

Foreign Reprographic Royalties: What They Are and Why They're Important

by **Jonathan Combs**, Guild National President, 1998-2000
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For the past five years the Guild's budget has had a revenue line item for "foreign reprographic royalties." These funds are collected overseas and channeled to the Guild through special organizations, called reprographic rights organizations (RROs). While most members may be vaguely aware that the Guild receives such royalties, you may not understand what the money represents. I hope this article will help explain what the RRO scene is about and why this source of funds is important to the Guild.

International recognition of creators' rights

Let me set the stage by giving you an overview. Over 140 countries, including the United States, have signed an international treaty called the Berne Convention (for a thorough discussion of Berne, see page 51 of the Guild Handbook). One of its provisions affirms copyright by giving the creator of a work the exclusive right to authorize reproduction of that work. That means rights-holders are eligible to collect fees for any copies of their work made in most nations around the world. Fees for individual copies are collected on what's called a "transactional basis" (one fee per each transaction) while fees for large-scale copying, negotiated by such groups as libraries, colleges, school districts, and governments, are given "blanket licenses" (fees collected for a group of works).

Over the past three decades RROs have been formed in countries all over the world to collect and administer funds generated by copying copyrighted works. Some of these organizations have been formed with the help of the country's government. Others, such as the Copyright Clearance Center in the United States, are not-for-profit organizations that operate through voluntary participation of rights-holders.

How funds are collected and how funds are distributed vary greatly depending on the country, though statistical surveys are generally used to determine distribution. The funds are then distributed to both individual rights-holders (rights-holders may sometimes be publishers, heirs, and assignees who own the copyright) and/or to organizations that act on behalf of rights-holders. When a work can be traced to a specific creator, "title-specific" funds are distributed directly to the rights - holder, after administrative costs are deducted. When "non-title-specific" funds (where the title and author of the work aren't identified) are distributed, the RRO may give the money to organizations designated as representing the interests of rights-holders or hold it in escrow for later use.

While each country collects most of the money on behalf of that country's rights-holders, some may be collected on behalf of creators in other countries. In those cases RROs make agreements to collect and dispense those funds to their foreign counterparts.

The International Federation of Reproduction Rights Organizations (IFRRO) was established to help expedite the exchange of RRO funds and information between countries, to further the RRO

process in countries that do not yet have such organizations, and to build respect for and compliance with copyright. IFRRO also helps RROs and associated creator and publisher organizations work together smoothly, despite the international Tower of Babel created by conflicting laws, operating procedures, and languages. The Guild became an associate member of IFRRO in 2000.

Members of IFRRO, in addition to conducting ongoing committee and development work, meet annually to discuss agreements, to exchange information, and to help support the development of RROs worldwide. There are 34 member RROs and 53 associate members, mostly creator and publisher associations, including seven from the United States. The Guild has been sending representatives to these annual general meetings for the past five years and has become an active and effective advocate for American creators.

To further this goal, the Guild recently joined The Authors Coalition of America (ACA), a group of creator organizations dedicated to securing non-title-specific funds for use on behalf of American creators. Also a member of IFRRO, the ACA has been effective in repatriating funds (getting royalties returned to the United States). Belonging to ACA gives the Guild an excellent opportunity to form a united front with other American creator groups in IFRRO.

How royalties are collected and distributed

The Guild currently receives foreign reprographic royalties, or non-title-specific funds, to use on behalf of creators' rights from two organizations: Kopinor in Norway and, for the first time last year, Bonus Presskopia in Sweden. Both Norway and Sweden collect funds using a statistical method that does not identify the author or title of a work.

Our contract with Norway stipulates that these funds must be used for the collective good of the "rights-holder class." Guild members, through their elected representatives to the National Board, decide on the use of these funds at the Guild's annual National Convention. In the past these monies have been used for a number of Guild initiatives to advance copyright. This year they have helped fund the current legislative effort to gain an antitrust exemption so that artists may discuss fair pricing and negotiate collectively to retain their rights. (See the Advocacy Committee report on page 6 for an update on the Conyers bill, HR4643.)

Some members have asked if these funds could be distributed directly to individual artists. Even if the Guild didn't follow the IFRRO principle of treating funds in the same manner as they are handled in the country from which they are collected, distributing checks to everyone whose work may have been copied would be a bureaucratic nightmare. And the administrative cost of the process, including securing permission to represent all potential rights-holders, the accounting and distribution of funds, and any legal defense, would likely consume all the money before a penny reached individual artists. Unlike many other countries, the United States does not have laws supporting this process, and the burden of creating systems for distribution and proving fairness and legality would rest solely on the distributing parties.

Then there's the question of fairness. Because some of the surveys that determine rights-holders' royalties are conducted as much as five years apart, some deserving artists might be cut out of royalties simply because they went into business after the most recent survey. Then too since the

method of determining non-title-specific monies is potentially very inaccurate, too much money might go to one party and not enough to others.

In defense of the current system of distribution, Marianne Shock, administrator of The Authors Coalition, states, "By virtue of its membership in IFRRO, and in accordance with bilateral agreements signed by or on its behalf, The Authors Coalition distributes reprographic fees received from foreign RROs according to the system the transferring RRO applies to its own rights-holders. We are, therefore, contractually required to apply these fees to a collective purpose of benefit to the appropriate class of rights-holders.

"The Coalition supports the distribution of collective fees to [creators'] organizations representing the allocated class of rights-holders, and rejects systems that distribute collective fees to a few random, and in all probability undeserved, authors."

International collaboration grows

RRO collection and distribution continue to increase. In addition to new RROs being formed worldwide, new methods of gathering information, new statutory support, and momentum from successful negotiations have all contributed to this increase. Many RROs take less than 20 percent of the revenue collected for administration -- a very low figure considering the mandate and the effectiveness of these organizations.

Several important principles guide RROs in their work. One is the concept of transparency -- to be as open about business dealings as possible. Rights-holders should have access to budgets, surveys, and other business practices to avoid mismanagement or misuse of RRO funds. Another is accountability. In addition to being represented on RRO boards, rights-holder organizations should be accountable to their members through elective and democratic processes.

The Guild is continuing to work with the Copyright Clearance Center, with its established infrastructure and its status as a recognized American RRO, to push for the collection and distribution of both domestic and foreign title-specific funds for individual graphic artists in the United States. Although the hurdles we face in this process are daunting, significant progress has been made this past year with the Guild able to negotiate and resolve some of the issues that have prevented distribution of individual artists' royalties of the CCC. The Guild constantly stresses the importance of graphic artists retaining their rights through copyright registration, and that is especially important in light of these international funds. When creators are forced to sign contracts assigning all rights to publishers, they forgo all the profits from reuse, including RRO distributions.

Members can rest assured that the Guild will continue to work to secure non-title-specific funds through the ACA for the Guild and other artists' rights groups to be used on behalf of American creators. A steady stream of foreign reprographic royalties helps the Guild pursue its mission of promoting economic rights for all visual artists.

Jonathan Combs attended the 2002 IFRRO conference held in October

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