries, with a large majority set up and governed jointly by authors and publishers.

A well-functioning copyright system is supported by copyright legislation, rights management, and enforcement. Among RROs’ key objectives are to create a compliance culture; secure a healthy print and publishing market; and encourage and protect creativity and the creative sectors. The three main facets of RRO activities are: Awareness raising; Copyright education and enforcement; and Rights management.
RROs administer rights on behalf of authors and/or publishers when they either do not want to, or simply cannot administer their rights themselves. This is typically the case with large-scale uses of multiple works by multiple authors and publishers for personal use of students or employees within institutions or corporations. Annually, the RROs in IFRRO’s membership collect more than USD 1 billion for distribution to authors and publishers for these kinds of uses.

- In 2013-2014, IFRRO member RROs worldwide collected EUR 785.4 million for all reprographic and similar reproduction
- EUR 453.8 million have been collected in Europe; EUR 233.1 million in the Americas and EUR 98.5 million in the Asia/Pacific region
- The split of revenues by sector shows that the highest amounts are collected for copying in education (university and other higher education institutions, schools, etc.). Other important sectors are private corporations, government administration and libraries.

IFRRO has several tools to help authors and publishers to set up national RROs:

**Resources on good governance and agreements between RROs**

IFRRO offers a handbook on how to establish a RRO, which includes examples of RRO Statutes, licensing agreements, and a template for a three year activity plan. IFRRO’s website also has a range of information and advice relating to governance and agreements for the administration of repertoire across borders, including principles for bilateral agreements and digital repertoire exchange.

**Mentor Relationship**

IFRRO can facilitate the establishment of a mentor relationship between an emergent and an existing RRO. A mentorship typically lasts for two-three years. It has proven to be an effective way of cooperation and help to the development of a national RRO, establishing a relationship of long-lasting assistance.
Regional Development Representatives
IFRRO has appointed Regional Development Representatives, who may be assigned to assist in hands-on work of a newly established RRO. These are people with direct RRO experience.

IFRRO’s Development Fund
IFRRO can offer financial assistance, primarily to IFRRO members, for defined activities such as awareness raising and staff training. Provided there is inter alia a credible three-year activity plan, IFRRO may also offer an interest free loan to match local investments as start-up capital for the RRO.

Rights Management Software
IFRRO offers free of charge software for managing works, rightholders, licensing and/or copyright levy administration, and distribution.

Want to set up a RRO – What are the first steps?

Establish a Preparatory Working Body
The first step is to set up a preparatory working body for discussions and decisions. This body normally functions and ascertains the contact with IFRRO until the RRO has been established.

Involve Rightholders
It is essential to build good relations with authors and publishers and their associations. Sufficient representation is a prerequisite for an effective RRO operation.

Raise Awareness among Rightholders
Groups of potential rightholders may be organised differently and some may be organised very poorly, if at all. Rightholders need to be made aware of their rights and the benefit of a RRO. IFRRO can help directly, or provide, for instance, speakers from countries with functioning RROs, be it publishers, authors or from the RRO itself. IPA, as an IFRRO member, is also in a position to help in this respect.

Make use of IFRRO’s expertise and International links
Contacting IFRRO before the formal establishment of the RRO provides valuable insight and makes the task more manageable, as IFRRO can put the local initiators in contact with other helpful resources.

For further advice on these or any other questions contact James Boyd at james.boyd@ifrro.org.

3. The Nordic approach: Extended collective licensing
Extended collective licensing (ECL) agreements developed out of reforms to the copyright laws in the Nordic countries in the 1960s. As the name suggests, ECLs provide an extended effect to the clauses in a collective agreement by applying them to rights owners who are not direct members of the organizations represented in the collecting organization. The system works on the basis that CMOs represent a substantial number of rightsholders. When CMOs enter into licence agreements on behalf of their members, under ECL provisions the terms of any agreement automatically apply to all rightsholders, whether members or not.

While ECL laws vary across the Nordic region, they share a common philosophy:
• The ECL presupposes a well-developed copyright infrastructure, where right-owners are effectively represented in collecting societies who can conclude contracts on their behalf
• If a collecting society can demonstrate that it represents a substantial number of rights holders, it can apply to represent all rights owners in that field
• ECL laws apply identically to all rights owners, whether members of the CMO or not
• Unrepresented rightsholders are entitled to individual remuneration

NB: In some countries, it is possible for rights owners to “opt out”, excluding their works from ECL

“Happier rights holders, happier users”: the view from Denmark”

“In Denmark, extended collective licensing is popular with publishers and users alike. It’s a fair system, based on listening to each other’s needs, and remuneration is similar to the way publishers usually handle rights. It can also be adapted easily.

Rightsholders have met the requirement of users to have digital agreements, because our experience is that teachers want to do as they’ve always done, i.e. to be able to copy and paste from different materials. We managed to get consensus around new digital licensing agreements that allow users to make digital copies from digital materials. An advantage to rightsholders is that digital registration can make it easier to check that institutions are not exceeding copy limitations. If information is gathered centrally it gives the CMO better reporting mechanisms. We believe that the agreements we have struck are satisfying for both rightsholders and users. These agreements will last for around four years before we renegotiate, and will be evaluated in due course to see how it has changed copying patterns.

The Nordic model compares favourably to statutory approaches to licensing. Legislation takes years, whereas agreements can be quickly adapted, creating a better climate among users and rights holders.”

Christine Bødtcher-Hansen, Director, Danish Publishers Association

Not just for the Nordics!

In the UK, regulations on extended collective licencing have recently been approved by Parliament. The government believe ECL schemes will enhance respect for copyright, help rights holders to get paid and allow for more streamlined licensing so that a greater number of works can be circulated and enjoyed legally. The regulations will ensure that ECLs are possible only where they have been demanded by the market and sanctioned by rights holders.

IPA’s view

Extended collective licensing is sophisticated and complex, but if offers many advantages. Rightsholders are closely involved in the licence development process. Such licensing questions become complex when the works in question are largely owned by foreign rightsholders, for example in many sectors of scholarly publishing. Adequate involvement of those foreign rightsholders is required in order to maintain the balance of this type of regime.
4. Delivering efficiency through voluntary collective licensing

Tracey Armstrong is the President and Chief Executive Officer of Copyright Clearance Center (CCC), the world’s largest collecting society. We asked her how CCC’s voluntary collective licensing model is adapting to meet new copyright challenges.

What have been the toughest challenges in adapting licensing for the digital era?

Tracey Armstrong: Without a doubt, the digitization of content has been the toughest challenge, as it has fundamentally changed almost every industry, including copyright. There are so many new ways for rightsholders – authors, creators and publishers – to create and deliver content and, so many ways for people to discover, acquire and use content. This has massively disrupted copyright, in ways that suggest more disruption ahead.

The opportunity for rightsholders now is to tap into a new global marketplace for licensed content, and the challenge is to address the unauthorized global distribution of unlicensed content. According to a recent Outsell study, executives share content more than 60 times per week, on average, and 81% of knowledge workers share information at least weekly with their immediate teams. Of those surveyed, 65% believe they’re free to share content they find on the web or in print. In the new digital marketplace, rightsholders must ensure that their content is easily accessible and stands out for its quality and that they are compensated for its reuse.

One challenge in particular is Open Access. The demands are great. Publishers want efficiency and flexibility, authors want a smooth and effortless process, and funders want proof of compliance with their Open Access policies.

CCC has had to rapidly evolve in order to stay ahead of the curve. Software now plays a key role. We’ve gone from using software to deliver licensing to delivering software that enhances licensing.

While we don’t know exactly what technology will bring next, we know for sure it will bring both opportunity and change. With a deep understanding of customer needs and the right licensing choices, rightsholders can maximize customer satisfaction and seamlessly license their content, no matter what innovation is around the corner.

Is it possible to remove some of the complexity from copyright and IP?

TA: We hear regularly from both publishers and licensees that copyright and IP is too complex. It’s true, copyright can be complicated. New business models in publishing have triggered new complexities for everyone. We are constantly working to determine where we can help to simplify licensing.

Technology can play a major role here. At CCC, we offer technology-driven solutions for using and distributing content, which meet the tracking and reporting needs of rightsholders while meeting their customers’ needs for accessibility and ease-of-use.
For example, RightsLink, our transactional service, allows publishers to offer customers an instant licensing option on their website based on each publisher’s unique business rules. That service enables publishers to put their content out there and feel confident that it’s protected.

I’m proud of the work we’ve done to simplify licensing to facilitate global collaboration. We operate in a world where everything is instant and where neither content nor companies are limited by geographical borders. I consider it an achievement that we’ve developed borderless licenses.

What do you see as the main advantages of a collective, voluntary approach to licensing?

TA: Voluntary collective licensing was the impetus behind the formation of CCC in 1978. Technological advances since then have made voluntary collective licensing even more relevant and important. Properly designed voluntary collective licensing systems remove inconvenience, reduce delay, and simplify compliance. They provide an appropriate balance between the interests of rightsholders and users, and they do so in a predictable, transparent and straightforward way.

In 2014, we still believe voluntary collective licensing is an effective solution to copyright challenges, helping make copyright work efficiently for everyone.

What advice would you give to countries trying to adapt their collecting systems for the digital age?

TA: Demand for access to copyrighted materials, particularly in digital forms, will only increase. By necessity, public policies will have to address digital content consumption. Any proposed solutions should include collective licensing given that it is an important, proven approach to facilitating the management, use and dissemination of copyrighted materials.

When it comes to the value of voluntary collective licensing, Francis Gurry, Director General of WIPO, put it best: “We need a global infrastructure that permits simple, global licensing, one that makes the task of licensing cultural works legally on the Internet as easy as it is to obtain such works there illegally.”

Rightsholders can take two steps that can have a powerful effect on the value of their rights and the ability of us all to foster a culture of respect for intellectual property rights.

First, rightsholders can make it easy for content users to respect IP rights by facilitating collective licensing. Many organizations can’t or won’t expend the resources to negotiate individual licensing agreements with multiple rightsholders. Collective licensing gives businesses and other organizations an efficient way to address many of their information usage needs with a single license. It also gives rightsholders a way to extend the value of their content in these markets.

Second, rightsholders can support copyright education. To assure responsible content usage, workers need copyright education, and they need it in a way that makes it simple for them to understand their responsibilities.

www.copyright.com
5. Adapting the UK system of collective licensing

Established in 1981, the Publishers Licensing Society (PLS) is the body which oversees collective licensing on behalf of book, journal and magazine publishers. It also offers an online rights management service, which allows publishers to monitor revenues and manage their licence terms in real time.

PLS is owned and operated by three trade associations: the Publishers Association, the Association of Learned and Professional Society Publishers and the Professional Publishers Association. Together with the Authors’ Licensing and Collecting Society, PLS runs the Copyright Licensing Agency, which issues users with licences to copy, scan and re-use content, i.e. the CLA is licensee facing whereas the PLS is publisher facing. The IPA spoke to PLS Chief Executive Sarah Faulder about the evolution of the UK’s approach to collective licensing.

What is the guiding rationale behind the UK model and how does it work in practice?

Sarah Faulder: The UK has a voluntary, as opposed to a statutory, licensing model. That gives it tremendous flexibility, allowing it to adapt with the times.

It works as follows. We receive licence fees from CLA and allocate them to publishers on the basis of usage data which the CLA supplies. This usage data indicates which titles have been used under each licence and is gathered from a representative sample of licensees through a combination of surveys, audits and record keeping returns.

PLS deducts 6% from the fees we receive to meet our administration costs. The funds are then available for distribution to publishers, net of the following deductions so that publishers have no further obligations to other right holders:
- CLA administration fees: 11%
- Fixed share of licence fee income payable for visual artists: 8%
- A share of the balance to ALCS, namely 50% of monies attributable to books, 15% of monies attributable to serials and 50% of non-title specific licence revenues.

The UK model is therefore different from the US, where all the money which CCC collects goes to the publishers, who are then responsible for remunerating authors, translators, designers, illustrators etc...

This year, we have been able to distribute a record £36.4 million to publishers, up 8.25% on last year.

What challenges has the digital era created for PLS?

SF: Our main challenge has been in understanding how the ways in which people access, use and share content are changing. Remember that the PLS started out with photocopying in mind, at a time when there was a clear distinction between primary and secondary usage. We’ve work closely with the CLA, organizing customer sessions and listening to users. This has allowed us to evolve the licensing offering.

In the digital world, the line between primary and secondary licensing blurs, for instance with online journal subscriptions. When publishers sell a subscription package today, they often include secondary
re-use rights, eg allowing the journal to be shared within a limited environment. A challenge for us has been in persuading publishers to make their digital rights available through collective licensing.

Open Access is a growing challenge. We can’t be seen to be charging licence fees for Open Access publications. But it can be difficult to identify what an OA publication is.

**Beyond digital, what are the other issues you (and publishers) face currently?**

SF: There are challenges coming from government in terms of copyright reform, broadening copyright exceptions and new exclusions for text and data mining.

Until now, a CLA licence has always let people copy up to 5% of a publication. Now the law has changed, meaning schools can photocopy 5% of a book **each year**. But a CLA licence still only offers 5% in total. Publishers are going to come under pressure to increase that 5% figure to around 10%, which would bring the UK more in line with other countries.

With publishers’ revenue streams under pressure, it’s a challenge to persuade them to give away more, to meet the demands of the market.

**What new services and initiatives are under way currently?**

We have been developing our own clearing house, [PLSclear](http://www.pls.org.uk), initially as a solution for those needing to get permission to mine publishers’ works on a large scale, and now as a more generic tool for all publishers seeking and granting permissions. By streamlining the process through a web-based tool, we will be able to generate more requests and more revenue for publishers, and bring down the costs of managing permissions.

[Access to Research](http://www.pls.org.uk) provides free, walk-in access to a wide range of academic articles and research which can be accessed from designated library terminals in public libraries. It is the result of a collaboration between publishers, represented by the PA and the ALPSP, and librarians, represented by the Society of Chief Librarians and was launched in response to a UK government recommendation that major journal publishers should grant public libraries a licence to provide free access to their academic articles.

Following a successful trial in 10 districts in 2013, Access to Research has now been rolled out across the UK as part of a two year pilot.

**What advice would you give to countries seeking to develop their licensing model?**

Clearly, many collecting models are set up very differently from the UK. It’s fundamentally important that models can adapt, and that they are versatile and responsive.

[www.pls.org.uk](http://www.pls.org.uk)
6. Copyright Hub: smart licensing

Copyright Hub is an ambitious effort to update the mechanisms of copyright licensing to fit the digital age, making it easy for creators to exercise their right to decide what happens to their work, and easy for those who want to use a work.

The Hub emerged from the UK government’s Hargreaves Review into copyright, which proposed in 2011 that “the UK should establish a cross sectoral Digital Copyright Exchange... to make it easier for rights owners, small and large, to sell licences in their work and for others to buy them...and to make market transactions faster, more automated and cheaper.”

A steering group was established to assess how to design, fund and govern the exchange. It concluded that it should function as a hub, led by the creative industries but with government support.

A central rationale for the Copyright Hub is that given the explosion in the amount of content available online, the only viable way to deal with copyright licensing is to make it possible to automate the process completely. It envisions a system where one can right-click on a piece of content and obtain rights information or a licence to use it, thus allowing a huge volume of low value licences to be dealt with at a cost which makes the process worthwhile.

The main challenges in achieving Copyright Hub’s vision are the complexities of each sector and the different ways in which critical mass will need to be achieved. Each piece of content, whether created by a “professional” or casually by a social network user, will need to be able to have an identifier which allows connections to its creator or rights-holder. The Copyright Hub is working in a way which interoperates with existing identifiers and makes it easy to obtain new ones if necessary. Protocols will also be needed so that computers operating on each side of the rights equation can understand and deal with each other. Copyright Hub is therefore working with the Linked Content Coalition, a not-for-profit global consortium of standards bodies and registries, to develop a standardized, digital rights “language”.

As of now, Copyright Hub, with its partner the Digital Catapult, has just completed the Alpha version of its core technology and is testing the system with real and demonstrable functionality including “right-click licensing”. It is working on a rapidly growing range of use cases, numbering 32 at the time of writing. These span music, film, photography, newspapers, text, academia and other sectors. 2015 will see the launch of live use cases, starting with photography, and an open source release of software. The Hub’s intention is to move to a self-supporting funding model in the next twelve months. A Technical Working Group is overseeing the Hub’s technical activity while its Executive Board is evaluating a future governance model.

The intention is to develop a copyright licensing solution which can be adopted by any country, any creator, any user and any industry. As Copyright Hub’s CEO Dominic Young puts it, “the issues are universal”.

www.copyrighthub.co.uk
7. Australia’s digital subscription model for textbook content

Many collecting societies are now breaking out of the pure rights licensing role and are exporting services that combine digital content delivery with licensing. LearningField, which was presented to the international publishing community at the 2014 Frankfurt Book Fair, is an example of such an initiative: a new subscription textbook model that has been developed by Copyright Agency, Australia’s rights management organisation.

Background to the project

In early 2013, Copyright Agency and a group of leading publishers got together to explore better ways to satisfy the needs of teachers, students and schools around the delivery of digital textbooks. While Australian schools had been transitioning to the digital environment for many years, it had come with a certain amount of trial and error and its own challenges, such as students having to remember multiple passwords, technical incompatibilities, poor IT support and things just not working.

Copyright Agency’s Business Development team subsequently developed LearningField, a platform and a subscription model which responded to a number of goals:

- To offer multiple chapters of textbook content, linked to the Australian and state curriculums
- To improve the digital textbook user experience for schools and students via a single login, with anytime/anywhere access for multiple devices
- To boost publishers’ revenues by replacing a one-off book-sale/book-hire model with an annually renewable revenue stream
- To give Australian publishers increased control of an industry platform for digital content distribution

Trials of LearningField took place over several months and, by September, four publishers (Cambridge University Press, Jacaranda, Oxford University Press and Pearson), as well as urban and regional schools across New South Wales, Tasmania and Victoria signed up for the new school year in February 2014. The four original publishers have since been joined by Cengage Learning, Macmillan Education, Insight Publications, Helleman Books, PCS Publications and James Goold House Publications.

How the model works

For a single yearly subscription fee of A$260 (ca. €180), Year 7-10 students can use multiple digital textbooks per subject in a searchable format. Teachers and students can also collaborate using LearningField’s note sharing and discussion tools.

Teachers are provided with support and training before LearningField goes live. Once operational, schools receive
dedicated customer service and rapid response IT support.

Plans to enhance LearningField’s capabilities for the 2015 school year are well advanced. Teachers will be able to track student engagement by accessing data such as whether a student has downloaded a chapter, how long they have spent reading a particular chapter, and how students are using the collaborative note-taking and group discussion features. Publishers will receive analytics on content usage as well.

What do the schools say?

Penleigh and Essendon Grammar School in Melbourne adopted LearningField in February 2014. The school’s Vice Principal Nina Bilewicz says “the magic of LearningField is that students get a complement of texts for every single subject.” History and English Teacher Tom Ruttkay says “the internet’s a big challenge, because [students are] always looking for the easy way out, using things like cut and paste, Wikipedia and Yahoo Answers.” Ruttkay says with LearningField he can divide his class into five groups, give each of them a textbook on a particular topic, have a nominated spokesperson from that group give feedback, then look for common threads, and have a class discussion. “That provides a springboard for us to move forward”.

St Patrick’s College in Ballarat has been using LearningField for Year 7-10 students since early 2014. Deputy Headmaster of Teaching and Learning, Stephen Hill, said the school spent some time researching their transition to the online environment. “Perhaps the biggest strength of LearningField is that it has been able to draw resources from a variety of publishers”, Mr Hill says. He also says LearningField is practical – it cuts down on the number of books students have to carry and reduces the incidence of lost books and having

Speaking to us for this report, Copyright Agency’s CEO Murray St Leger described LearningField as ‘enormously exciting - a world-first digital subscription model in education for core textbook content, anytime, anywhere and on any device. This is another way of connecting users of copyright material with creators of content; another way of facilitating choice and usage of content.’

Through their experiences developing LearningField, Copyright Agency offers the following advice for countries seeking to adapt their collecting models to suit the digital age.

- **Research the market** to understand evolving customer and publisher needs
- **Work with publishers** to develop the best digital channels to market
- Publishers must be given influence in how any model is developed – publisher knowledge is vital and “choice is the thing that makes it work”

LearningField was recently cited as an example of global industry innovation in PwC’s 13th annual Australian Entertainment & Media Outlook, for delivering unbundled book content through an eReader app which can be tailored to the differing learning needs of students within the same class. [www.learningfield.com.au](http://www.learningfield.com.au)
8. The future of collective licensing: a Geneva perspective:

Publishers are entrepreneurs. They don’t naturally join with competitors and partner with authors organisations. The toolset for successful collecting societies is also not that of the competitive entrepreneur: slow consensus and relationship building with governments and, at best, reluctant users. This is why the natural instinct of publishers is to ask collecting societies to focus on piracy and to authorise collecting societies to manage a bare minimum of rights.

Looking forward, however publishers are well advised to embrace the potential of collective licensing. There are many reasons to grasp the opportunity. Publishing incomes streams are diversifying. More and more works are generating income from a multitude of income streams. Every little helps, and many a publisher in the major publishing markets would not have survived past slumps without the money that they received from collective licences. After all: it goes straight to their bottom line.

Publishers cannot change the habits of the new generation of digital users. The “cut and paste” culture is here to stay. We need to get to a place where rightsholders do not worry about how their works are being used, but rejoice that their content is being used, safe in the knowledge that they will receive remuneration for those uses in an effective and fair way.

Our shared objective must be a seamless digital environment, where increasingly granular individual licensing blends with collective licensing where licensing remains cumbersome or impossible.

The following recommendations for individual publishers come from personal experience as former Chief Executive of the UK Publishers Licensing society and as publisher representative on the IFRRO board:

1. Engage. Collective licensing is not just a potential revenue stream. There is much to be learned through participation in collective licensing organisations about user behaviour, digital developments and new partnerships that will benefit publishers.

2. Ensure that the collecting society is run as commercially as possible: help educate the author board members who may have less business experience. Developing a culture that focuses on efficiency and entrepreneurialism will ensure the success of the organisation.

3. A commercial company will have its own ideas about new products and services, customer demands and at times, the role of collective licensing itself. Learn to bear and manage it, as it is in itself not a bad thing. It is inherent to the role of a collecting society. Let it pull at the reins, but make sure you keep an eye on its direction. The best RROs are seen as bridges between rightsholders and users, perhaps eyed with suspicion by all sides in equal measure.

4. Most importantly: learn to manage the complexity of rights in and outside of the collecting society. Clarity and transparency in agreements with authors and other creators, persistent and unambiguous digital records, honesty and transparency in sharing information and revenue in accordance with agreements are all critical.

Jens Bammel, Secretary General, International Publishers Association