

Bilateral Agreements - Type B

Statement adopted by the IFRRO Board on 31 October 2016

The IFRRO Board can neither endorse nor reject Type B Agreements, it must be for each RRO to decide whether it is appropriate for them to enter into such an agreement. However the following important points should be taken into consideration by those RROs either considering signing Type B Agreements or reviewing their existing Type B Agreements:

- 1) Type B bilateral Agreements (where repertoire only is exchanged) have been a valuable tool for the development of the global network of RROs and, subject to legal considerations, there are still sound reasons for their use in particular circumstances.
- 2) Whilst there is no International Treaty regime that renders Type B Agreements automatically illegitimate, the manner of operation of Type B Agreements, implying the non-payment to the actual rightholders of money collected for copying of their works, may expose RROs to legal risk.
- 3) The scale of this risk will depend in each case on the applicable national law:
 - agreements between two RROs based in the EU:
As Type A and Type B Agreements are not specifically mentioned in the CRM Directive, it is unclear to what extent Type B Agreements have to comply with the requirements of the Directive. If the provisions of the CRM Directive are applicable to Type B Agreements, then it is not easy to see how they can comply with the requirements of the Directive;
 - agreements between an EU-based RRO and a non-EU RRO:
The EU RRO would still be subject to the provisions of the CRM Directive (to the extent that it is applicable) as regards acts of copying within the EU. The position of the non-EU RRO regarding acts of copying in their territory under such an Agreement would depend on the relevant national law;
 - agreements between two non-EU RROs:
The position would depend on the national legal framework in each country, assessed on a case by case basis.
- 4) The risk falls primarily, but not exclusively, on the granting RRO because of the indemnity it gives the receiving RRO. This risk can be managed or reduced by adoption, as appropriate, of some or all of the following measures:
 - to obtain, where feasible, rightholder consent to the granting of Type B Agreements ;
 - adoption of efficient procedures to enable swift removal of the works of dissenting rightholders from the scope of Type B Agreements;
 - inclusion of more detailed reciprocal reporting requirements in Type B Agreements. This would improve transparency and enable right holders to make informed decisions about participation in such agreements;
 - more detailed reporting would also enable better verification where a Type B Agreement has been signed for 'offsetting' purposes either where it is more cost effective and involves less administration to keep the money in the country of collection or where the amounts involved are de minimis;
 - the use of 'sunset' clauses, which specify a date by which transfer payments will commence or which may provide for a phased introduction of transfer payments, may prove useful in controlling the legal risk.