
3. Intellectual Property Rights and Book Publishing

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1. The Importance of the Publishing Industry

Existing or emerging copyright industries are becoming extremely important as contributors to both national economies and the international economy. In fact, in some Asian economies copyright industries have become the key drivers of development and growth. The publishing industry is one of the core copyright industries, which also include the record, film and games industries.

These core copyright industries are wholly engaged in creating, producing and disseminating copyright works. However, a key characteristic of the copyright industries is the number of other industry sectors that also experience growth when the copyright industries do.

These sectors of the economy either manufacture materials used in the production or dissemination of copyright products, such as paper and TV sets, or they have a partial copyright component and include industries such as education, clothing manufacturers and the museum sector.

Copyright industries are so attractive as part of an economy, because so many other sectors of the economy are enhanced when there are strong, vibrant copyright industries.

For example, there are statistics available about the impact of copyright industries on the economy of Singapore. In monetary terms the core local copyright industries contribute 1.56% of Singapore's GDP, or a turnover of S\$10 billion, and employ 38 000 people¹.

If the interdependent or partial copyright sectors are also considered, then the contribution of the copyright industries to national economies is even more marked. Referring to Singapore again, the total contribution to GDP of the copyright industry and the related industry sectors is 5.7% or S\$30.5 billion of turnover employing 118,600 workers or 5.8% of the workforce².

However there are other reasons, as well as the economic benefit for economies to develop a publishing industry. Publishing can give a voice to traditional cultural expressions and activities, ensuring that vibrant and individual national cultural expression continues to be created, and also reaches new audiences both at home and abroad.

An example of how such projects can enrich a culture and find new audiences is a joint Australian/Vietnamese initiative to translate well known Australian short stories into Vietnamese.

I will quote from some of the supporting material for the project:

*It is through our literature that many Vietnamese know about Australia best. Our stories reveal our culture through their reflection and articulation of the ideas, voices and lives of people in Australia, of the places we live in, the things we use and talk about.*³

Another reason to develop a publishing industry is that it contributes to the education system and skills development within communities. This is true both for traditional hard copy publishing activities but is also increasingly relevant to the growth and development of digital technologies which overcome traditional reasons for poor access to copyright works.

A further benefit is that groups of authors, illustrators and publishers form associations or professional organisations. Such organisations are important for the sharing of knowledge, skills development and for fostering cultural interchanges between creators and the wider communities. They can also influence government and society to generate improvements to the copyright system for the benefit of creators, copyright users and society generally.

Professional organisations can also provide the first steps towards developing systems for collective rights management and establishing a copyright management organisation, an important initiative for creators and rights owners.

It is for these reasons that creators, copyright owners and governments need to understand the key aspects of the copyright system, and how it can be used to promote and develop a publishing industry.

2. The Copyright Agency Limited (CAL)

CAL is a not-for-profit member-owned company that manages the copying and communication rights in the creative works of our members. CAL is a copyright management organisation or reprographic rights organisation (RRO).

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Our members include authors, artists, journalists and publishers. As creators they have rights in their works. They retain moral rights, which allow them to insist on appropriate attribution of their works and take action for derogatory treatment of them, and they have economic rights which entitle them to be paid when someone else copies their work.

CAL provides access to works by licensing copying and online communication, and we distribute to the creators from these licences.

We see it as our role to facilitate access to our members' works, and to ensure that our members are properly paid for the access that our clients enjoy.

3. The International Federation of Reproduction Rights Organisations

The International Federation of Reproduction Rights Organisations (IFRRO) began in 1980 as a working group of international scientific, technical and medical publishers. It now has 45 full members and 59 Associate Members. These members are from Africa, the Americas, Asia, Pacific, and Europe.

IFRRO links together the various national copyright management organisations. IFRRO has three primary purposes:

- to foster the creation of RROs worldwide;
- to facilitate formal and informal agreements and relationships between and on behalf of its members; and
- to increase public and institutional awareness of copyright and the role of collective rights management and RROs in conveying rights and royalties between copyright owners and users.

IFRRO has established a number of committees, including its Asia Pacific Committee, of which CAL's CEO is chair and I am a member. The objectives of the Asia Pacific Committee are:

- developing an effective copyright legislative framework at national, regional and international levels;
- setting-up and developing RROs in the region; and
- combating all forms of illegal copying.

We have worked closely with rightsholder groups and governments in several Asian countries to build awareness of copyright, develop copyright legislation, train government officials and judges in aspects of copyright, and establish RROs to protect the interests of authors and publishers.

4. Challenges for the Publishing Industry

The digital environment poses many challenges for copyright owners by disrupting the equilibrium between various interest groups in terms of accessing and reproducing copyright material. This disruption occurs in a number of ways:

- ease of copying and reproduction is greatly enhanced by digital technology;
- the copies made more easily are the same quality as the original; and
- the potential scale and organisation of the re-use of material is facilitated by the internet and the networked environment.

This ease of reproduction and dissemination threatens the traditional business model in the publishing industry. Previously, when photocopying was the primary means of copying works by individuals, the number of copies able to be made from published works was limited. Digital technology means people can now distribute copyright content easily and cheaply when they have no right to do so. Further, that content, because of the quality of the reproduction, competes directly with legitimate content. When we review some copyright education campaigns later, we will see that many of them have an anti-piracy focus.

The challenge for policy makers is to balance the desire of copyright owners to control and protect their copyright works with the demands of consumers for access to those works.

However, it is now evident that copyright will be as important to developing solutions appropriate to the new digital environment, as it has been to the print publishing industry.

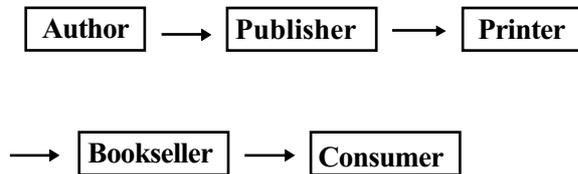
5. The Publishing Industry

I propose now to examine a specific copyright industry in the publishing industry.

The printing and publishing industries are among the biggest cultural sectors in an economy, providing a whole range of products and services in analogue and digital formats. To illustrate:

- there are more than 110,000 magazine and periodical titles including consumer business and professional titles world wide (2003)⁴,
- there are over 6,600 daily newspapers with a total circulation of 392 million worldwide⁵, and
- 798,000 different book titles are published each year, around the world⁶.

The easiest way to identify the various roles and responsibilities of participants in the publishing industry is to look at the industry's value chain. This approach highlights that there are a number of different participants in the industry, each with their own specific role to play.



Creators, or authors, within the print and publishing industry include writers of fiction and non fiction, translators, journalists, scientists and other professional writers. Photographers, illustrators, graphic designers and other visual artists contribute to the visual image of publications. Their works are brought to the market by **publishers** - book, journal, magazine, periodical and newspaper publishers.

The **publisher** undertakes the editing, design, marketing and distribution of their works and contracts with **printers** to produce the work. Copies of the works are then made available to the public, usually through **booksellers**.

The focus of our attention today is on the first two of these participants - the author and publisher and their relationship.

The easiest way to think about the industry is as a chain of buyers and sellers. Each party has something to sell, and something that they need in return. An author will enter into a publishing contract with a publisher and will give the publishing company the right to bring the work to market. In return, the writer gets a share of the sale price as a royalty and thus benefits from the economic success of the work. Copyright ownership permits the author to negotiate with publishers for the publication of their works and to obtain payment.

Publishers then rely on the copyright framework to prevent the competing publication of their works by others. Copyright enables the publisher to sell copies of works to the end consumers - educational institutions, government, business and individual users.

We can see that relationships in the print and publishing industries are mainly managed by direct contract in respect to the control and management of copyright.

Consequently, the entire publishing industry depends on copyright to manage relationships between authors and publishers, and between publishers, booksellers and even the end users of copyright material. Without a functioning copyright system, the development of a vibrant national publishing industry would be severely hampered.

6. The Rights of the Different Participants in the Publishing Industry

Copyright is often described as a bundle of rights. That is, the copyright owner is given the right to exploit certain uses of their work. These vary from country to country and are often described differently in different countries. However, copyright owners are generally granted rights to control the reproduction, publication, performance in public, broadcasting and adaptation (including translation and dramatisation) of the works they create.

Recently the right to communicate works to the public was added to the bundle of rights contained in copyright to take into account the development of digital technologies and uses of works - especially the development of the internet and e-mail. This right is contained in the WIPO Copyright Treaty and has been adopted by many countries, including Australia in its Digital Agenda Act of 2000.

Our analysis of the publishing industry today will identify which of these copyright rights are important to the industry participants, and what are the respective rights and obligations of the various parties in the publishing industry value chain.

6.1 Authors and Illustrators

I have grouped authors and illustrators together as they are each the creator or author of their works. As such, they have similar rights over the individual works they create regardless of whether the work is text or illustration. Creators, such as authors and illustrators have two sorts of copyright rights - economic rights and moral rights.

Economic Rights

The first owner of copyright is generally the author. The owner of a copyright work has the right to control the copyright uses of the work. This means that their consent is necessary to do any of the *acts comprised in the copyright*.

Because of this first ownership rule, publishers need to enter into an agreement with the author to obtain a share in the copyright, in order to publish the book or other copyright work.

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However there are exceptions to this rule. The most important of these is the employment rule. This means that generally the copyright in a work produced by an employee automatically belongs to the employer. For example, in the case of journalists employed by a newspaper publisher, their employer will generally own the copyright.

The most important copyright rights in the publishing industry are:

- the publication right - to be the first person in a territory to publish a work;
- the reproduction right ñ the right to supply copies of a work to the public; and
- the communication right ñ which is essential in electronic publishing.

As well as economic rights, copyright provides protection for what are known as moral rights or personal rights for the author or creator.

Moral Rights

Moral rights protect the honour and reputation of creators. The rationale for moral rights is that creative material is an emanation or extension of the creator's personality and what is done with their material may affect their standing and reputation.

Moral rights provide an ongoing connection between the individual creator and his/her audience. They ensure best cultural and educational practice by requiring correct attribution and faithful reproduction of works.

There are three basic types of moral rights:

- an author's right to be attributed as the creator of a work (including the right not to be falsely attributed as the author of a work);
- an author's right to object to derogatory treatment of his or her work which prejudicially affects his or her honour or reputation (the right of integrity of authorship of a work); and
- the right of disclosure-the right to determine if and when material is made public.

The Berne Convention only mentions the rights of attribution and integrity of the author of a work (the first two points above) and not the right of disclosure.

Moral rights generally endure for the same period as copyright in a work ñ for Australia, much of Europe and the US that is 70 years after the death of the author. Moral rights can be waived by written agreement by the author. However, unlike economic rights they are not assignable or transferable. Once

the author has died, his or her heirs have the ability to exercise moral rights over the author's works.

In Australia moral rights over works automatically apply. However, in some countries, such as the UK and New Zealand, authors must assert their moral rights if they want to benefit from them.

6.2 Publishers

There are two ways that publishers can obtain rights in a work or publication. The first of these is if they are the first owner of the copyright by virtue of the employment rule ñ that is the creator of the work is an employee and therefore the copyright resides with the publisher. It is important to note that even in this circumstance the moral rights in the work remain with the creator or author.

The second way in which the publisher can obtain rights in a work is by entering into a contract with the author, in which the author either transfers all or part of the copyright to the publisher, or agrees that the publisher is able to exercise some copyright rights in respect of the work.

There are two alternate ways of achieving this ñ by either a licence or an assignment of all or part of the copyright. The question of whether a licence or assignment is better is not an easy one and often depends on the particular circumstances of the situation.

Assignment

An assignment is when the author effectively hands over or transfers the copyright to the publisher who then becomes the new copyright owner. Assignments of copyright must be in writing. A typical form of assignment might be:

The Author assigns to the Publisher the copyright of the Work throughout the world for the term of copyright (or for X period) and shall, as appropriate, procure the assignment to the Publisher of the copyright in all material in the Work which is not the property of the Author with the intent that that the entire copyright in the Work shall vest in and become the property of the Publisher.

Once an assignment has been entered into for all intents and purposes the publisher is the copyright owner of the work, and the author cannot without their consent, recite, read or perform it in public or photocopy it. They can of course, keep their original manuscript.

Assignments of future works can be made. It is also possible to agree on a partial assignment rather than a complete assignment - in a partial assignment the

assignment of copyright is restricted in certain ways, for example, it will only apply to some territories or only to some of the rights in the work.

Licence

A licence is the grant of certain rights in the copyright work to a third party. The licence permits the licensee to do certain acts comprised in the copyright with the work. Licences can be exclusive or non-exclusive. Exclusive licenses are generally required to be in writing, although non-exclusive licences need not be. For certainty, it is preferable that they are.

An exclusive licence looks and feels much the same as an assignment because the writer cannot offer the use of the work to anyone else during the currency of the agreement. The exclusive licensee is the only person who can use the work in the way or ways covered by the licence. For example, in book publishing contracts, a writer may grant a publisher an exclusive licence to print and publish their work. This means that the writer may not licence another publisher to publish the same work during the period of the licence. An exclusive licensee has similar rights to the copyright owner, and may take legal action for infringement by third parties.

An example of an exclusive licence might be:

During the legal term of copyright (or some other agreed period) the Author grants to the Publisher the sole and exclusive licence throughout the world to produce, publish and sell and to license production, publication and sale of the Work and all parts, adaptations and abridgements during the term of this Agreement.â

Licences can also be non-exclusive. This means that although one person may be able to do certain copyright acts, another person can be granted rights to undertake the same activities. Generally, a publisher will not be satisfied with a non-exclusive licence as it does not provide the certainty they require. However, non-exclusive licences can be appropriate in some circumstances, such as the use of an illustration in a publication, or the publication of an article in a journal.

Because of its certainty and flexibility publishers generally prefer an assignment. The reasons they give include:

- greater flexibility when dealing with new opportunities, whether for hard copy or electronic publication as the assignee (the person granted the assignment) knows that he is in control of all the rights and can use the work in whichever context is required;

- alterations such as digitisation of the text and successive editions can be made because it is not generally necessary to obtain the consent of the author;
- enforcement of rights against third parties are easier because rights do not have to be traced back to the original copyright owner;
- assignments can be transferred at will to a third party (eg another publisher); and
- assignments create legal certainty as to ownership.

Authors generally prefer an exclusive licence because they retain an element of control over the work.

In fact, many of the reasons cited above for why publishers prefer an assignment, apply equally to an exclusive licence. For example, an assignment cannot override an author's moral right of integrity, so that in order to be able to make alterations without the author's consent a waiver of moral rights would also be required. Similarly an exclusive licensee has the right to take legal action in their own name.

A well-drafted agreement in which a work is licensed on an exclusive basis can meet most of the needs of publishers. Indeed publishers are increasingly adopting licensing agreements in place of assignments and this practice should be encouraged.

6.3 Translators

Copyright owners have the exclusive right to control the making of translations of their works. This means that permission to make and publish a translation of a work from the copyright owner is required in order to publish a translation of another's work.

However, as the translation would be considered to involve sufficient skill and labour by the translator, it would be regarded as an original work. Therefore, copyright would exist in the translation and it would be held by the translator. As a result it is possible that copyright in the translation and copyright in the underlying work will be owned by different people.

The translator will therefore have all the rights of a copyright owner in the translated version of the work. However, when negotiating permission to translate a work there are a number of things a translator should consider - the most important of these is what they want to do with the translation. This is because in order to make subsequent uses of the translated version of the original work, such as publication or broadcast, the permission from the owner of copyright in the underlying work needs to be obtained for those uses as well as for the translation.

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Another matter to consider when obtaining permission to translate a work is ensuring that the person granting the permission to translate a work warrants that they are authorised to grant the permission to translate the work. Also, they should indemnify the translator for any loss or damage suffered as a result of a breach of that warranty.

7. The Author/Publisher Relationship

The relationship between the author and publisher is an important one. Very often an author will publish several works over several years with the same publisher. For this reason it is important that the respective rights and obligations of each party be discussed and clearly set out in the publishing contract.

The publishing contract is the main vehicle for expressing the relationship between the author and the publisher. Although they may use different words or formats most publishing contracts include the same or similar sets of obligations.

These include:

- a description of the material in which rights are being granted, and agreement as to who is the copyright owner of that material. The contract should also provide that a copyright notice will appear on reproductions of the work;
- the terms of the licence or assignment of rights to the publisher ñ for what period, in which parts of the world, and in what languages. For example, an author may decide to enter into one contract with one publisher for publication in their language and in their country but may also want to enter into a contract with a foreign publisher for an edition of the work in a different language. Similarly if an author is not confident that the publisher can undertake the electronic publication of the work the author might decide to retain those rights and only grant hard copy rights to the publisher;
- set out how the author will get paid ñ either a flat fee or a royalty on sales and whether this is by an advance or not. There are a number of different formulas for calculating royalties; but generally the royalty is specified to be 10% of the recommended retail price;
- a warranty from the author that the work is original, that they are the copyright owner, that the work does not infringe any other copyright and that it is not libellous;
- provide an obligation from the publisher to publish and market the work including the approximate price the work will retail for, the minimum print run and the date of publication;

- set out whose responsibility obtaining and paying for the cost of illustrations is;
- provide when and how a reversion of rights to the author will take place. A reversion of rights clause provides for the return of the rights to the author in the event of certain conditions being met, such as after the expiry of a certain period or when the work goes out of print. Generally, a notice period of around six months from the author is required to exercise a reversion. Once a reversion has been exercised the author may publish the work either himself, or with a new publisher;
- set out the procedure for making alterations, changes or updates to the work;
- termination provisions, if for example a certain period, usually twelve months expires and the publisher has not yet published the book; and
- the management of subsidiary rights, which are the rights to other copyright uses of the work. Subsidiary rights can include anthologies, condensation, licences to third parties, serial and translation rights, broadcast and television rights. There is a question about whether the payments from collecting societies should be a matter for the contract between the author and the publisher. In many countries these are administered independently of the contractual relationship but in others, such as in Australia the respective shares of the fees are often specified in the contract.

8. Managing Secondary Rights

As mentioned above secondary rights are additional uses of the work besides its publication in book form and include translation, film and television adaptation and serial rights.

It is important to specify firstly if any of those uses of the work are included in the rights the author grants the publisher in the publishing contract. The key question here for the author is whether they believe the publisher has the capacity to exploit the rights and negotiate a good deal. For example, if a publisher has no experience in selling translation rights to foreign publishers but the author has contacts in that area then translation rights should be excluded from the publishing contract.

There is no clear guidance on the way the proceeds of licences for secondary uses should be divided between the author and the publisher as so much depends on the nature of the project.

One issue that is often discussed is whether electronic rights should be considered subsidiary rights or not, or licensed as part of a print publishing contract.

9. The Use of Copyright Works by Third Parties

The control that copyright owners are given over the use of their works is limited in a number of ways. As a participant in the publishing industry it is important to know when you need to obtain permission to use other's works and also when others may use your works without permission.

9.1 Limitations

Limitations on copyright ensure that the advancement of knowledge and the creation of new works are not hindered by copyright owners using copyright law to limit legitimate access to the works they have created. This is because ensuring access to copyright works also enhances the general good of society and encourages the creation of new works.

Some common examples of these limitations include:

Term

Copyright protection is limited in time. The time period varies, but generally a copyright owner has control over their works for the life of the creator plus an additional 50 or 70 years.

Once the copyright term expires, the copyright material becomes part of the public domain. Once this has occurred the permission of the author is no longer required to republish or translate a work.

Certain Rights

Secondly, copyright owners are only entitled to control some uses of their works. For example, copyright owners in books and journals do not generally control the rental or lending of their works.⁷

Expression of Ideas

Further and most importantly, copyright law only protects the expression of ideas not the underlying ideas themselves. This is to encourage the reuse, criticism or discussion of the ideas contained in copyright works.

9.2 Exceptions

It is also recognised that in certain circumstances, governments will need to legislate for exceptions to the exclusive rights of copyright owners. Guidelines for the scope of these permitted exceptions are set out in the Berne Convention.

Copyright exceptions are a means of balancing protection of copyright works and access to them. They allow copyright material to be used for certain purposes without the permission of the copyright owner if the use of that material meets certain public policy objectives.

Many jurisdictions provide for exceptions to allow limited copying of works for fair dealing purposes, such as for private research and study, criticism and review, reporting the news, court proceedings and the provision of professional legal advice.

In addition there may be library copying provisions which permit limited copying such as for preservation purposes, or to permit libraries to provide other libraries or their patrons with copies of works which are not otherwise available.

Other exceptions include some forms of collective management such as statutory licences and private copying levies. Again, these exceptions must comply with the three step test in the Berne Convention. In these circumstances the exceptions are permitted provided the copyright owner receives payment for the use of their works.

Exceptions to copyright owners rights apply in different circumstances depending on the national context in the country concerned. All limitations and exceptions contained in national laws are required to be consistent with the standards of protection set down in the Berne Convention.

The test for deciding in which circumstances exceptions to the reproduction right can be introduced into legislation is contained in Article 9(2) of the Berne Convention. Article 9(2) reads:

It shall be a matter for legislation in the countries of the union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

This test, which has become known as the *three step test*, was extended to apply to all uses of copyright material (rather than only to the reproduction right) by the TRIPS Agreement.⁸ Its application to works in digital form was confirmed by the WIPO Copyright Treaty.⁹

The *three step test* provides that exceptions to copyright can only be justified if they:

- apply only in certain special cases ñ this implies that the exceptions to copyright must be clearly defined, narrow in scope and reach;

- not conflict with the normal exploitation of the work - the uses permitted by the exceptions to copyright must not be of considerable or practical importance or economically compete with the author's interests; and
- not unreasonably prejudice the legitimate interests of the author ñ the legitimate interests of the author include both moral and economic rights. It may be that if the exception to copyright provides for a payment to the copyright owner then permitting a use in legislation will not unreasonably prejudice the interests of the copyright owner.

9.3 Use of a Substantial Part of a Work

In order for copyright infringement to occur the proportion of the work used must be 'substantial'. Whether a proportion of the work is substantial or not depends on a number of factors, such as the significance of the part used, and the circumstances of the use. This means it is not possible to provide a general guideline as to the size or amount that would be appropriate to be used without requiring the permission of the copyright owner in all circumstances.

10. Collective Management of Copyright

The rights and uses that copyright owners are able to administer individually will usually be in the specific circumstances in which they are contracting with a limited number of parties. An example of such a situation is when an author and a publisher are negotiating about the publication of a book.

However, when that book has been sold and multiple photocopies of that book are made by a number of different users, individual administration of each of those copying instances is impractical and difficult. It is in this context that collective management of copyrights has developed as a solution for providing efficient methods for exercising copyright rights and to enable copyright owners to receive payment for the use of their works.

Collective management means transaction costs are reduced and the public interest is served by ensuring that educational and scientific material is readily available for educational and research purposes. It also serves the public policy interest of ensuring that copyright owners receive remuneration for their creative efforts, which operates as an incentive to them to produce more works.

Authors and publishers in many countries have jointly set up collective management organisations, known as Reproduction Rights Organisations or RROs, to manage the reproduction rights in their works. RROs facilitate copying access to a comprehensive repertoire of works by users ñ often

in an educational context ñ who require access to copyright works on a large-scale and quite frequently on an instantaneous basis. Collective administration makes economic and practical sense in this context, because it is not feasible for the rights to be handled in any other way.

There are a number of different collective licensing systems throughout the world. These fall into two main groups - voluntary and non-voluntary systems.

10.1 Voluntary Licensing

In a voluntary licensing system, there is no specific legislation either authorising or permitting the involvement of a copyright management organisation or RRO in rights management. In these systems, the RRO issues licences on behalf of the copyright owners it represents, collects remuneration and distributes it to the rights holders.

There are two sorts of voluntary licensing systems, those based on contract, and those with statutory provisions that regulate the impact of those voluntary contracts in some way.

In a voluntary system, a RRO can only administer the rights of those copyright owners who have authorised the copyright management organisation to represent them. It is however, in practice, impossible for any organisation to represent all national and international copyright owners.

Consequently, many countries opt for a voluntary system, with a legislative back up encouraging users and copyright owners to enter into voluntary agreements. Examples of these types of provisions include a presumption that if you have entered into a licence agreement with an RRO, you are entitled to assume that all works of the same type are included in the licence unless specifically excluded.

10.2 Non voluntary Systems

In non-voluntary licensing systems, permission to copy is granted by law in specified circumstances. This means that no separate authorisation from the copyright owners is needed, although they have a right to remuneration. The term compulsory licence or statutory licence is often used to describe these schemes. Non-voluntary systems are of two types - a statute based licence scheme or a levy system.

A feature of many non-voluntary statutory based licence systems is government appointment or approval of a specific copyright management organisation to manage the licence on behalf of all copyright owners.

The equipment levy approach starts from the position that although payment should be made for all uses of copyright material, the making of single copies for private and personal use cannot be tracked. This system makes payments to copyright owners by imposing a levy on copying equipment.

Collecting societies or copyright management organisations are established by copyright owners to manage the use of their works in circumstances such as those mentioned above, when individual administration by an author or their publisher is not practical or economically feasible.

The circumstances where collective administration is preferable to individual.

10.3 Collective Management of Copyright in Asia

Many Asian countries are implementing legislation to allow and regulate collective management of copyright. While enforcement of copyright through infringement actions may be necessary to create precedents and to promote a culture of copyright compliance, collective management is desirable for both owners and users of copyright material due to its efficiency.

Each of the models for collective management of copyright mentioned above is provided for in the national copyright laws of different Asian countries.

For example, an Asian country which has taken a voluntary licensing approach is the Philippines, where the government through the Book Development Board is actively working with authors and publishers to develop the PRRO.

Thailand is in the process of considering regulation of voluntary collective licensing schemes to assist in reducing what have historically been high rates of piracy – particularly in relation to educational texts.

On 1 March 2005 regulations to facilitate the collective management of copyright rights came into force in China. This will permit copyright owners to allow collective management organisations to license the use of copyright works. It is represented as a method of increasing copyright compliance and decreasing piracy. The model adopted by China has considered foreign collective management organisations' schemes from developed countries – particularly referring to the experience of IFRRO's members and is an example of a voluntary system with legislative backup.

The Hong Kong RRO, HKRRLS, operates voluntary collective licences with legislative backup. HKRRLS was established in 1995 and is now in a

position to begin distributing money to their members.

Other voluntary systems with legislative backup have been adopted into India, Japan and Malaysia. These systems provide that organisations which undertake collective licensing can apply to administrative arms of government for registration of copyright licensing schemes if they can demonstrate that they represent a significant portion of the rights owners for certain classes of works. Once they are registered, they are in a position to seek to enforce the terms of these collective licences.

Non voluntary licensing has been adopted in Singapore, where there is a statutory licence for educational institutions managed by CLASS.

In Australia both the statutory licence schemes for copying in the education and government sectors are administered by CAL through government appointment. These are non-voluntary licences and the licence fees charged by CAL are negotiated with the copyright users. If there is failure to agree, these fees are set by a government tribunal, the Copyright Tribunal. However, in non-government and non-educational sectors such as corporations, associations and press clipping firms licences for use of the works represented by CAL are voluntary.

In Singapore, Fiji and Samoa, although either a compulsory licence or a voluntary scheme with legislative back-up is provided for in copyright legislation, there is no requirement that rightsholders be represented by a single government approved RRO, as in Australia.

Additionally, Japan has a levy for private copying. Sales of recording media, such as dvd burners, and audio recording machines have a levy charged on them to compensate copyright owners for this use of their works. Australia's government is currently considering implementing private copying provisions into legislation which would probably operate in a similar fashion for audio and visual works.

11. Education Campaigns

A critical element in establishing effective copyright systems and respect for the rights of copyright owners is education – education of those in society generally to understand the importance of copyright and also of industry participants to understand the special features of the copyright industries, and their rights and obligations when using other peoples' copyright works.

Of course the appropriate education campaign for each country or market is different but what is

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important in their effectiveness is that the campaigns need broad based support.

Some examples of successful copyright awareness campaigns include:

Taiwan

The Taiwanese Intellectual Property Office (TIPO) undertakes a range of education and communication activities focussed on intellectual property protection. Promotional advertisements are posted at transport hubs such as the airport and MRT stations. Commercials are also aired on television. A specific campaign against counterfeit and piracy was launched in October 2004 with the theme *ñ We Support Genuine Articles*. Stickers with this message were distributed to shops, department stores, and boutiques that participated in the campaign *ñ* over 15,000 to date.

In addition, intellectual property educational activities have been incorporated into the curriculum at all levels of schools with the concept of *ñ to respect IPR now is to protect your own rights in the future*. In addition to promotional campaigns, IPR composition competitions, comic strips and movie clips featuring popular stars as spokespersons are shown both at schools and at movie theatres.

Singapore

IPOS, the Intellectual Property Office of Singapore, has developed a campaign based on the idea of the HIP (Honour Intellectual Property) Alliance. The HIP Alliance is a group of public and private sector organisations and industry associations in Singapore with a common interest in pursuing the need for education about intellectual property.

The Alliance was formed in April 2002. Presently, the Alliance has over 20 members, which includes organisations involved in creative arts, creative industries, international organisations and industry bodies.

Since its inception, the Alliance has initiated and organised many awareness programmes that encourage people to respect and reward original creative works by *Saying NO! to Piracy*. The HIP Alliance has as its motto, *Live for Real* and produces a range of materials and activities focused on developing a preference for original rather than pirated product in Singapore's youth.

For example, a current initiative is the launch of a video called *ñ Copy Not Right* which is a light hearted video highlighting some common mistakes about copyright made in the work environment with regard to copyright material. They have a website

<http://app.hipfriends.org.sg/hip.asp> on which individuals can register to become part of the HIP Alliance, and by virtue of their membership be invited to special happenings and events involving Singaporean artists and performers.

Denmark

In Denmark, a group of collective management organisations have developed a common communication strategy to ensure consistent messaging about copyright from all the various industry groups. The theme of the campaign is the protection of *ñart, knowledge and entertainmentñ*. The campaign focuses on the importance of cultural industries in ensuring cultural diversity.

The organisations involved in the campaigns have developed common materials and activities. One interesting aspect of the campaign is that it includes PR material and educational material geared towards school children to make them more aware of copyright.

France

In France the copyright management organisation CFC was concerned about the illegal use of press clippings by government agencies and by private businesses. They launched a print campaign in newspapers that were being illegally reproduced. The first part of the campaign was an advertisement showing a portrait of an office worker as a criminal or *delinquent*. The approach was deliberately provocative and prompted much controversy. The second phase of the campaign was more informative, offering a solution to obtain authorisation.

One interesting aspect of this campaign was that its success could be measured because of the increased number of enquiries for licences by those organisations being targeted.

Columbia

The Anti Piracy Agreement in Columbia is a strategic alliance between the public and private sector to combat piracy by developing a training and education campaign. As part of the campaign a number of television advertisements have been produced. The objective of the campaign is to turn the man on the street into an ally in respecting copyright by humorously exploring the flaws in pirate works.

Another campaign which has been implemented across South America is a called *Each photocopy has a piece of its author*. This campaign features the image of a well known author of each country

so the public is aware that making unlawful copies affects people they admire.

Canada

The Canadian copyright management organisation has carried out a number of campaigns aimed at university staff and students to encourage them to respect copyright. It is interesting to note that campaigns that work for staff do not necessarily work for students. For example, t-shirts with the logo RESPE©T have been very successful with the staff of university bookshops and libraries. However, this campaign was considered boring by students. An alternate campaign for students including humour and visuals and with the tagline *ñ whatever you do, do it legally* was much more successful. This points to the importance of tailoring the message to the audience.

So what can we draw from these education campaigns? There seem to be a number of common elements. Firstly, broad based support ñ particularly a private/public partnership is the most effective approach. Secondly, the messages need to be tailored to the intended audience ñ humour seems to be generally effective. Another effective element is that the campaigns should encourage the public to feel like part of something ñ through an interactive website, stickers or t-shirts which allows them to announce that they are participating in an exclusive program or initiative.

(Footnotes)

¹ Singapore's Media Development Authority Media21 Singapore, 2003

² Economic Contribution of Copyright based industries in Singapore, Leo, Chow, Lee, Ong and Loy, IPAcademy, Singapore 2004

³ Australian Society of Authors

⁴ International Federation of the Periodical Press (FIPP) at www.magazineworld.org September 2004.

⁵ World Association of Newspapers, May 2004

⁶ Data provided by IPA members. © IPA Geneva, 2003

⁷ Copyright owners in some other types of copyright material do have rights over the rental of their works. Article 11 of the TRIPS Agreement requires signatory countries to provide rental rights for copyright owners in computer software and cinematographic works.

⁸ Agreement on Trade Related Aspects of Intellectual Property Rights 1994 (TRIPS Agreement).

⁹ WIPO Copyright Treaty 1996.