

IFRRO BOARD REPORT 2011

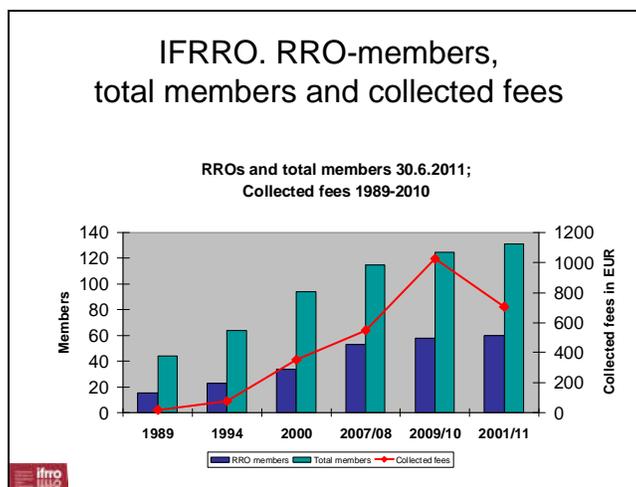
This report covers the period July 2010 – June 2011 during which the Board was made up of *Magdalena Vinent*, CEDRO (President); *Franziska Eberhard*, ProLitteris (First Vice President); *Bruce Funkhouser*, CCC (Second Vice President); Directors: *Jim Alexander* (CAL), *Jens Bammel* (IPA), *Christer Johansson* (Bonus Presskopia), *Hélène Messier* (COPIBEC) and *Mats Lindberg* (BUS); Substitute Directors: *Owen Atkinson* (ALCS/EWC; *Trond Andreassen*, EWC till 28 October 2010), *Maureen Cavan* (Access Copyright), *Rainer Just* (VG Wort) and *Michael Mabe* (STM). The Board met three times: October 2010 in Boston; January 2011 in Madrid; and June 2011 in Brussels, and carried out one e-vote in September 2010.

During the past year, a main focus was again on collective management and text and image based works. Discussions on exceptions and limitations on the international level addressed in particular the knowledge and education areas, which are of prime interest to RROs and text and image based works. The European Commission published its Communication on Intellectual Property (IP) in May, 2011. IFRRO began its examination of that document and will continue to and work with the Commission during the coming Financial Year (FY). Additionally, the draft European Union Directive on Orphan Works particularly focused on the text and image based sector.

IFRRO continued to contribute to the development of dynamic, forward looking solutions for users to enable them to legally access copyright works in a manner consistent with the interest of authors and publishers through the establishment of RROs in countries where they previously did not exist; the documentation of best practice business models for the analogue and digital environments which would offer increased opportunities to legally consume intellectual property through RRO licences; creation of innovative solutions for enhanced access to text and image based works for persons with print disabilities such as the TIGAR and ETIN projects; participation in the stakeholder dialogue run by the European Commission which led to agreement on collective licensing on the digitising and making available of cultural heritage; involvement at the highest level of the ARROW Project which, among other benefits, will facilitate and reduce time and costs involved in obtaining rights information and clearance. IFRRO has been among the initiators and/or drivers of these and other projects to launch ground-breaking solutions to permit legal use of copyright works. The ongoing challenge is to communicate to others that IFRRO, RROs, authors and publishers are enablers of legal access to content.

1. MEMBERSHIP

As at 30 June 2011, IFRRO has a total of 131 members of which 60 have RRO membership status and 71 are Associate Members (16 of which administer reprography). This represents a net increase of six members since last FY. The revenue drop since last year is due to substantial back payment to some RROs in 2010.



Two new RRO Members – VIETRRO (Vietnam) and ZARRSO (Zambia Reprographic Rights Society) – and four new Associate Members – DHK (Croatian Authors’ Reprographic Rights Association), LIBRIUS (Belgian publishers’ Collective Management Organisation (CMO)), OOA-S (Czech Visual Arts CMO) and Pyramide Europe - were approved during the FY. No organisation cancelled its membership in 2010/11 but the Board decided not to renew BULREPRO & COPY’s observer status with IFRRO.

For the future, the Board proposes that the AGM 2011 adopts modifications of the IFRRO Statutes to allow for a category of Associate RRO members for those who administer reproduction rights but do not represent directly both authors and publishers, and a provisional RRO member category for new members who do not yet licence and collect revenues.

2. ORGANISATION

The Board has reviewed IFRRO’s scope of activities and will, at the next IFRRO General Meeting, propose to the members to (i) maintain the current branding of IFRRO including its logo and acronym; (ii) clarify that the scope of IFRRO and RRO activities includes the administration of the reproduction, making available and distribution rights in the text and image based sector; (iii) establish that the main distinction between IFRRO membership categories is between CMOs performing RRO activities (the RROs) on the one hand, and creators’ and publishers’ associations (national and international) not carrying out such activities on the other; (iv) maintain a distinction between RROs with direct representation of *both* authors and publishers on governing bodies (“full” RRO members) and those with direct representation of either authors or publishers (but not both) on governing bodies (Associate RRO members); (v) propose that a category of provisional membership be introduced for RROs which do not licence or collect and distribute revenues; and (vi) increase the proportion of votes of RRO members. The Board’s proposition is set out in draft amendments of the IFRRO Statutes tabled for approval at the IFRRO General Meeting 2011.

Being mindful of discussions which took place at the IFRRO AGM in 2010, the Board has also reassessed the IFRRO election procedures with a proposal for the membership to consider at the General Meeting 2011.

The Board’s examination of the regional committees and technical working groups led to the re-confirmation of their mandates and composition, with *Sandra Chastanet* (CFC) being appointed as Chair of the Newspaper and Similar Periodicals Working Group, to replace *Martèl Bakker Schut* who asked to step down, and the establishment of one new regional committee: the Middle East Development Committee (MEC) with *Emma House* (PA, the UK) appointed as Chair, and *Jim Alexander* (CAL), *Sandra Chastanet* (CFC), *Benoît Proot* (Reprobel) and *Martèl Bakker Schut* (Stichting Reprorecht) as committee members.

During the period under review, and as envisaged in the IFRRO Business Plan 2009-12, the documentation of RRO distribution practices was completed on the basis of a questionnaire posted to an extranet on the IFRRO home page. A summary of the results is posted to the IFRRO website to complete and update information in the existing Detailed Paper on Distribution, with more detailed information from the survey and best practices available on the Members Only section of the website. This documentation of distribution practices also addresses issues which authors’ organisations had requested (through a statement at the AGM 2010) the Board to examine.

In the wake of the distribution practice study, the Board found it appropriate to review the stipulations in the IFRRO recommended governance instruments, “Code of Conduct” and “Relationship between RROs”, on deductions to meet administrative costs. The majority view in the Board is that the existing stipulations are appropriate and satisfy at present the requirements for action at IFRRO level.

During the period under review, the Board decided to establish an IFRRO Enforcement Fund which may offer financial support to litigation with precedent effect involving more than one country, with the Board as its governing body and the IFRRO Treasurer as the fund administrator. The Board invited members to offer contribution to the Enforcement Fund and allocated up to € 50,000 from the Development Fund as matching funds to member donations. At the close of the period for the Annual Report, the Board wishes to thank *ASMP* for its financial contribution towards the Enforcement Fund.

3. POLICY ISSUES AND STRATEGIC COOPERATION

Collective Management on the copyright agenda

The European Commission's Communication on a Single Market for Intellectual Property Rights, published in May 2011, sets out an overall strategy on copyright related issues. It announces, among other things, a Directive on Collective Management in 2011/12. With the aim to ensure that the Directive does not unduly or inappropriately interfere with RRO business models for collective rights management, IFRRO has met with relevant EC Directorate Generals at various levels as well as with Members of the European Parliament (MEPs) to explain IFRRO's position and the functioning of RROs, emphasising the position that assessing collective management requires a sector specific approach. Focus must be on the needs and requirements of authors, publishers and consumers. Consideration should be taken into account as to whether the use is for commercial or non-commercial purposes; whether the use is a primary or secondary use; whether the use is for single or mass use; whether contracts are negotiated and/or signed with individual users or with umbrella organisations; whether online or offline access is offered; and whether the use is through closed or open networks. RROs are mainly in the business of administering, through a one-stop shop model, secondary uses for the multiple reproduction, making available, or distribution of portions of a large number of already published works belonging to a diverse and high number of both authors and publishers.

Digitising and making available the cultural heritage: orphan works and out-of-print works

In May 2011 the European Commission published a draft Directive on "Certain permitted uses of orphan works". At the time of the finalising of the Annual Report, the membership is being consulted on the draft IFRRO position. The focus of the IFRRO position on the Directive is to suggest that the Directive be (i) framed as to offer solutions in relation to orphan works only; (ii) favourable to solutions based on collective management of rights; (iii) clear on the right of remuneration, preferably to be paid upfront to be held in escrow by the pertinent CMO; (iv) without prejudice to the EU Members States being allowed to choose alternative solutions.

IFRRO has also been an active partner in the European Commission stakeholder dialogue to develop solutions for the mass digitisation and making available by libraries and other publicly available cultural institutions of works which are no longer in commerce. Solutions should enable authorisation through collective management based on voluntary mandates on the basis of a licence which, on certain conditions, may be made to include works of non-mandating authors and publishers, combined with a withdrawal right, for cross-border access.

ARROW – Accessible Registries on Rights and Orphan Works and European digital libraries

ARROW, the EC-sponsored project to establish an automated system to identify rights, creators and publishers and rights status of a work, as well as to build an orphan works registry and provide information regarding rights clearance, terminated in March 2011. The piloting of the system in France, Germany, Spain and the UK revealed both time and cost benefits from 73% in Spain to 97% in the UK from using ARROW as compared to manual searches. The encouraging project outcome was presented at a conference which included an opening speech by European Commission Digital Agenda Commissioner *Neelie Kroes*.

The ARROW business model has been published. It envisages pay per use, subscription and per inhabitant models in the EU Member States, Norway, Iceland, Switzerland and Lichtenstein. It further suggests that the European Commission meets the costs of the EU Members States in yearly lump sums based on a fee of € 0.0011 per inhabitant to allow free use of the basic ARROW services by all Member States' public institutions as well as to ensure the system's financial sustainability. ARROW is business neutral and foresees selling services to commercial players in the market such as Google, Microsoft and Amazon, as well as to publishers, creators and RROs.

The ARROW legal entity is under consideration, and expected to be formalised in 2011. The Board is considering the IFRRO involvement, including whether to become a founding member of ARROW.

The project continues as the ARROW Plus project, which aims at refining the ARROW system, increasing the number of countries in which it operates, and broadening the types of works to include visual material. This scheme is also being co-financed by the European Commission, for 80% of the contracting partners' project-related costs. Included among the 33 contracting and associate partners are RROs; authors and publishers organisations; several libraries and library organisations including the Conference of European

National Libraries (CENL), EUROPEANA and the Dutch National Library; standards organisations including EDI/EUR; and technology and business developers.

Three of the seven Work Packages (WP) are led by IFRRO or its members: The Board approved that IFRRO joined the project as leader of WP 2 on network building and dissemination and responsible for quality management and control under WP 1 on project management; FEP leads WP 3 on the coordination of national initiatives, with CEDRO responsible for the coordination of RRO involvement in the project; and EVA is WP 6 leader on the inclusion of visual material. IFRRO and IFRRO members make up nine of the 26 contracting partners - in addition to those mentioned above, EWC, ICLA, Polska Ksiazka, OSDEL and SCAM – and two of the seven associate partners - COPYDAN and Kopiosto.

ARROW Plus is scheduled to last for two and a half years from its start up date of 1 April 2011 and to present its results at a conference in October 2013.

Visually Impaired People (VIP)

The Board approved the participation of IFRRO in TIGAR (Trusted Intermediary Global Resources), the pilot program established under the WIPO Stakeholder Platform on enhanced access to copyright works by persons with print disabilities. It further allocated a financial contribution of € 45,000 towards the project and nominated *Hélène Messier* as a member and agreed to the *Chief Executive* taking a seat on the nine members Steering Committee (SC). The other rightholder SC members are *Alicia Wise* (Elsevier), which also acts as co-chair, and *Jens Bammel* (IPA). Four members, including the SC co-chair *Margaret McGrory*, represent persons with print disabilities communities. Assistant Director *Trevor Clarke* is the WIPO representative.

Following the decision of the World Blind Union (WBU) to suspend its participation in the WIPO Stakeholder Platform and TIGAR the Steering Committee agreed to pursue a fast track approach through a Memorandum of Understanding (MoU). The MoU allows cross-border transfer of files between participating Trusted Intermediaries (TI) of works which they already have in their archives. TIs in Brazil, Belgium, Canada, Colombia, Denmark, France, Jamaica, New Zealand, Norway, South Africa, Sweden, Switzerland and the U.S.A. have declared interest in participating. The RROs in those countries have been contacted.

Parallel to the WIPO Platform, the European Commission has been running a stakeholder dialogue on access to copyright works for persons with print disabilities with a particular focus on the situation in the EU Member States. This initiative, which supports the WIPO Platform, resulted in a Memorandum of Understanding (MoU) which the Board approved and the President signed on behalf of IFRRO on 14 September 2010. Other signatories to the MoU are EWC, FEP, STM, European Blind Union and the European Dyslexia Association.

The European dialogue established the ETIN (European Trusted Intermediary Network) pilot. *Ingrid de Ribaucourt* is IFRRO's key representative in this initiative, which suffers from lack of funding and therefore has been unable to engage a project manager. Also the European Blind Union's decision to suspend its participation has, to a certain extent, had a negative influence on the ability to make progress. At the time of the finalising of the Annual Report, discussions have started on a possible co-ordination between ETIN and TIGAR, which makes sense as several Trusted Intermediaries are involved in both projects.

Cooperation with CISAC (Confédération Internationale des Sociétés d'Auteurs et Compositeurs)

The Board looks forward to continuing cooperation with CISAC under its new Director General *Olivier Hinnewinkel*¹ who takes office in October 2011, to replace the former DG who resigned in May 2010. IFRRO and CISAC co-operated successfully in the co-branding of a panel on "Building bridges between creators and the digital generation"² at the World Copyright Summit in Brussels in June 2011, of which CISAC was the main organiser. The Board thanks the panellists *Jean-Jacques Arjoon* (Mauritius musician and composer), *Richard Charkin* of Bloomsbury (UK), *Penny Grubb* (author, ALCS Chair), *Helienne Lindvall* (Swedish lyricists and journalist), *Horacio Maldonado* (film director, Argentina) and *Klaus Thyman* (Danish photographer and DACS) as well as the moderator *Keith Harris* for making it the success it was. IFRRO was further represented at this event by the *President* on the collective management panel, *Maureen Cavan* on the Technical standards session, and the *Chief Executive* who opened and introduced the IFRRO-CISAC panel.

¹ Mr. Hinnewinkel, previous CEO of Eurovision Asia-Pacific

² Video available from <http://www.copyrightsummit.com/2011-videos/>

Cooperation on technical standards and identifiers continues and may extend to a possible involvement of CISAC in the IFRRO-WIPO education programmes³ with ARIPO, OAPI and CERLALC.

Relationship with IFLA (International Federation of Library Associations and institutions)

IFRRO and IFLA continue to meet regularly at the Executive and Presidency levels, and the two organisations are invited to each other's General Meetings. The *First Vice President* and the *Chief Executive* attended the IFLA congress in Gothenburg in August 2010. The IFRRO-IFLA conference programme on the enhancement of a culture for books and reading, in cooperation also with WIPO, IPA and authors, continued with a successful event in Tokyo in December 2010. It was co-organised with the National Diet Library, JAACC, JRRC and JBPA and had more than 200 participants from Japan and other countries in the region. The next conference in the programme is scheduled for Kenya in February 2012.

The Board notes that IFLA has posted to its website a draft WIPO Treaty on exceptions and limitations in favour of libraries which they seek to have tabled for discussions at a WIPO SCCR.⁴ IFRRO has thus far refrained from commenting on the text; and will prepare statements to be made at an appropriate time.

4. MEMBERSHIP RELATIONS, COMMUNICATIONS AND INFORMATION

It is essential to ensure that IFRRO's and the sector's messages are communicated correctly and that they are understood particularly by policy makers and legislators. The Board has considered IFRRO's communications and information strategy paying particular attention to the enhanced focus on collective management and the text and image based sector in fora which are essential to copyright. IFRRO contracted an external consultancy with expertise on communication and profiling and with an in-depth knowledge of the publishing sector. A small reference group of IFRRO members' communications executives made up of *Carmen Cuartero López* (CEDRO), *Hege Lunde* (Kopinor), and *Robin Morgasen* (CCC) was established to assist in reviewing the communications work.

The profiling exercise carried out by Midas PR and BML Bowker showed that the IFRRO network is considered an important one. IFRRO was also seen as constructive and collaborative and a source for reliable, relevant information. Promulgating the idea that IFRRO, RROs and creators and publishers and their organisations in the text and image based sector are enablers and dynamic and forward-looking solution providers in a fast changing world proves to be a challenging task. The Board intends to examine how IFRRO can raise further awareness on the many initiatives in which IFRRO is involved to facilitate user access, interoperability and time and cost reduction in rights management and clearance. Examples of such initiatives are found in IFRRO's work on enabling technologies, standards and identifiers; new licensing solutions for the digital environment; ARROW and solutions for usages by libraries; and access to work by persons with reading impairment.

The Secretariat provided assistance to Canadian members Access Copyright, COPIBEC and CPC in the lobbying against several proposed amendments to the Canadian Copyright Act outlined in Bill C32. Elections in Canada resulted in the withdrawal of the original C32 bill in May 2011. However, it is expected that a bill with a similar content will be introduced by the new government. The Secretariat also helped IFRRO, which resulted in the right of RROs in India to be set up and governed by both authors and publishers, and supported TTRRO and B-COPY in their licensing efforts, including through letters to the Intellectual Property Offices in their respective countries. Noting that members, to help out in conjunction with the tsunami in Japan, had authorised JAACC to sign temporary licences which allowed for defined uses of copyright works free of charge for a limited period in the affected regions of Japan, the Board agreed to allocate, as a donation, € 2,000 towards the Japanese Tsunami Relief Fund, with a preferred allocation towards copyright, education or cultural related activities.

Consultation with international trade associations which are members of IFRRO and with individual authors and publishers remains high on the agenda. In conjunction with its meeting in June, the Board also met with the Reprobel Board. The Chief Executive continues to meet regularly with the Executives of the Brussels-based international organisations in membership of IFRRO. Such consultations are often carried out as joint

³ See also 6.6 on page 8

⁴ World Intellectual Property Organization Standing Committee on Copyright and related Rights

meetings with the organisations from the book sector, a practice that IFRRO would also wish to establish for the members representing the newspaper and magazine sector.

The 2011 *Senior Managers Forum* (SMF), which we thank COPYDAN for hosting so well and Kopinor for helping out with the programme, was attended by 45 Senior RRO managers. Focus was on communications and information and included, in addition to sharing experiences, contributions from external speakers on profiling and communication. Access to works in education will be the topic of the SMF 2012.

Authors' and publishers' gatherings were facilitated through incorporating them into the weekly programme of the Boston AGM, and for the authors also in conjunction with the IBMF in Brussels in June 2011.

Two new publications have been prepared for dissemination during the coming financial year: an "Easy to Read" Paper which is a basic introduction to collective management of rights in text and image based works; and a Welcome Manual - directed towards new members with information that could also benefit existing ones. The Welcome Manual will first be available in English, in a printed version and on the website, and later in French and Spanish.

Transparency on the Board's work is also carried forward through the posting of Board agendas on the Members Only sector of the IFRRO website one month prior to the meetings, combined with *Executive News* after each Board meeting informing the membership's executives and boards of the main Board decisions. The *Newsletter* was published nine times and the *Digital Alert* appeared quarterly during the period under review. Mindful of the number and frequency of the communications from IFRRO, as a new service to the members, the Secretariat has started a monthly *News Alert* to remind members of the information that has been sent out the previous month, and to highlight upcoming deadlines, when appropriate.

Google

The Secretariat has continued to keep members updated on the Google Settlement. On 22 March 2011, US Circuit Judge *Denny Chin* denied the motion for final approval of the Google Book Settlement, concluding that the Amended Settlement Agreement (ASA) is "not fair, adequate, and reasonable"⁵. While recognising the positive aspects of the Settlement leading to library resources being made available to many people he also pointed out flaws, such as the possibility that the ASA offered Google unreasonable competitive advantages. The judge suggested that many of the concerns raised in the objections could be ameliorated with one simple change, namely if the ASA were to be converted from an 'opt-out' to an 'opt-in' settlement.

It is unclear what will happen next. On 19 July 2011 the parties informed the Court through a status conference whether they would attempt to negotiate an opt-in Settlement, or instead resume litigation. Another possibility is that the publishers and authors drop the suit against Google, which would not prevent them from starting lobbying US Congress for a legislative solution on orphan works.

5. FACILITATING DEVELOPMENT OF RRO AND RIGHTHOLDER BUSINESS MODELS

Business models and cases

The IFRRO Business Models Forum (IBMF) chaired by *Tracey Armstrong* (CCC) offers the main opportunity to the IFRRO community for the exchange of best practices and discussions to stimulate development of RRO business models, and for the communication and exchange of views on the Board's policies in the area. Two meetings, in Boston in October 2010 and in Brussels in June 2011, as well as a WebEx conference were organised during the period under review. The conclusion from the feed-back on the WebEx is that they should continue also in the coming FY.

The Board continues to monitor the development and deployment of RRO business models, including organisational structures such as the establishment of CCC's subsidiary in Europe, RightsDirect, and the implementation of IFRRO recommended tools, including the Repertoire Exchange Mandate (REM). The Digital Study paper on RRO business models published in October 2010 was based on the results of two surveys among IFRRO members carried out the previous FY. It offers a good overview of digital uses

⁵ Cf. the complete US Court order <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=115>).

administered by RROs and includes a separate chapter on REM implementation. IFRRO's role in this respect is to offer information, recommendations and guidelines rather than involving itself directly in the detailed relationship between RROs and their mandating authors and publishers.

Multi-territory licensing

Multi-territory licensing has been high on the Board's agenda, as envisaged by the IFRRO Business Plan 2009-12. It addresses a situation where a corporation, institution or organisation wishes to include subsidiaries in other countries in the scope of the licence it has with a RRO; it is thus distinct from cross-border licensing which implies the direct licensing by a RRO outside its national territories regardless of any multi-territory aspect of the licence. The Board sought external counselling on legal matters from the French lawyer *Jenny Vacher Desvernais*. Her privileged report was examined by the Board and the Secretariat, with the assistance of *Hege Døssland* (Kopinor), *Martin Delaney* (CLA), *Caroline Morgan* (CAL) and *Robert Staats* (VG Wort). A first discussion among the membership of the issue took place at the AGM 2010.

Multi-territory licensing requires special considerations in Europe, due to previous European Commission decisions in relation to the music sector. The Board therefore asked the European Group to examine how such licensing could be offered on the basis of bilaterals between RROs under the current EU legal framework. A task force was set up made up of representatives from *CFC*, *CLA*, *Kopinor*, *Stichting Reprorecth* and *VG Wort*, with the IFRRO *President* and *Chief Executive* attending meetings *Ex Officio*. *Thomas McQuail*, partner at Morrison & Foerster, has provided external privileged counsel. The work requires broad consultation with RROs and authors and publishers and a first membership discussion of the task force's work and its proposed elements for solutions took place at the European Group meeting in Brussels in June 2011. As the basis for further membership consultation, the presentations from the European Group meeting and other material have been posted to the Members Only section of the website. The task force is also working on a toolkit which, together with a proposal for multi-territory licensing, will be presented for comments in the coming FY. Consultation with the European Commission will be considered if required and appropriate.

Levies in relation to the administration of reprographic reproduction

In the Spanish *Padawan* case the Court of Justice of the European Union (CJEU) addressed the fair compensation of authors and publishers through levies for private copying based on the European Union (EU) Copyright Directive. Whilst stating that the simple fact that the devices are able to make copies is sufficient in itself to justify the application of a private copy levy it also pointed out that devices aimed at professional uses only are exempted if they are clearly dedicated to professional uses. Surveys show that reprographic equipment purchased by corporations, institutions and organisations are also frequently used to make copies for private use. Where a levy on reprographic devices is argued under the private copy exception of the EU Copyright Directive, the CJEU statement puts the onus on the RRO to document that it is used for private copying. This is often complicated. The *Padawan* case could therefore have consequences for RROs administering reprographic and similar reproduction rights on the basis of levies, if the levy is based on a private copy exception only.

On the other hand, there are court rulings in Germany and Greece which may indicate that the *Padawan* case should not have consequences on the administering of levies in relation to reprography. RROs which administer reprographic and similar right on the basis of levies are thus advised to ensure that they are based on the reprography (rather than the private copy) exception in the EU Copyright Directive: Whereas the private copy exception addresses the purpose of the copy (private use) made by whatever method, the reprography exception deals with the method (reprography) regardless of the purpose of the copy. The Board will monitor further developments and analyse the consequences of the decision in the *Padawan* case.

Technical standards

The ONIX Governing Body (OGB) chaired by *Maureen Cavan* (Access Copyright) and including *Franziska Eberhard* (ProLitteris), *David Grundy* (ALCS), *Heather Reid* (CCC), *Pablo Ruiz de Elvira* (CEDRO) and *James Boyd* with *Mark Bide* (EDItEUR) associated to it, is tasked with the management of the implementation and the efficacy of the use of ONIX for RROs. During the period under review a Guidebook was published⁶ to give guidance to organisations which are implementing the two ONIX for RRO messages – ONIX-DS (ONIX for distribution) and ONIX-RP (ONIX for repertoire). A survey among IFRRO members showed that Access Copyright, CLA, ALCS and PLS have implemented ONIX for RROs and that

⁶ Available on <http://www.editeur.org/23/ONIX-for-RROs/>

ProLitteris, VG Bildkunst and VG Wort are ONIX for RROs compliant. CAL will implement on the introduction of its new processing system at the end of 2011; Kopinor may implement by 2012, whilst CCC and COPYDAN are capable but do not as yet have specific plans to do so.

IFRRO is a member of EDI^{EUR} which is responsible for a number of standards of interest to IFRRO members, including ONIX for RROs. It has now also been contracted to carry out administrative work for ISTC⁷ and is tasked with technical standards and identifiers work in the ARROW Plus project. This is consistent with the Board's yearning for an environment acting as a coordinator for the administration and development of standards and identifiers of interest to the IFRRO community. *Olav Stokkmo* is on the Management Board with *James Boyd* also attending selected meetings.

The International ISTC Agency (ISTC-IA), in which *Olav Stokkmo* is on the Board with *James Boyd* also attending meetings, has approved seven new Registration Agencies (RA) – in Australia, Belgium, Canada, China, France, New Zealand and Russia – ensuring the standard's financial sustainability. ISTCs are being assigned and organisations in other countries have also expressed interest in becoming RAs.

During the period under review the ISNI⁸ International Agency (ISNI-IA) was set up with IFRRO as one of the co-founders, together with Bibliothèque Nationale de France (BNF), British Library (BL), CISAC, International Performers Database Association (IPDA), Online Computer Library Center (OCLC) and Proquest. ISNI is an ISO standard for the unique and unambiguous identification of names used publicly by authors, publishers and others involved in the creation, publishing, production and management of copyright works. IFRRO members were invited to submit data for population of the initial ISNI database, scheduled to be published in October 2011, against assignment of ISNIs free of charge. Next steps include approving Registration Agencies. *Olav Stokkmo* as the Treasurer is one of the three Officers on the Management Board which is chaired by *François Xavier Nuttall* of CISAC. *James Boyd* is also involved in the work for IFRRO.

Now that the ISNI standard is operational, it makes it possible to consider an IFRRO Party Identifier, provided there is sufficient will among IFRRO members for it. During the coming FY, the Board intends to gauge the appetite for the development of an IFRRO Party Identifier through meetings with and presentations to the Executive Management levels of IFRRO members. Such meetings will discern these executives' assessment of the advantages of a federated IFRRO PI scheme. Subject to the expression of support for moving forward with the IFRRO PI, a meeting at the technical level to explore the development and implementation of such a scheme will be scheduled.

6. WORK IN RELATION TO INTERGOVERNMENTAL BODIES

6.1. WIPO (World Intellectual property Organization)

WIPO is one of IFRRO's key co-operating partners. The main collaborating activities are with the Culture and Creative Industries Sector headed by Assistant Director *Trevor Clarke*, which comprises the Copyright Development Services Division led by Acting Director *Gao Hang*; the Copyright Law Division with *Richard Owens* as Director; and the Creators and Performers Support Division, which is responsible for collective management and the cooperation with the Non Governmental Organisations (NGO) such as IFRRO, headed by Director *David Uwemedimo*.

The General Assembly (GA) and the SCCR⁹ are attended by the IFRRO *President* and the *Chief Executive*, selected SCCR meetings also by the *General Counsel* or the *Senior Legal Advisor*. The SCCR has adopted a timetable which includes special sessions - in June 2011 to discuss a WIPO instrument in favour of persons with print disabilities, in November 2011 on exceptions and limitations in relation to libraries, and in May 2012 on limitations in favour of education. IFRRO statements at WIPO support appropriate limitations in favour of persons with print disabilities in national legislation enabled, if required, through a joint recommendation at WIPO level. The IFRRO statements further suggest that any WIPO instrument should make references and explicit links to the Berne Convention, ensure that alternate format copies are not made under an exception in a way that they may compete with commercially available copies, and that file trans-

⁷ International Standard Text Code, ISO standard, www.istc-international.org

⁸ International Standard Name Identifier; <http://www.isni.org/>

⁹ Standing Committee on Copyright and Related Rights

fers between authorised entities be subject to some form of approval mechanisms by creators, publishers or their representatives.

As a part of the preparation for the discussions on limitations in relation to libraries and education, the *General Counsel* has made a study of the concepts of “*illustration for teaching*” and “*fair practice*”, which are used in the Berne Convention and also have relevance to other international legal instruments. The study is posted to the Members Only section. For the next SCCR meetings, RROs in countries which are particularly involved in the WIPO discussions have been invited to join the IFRRO delegation.

The *Senior Legal Advisor* follows on IFRRO’s behalf the work of the IGCRTKF¹⁰ on Traditional Knowledge (TK), Traditional Cultural Expressions (TCE). An international WIPO instrument on TK and Folklore is getting closer through work in the Intersessional Working Group, which focuses on the objectives and substantive principles for a WIPO instrument. Main points of disagreement are the definition of the beneficiaries, the type of protection to be granted, delimitation against material to be defined as being in the public domain, and rights management

The *Senior Legal Advisor* also follows the WIPO CDIP¹¹ which suspended its last session in May 2011 without a conclusion and the adoption of a report. There is disagreement on a proposed development project and on coordination mechanism and reporting routines.

IFRRO provided speakers for and/or collaborated in the organising of twelve WIPO conferences, seminars and workshops: two centrally organised in Geneva, WIPO Global Symposium and Facilitating Access in the Digital World, with the IFRRO *President* among the speakers; two in Africa; one in Asia; three in Europe; one in Latin America; two in the Caribbean; and the WIPO-SIDA training course.

6.2. UNESCO (United Nation’s Economic, Social and Cultural Organization)

IFRRO has NGO status with UNESCO which has undergone fundamental changes during the FY under review. Following the appointment of *Irina Bokova* as Director General less focus has been on copyright issues, with the copyright unit having been dissolved.

IFRRO contributed to the evaluation process that UNESCO is undertaking to assess its Anti Piracy Observatory, launched in April 2010 to list best practices. *Greenfield Chilongo*, the IFRRO Regional Development Representative (RDR) in Africa, represented IFRRO at the meeting of the Intergovernmental Committee for the safeguarding of the Intangible Cultural Heritage in Kenya on 15-19 November 2010, and *Yngve Slettholm* of Kopinor was the IFRRO panellist at the 2nd UNESCO World Forum on culture and cultural industries on 6-8 June 2011 in Monza, which focused text and image based works.

6.3. European Union

The period under review saw several initiatives from the European Commission. Among the important ones to the IFRRO communities were the stakeholder dialogue on out of commerce works, the draft orphan works directive and the DG Internal Market and Services Communication on the Commission’s overall strategy on Intellectual Property (IP). In relation to copyright, the IP strategy Communication addresses the issues of (i) creating a “comprehensive framework for digital copyright”, (ii) multi-territorial collective management with a focus on cross-border rights management, particularly of musical works, (iii) collective management governance structures and transparency issues in general, and (iv) access to European cultural heritage including the collective licensing schemes for orphan works and out of commerce works. The Communication foresees restarting the Stakeholder Working Groups on copyright levies through a mediation process. It also recognises the beneficial and positive contribution that IPR and copyright make to the European economy and the competitiveness of the European creative industry and that collective management plays a key role in providing innovative licensing solutions especially in the digital age.

The Secretariat, partly accompanied by the *President* and/or by member organisations, has met with EU institutions to present IFRRO’s position on collective management and explain the role and functions of RROs. The importance of an orphan works directive in Europe and a recommendation by the European Group led the Board to establish itself as the reference and resource group for the Secretariat in its lobbying on this European Commission initiative.

¹⁰ Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore

¹¹ Committee on Development and Intellectual Property

6.4. ARIPO (African Region Intellectual Property Organization)

Since 2006, IFRRO has a cooperation agreement with ARIPO, which represents 16 English-speaking Sub-Saharan African countries. Regional Development Representative (RDR) Africa, *Greenfield Chilongo*, represented IFRRO at ARIPO's 34th Administrative Council meeting in Harare on 22-26 November 2010. He also spoke at the ARIPO-WIPO regional conference in Lusaka on 9-11 May 2011.

6.5. OAPI (Organisation Africaine de la Propriété Intellectuelle)

OAPI represents 16 French-speaking Sub-Saharan African countries. An agreement on co-operation covering all major IP relevant activities was signed on 27 September, 2007. The *Chief Executive* addressed the Ministerial meeting in Libreville on 13 December 2010 and *Ingrid de Ribaucourt* spoke at the OAPI-WIPO conference in Yaoundé on 8/9 June 2011.

6.6. CERLALC (Centro Regional para el fomento del Libro en America Latina y en el Caribe)

As a part of the celebration of its 40th anniversary, CERLALC, which has a cooperation agreement with IFRRO since 2009, has worked on a model copyright law for "literature, books and libraries". *Ana Maria Cabanellas*, Chair of IFRRO's Committee for Latin America and the Caribbean, represented IFRRO at the intergovernmental committee session that was organised on the issue in Bogota on 6/7 December 2010.

In 2011, the education programme which IFRRO and WIPO offers to Intellectual Property Office (IPO) and RRO personnel, also started up in Latin America with CERLALC as the regional co-organising partner. Twenty-five participants from Argentina, Brazil, Chile, Colombia, Dominican Republic, El Salvador, Mexico, Panama, Paraguay and Peru attended the successful event in Panama in February 2011, with *María Fernanda Mendoza* as the main teacher, and *José Miguel Herrera* (CDR), *Magdalena Iraizoz* (CADRA), *Diego Matté* (SADEL) and *Dalton Morato* (ABDR) among the resource persons and lecturers, and *Olav Stokkmo* as the IFRRO resource person. The teaching material in Spanish is posted to the IFRRO website.

7. REGIONAL DEVELOPMENT ACTIVITIES

Annual reports submitted to the Board from the European Group and regional development committees and made available to members document progress in all regions. The financial aspects of the development work are reported separately in Chapter 9 Finances and in the Financial Statement 2010-11.

Asia Pacific Committee (APC)

The region counts 13 RROs in membership of IFRRO administering reproduction rights, including one Music RRO. Since the last Annual Report one new RRO – VIETRRO (Vietnam) – has joined IFRRO as a full member and a Memorandum of Understanding has been signed between IRRO and the Federation of Publishers in India paving the way for the members of the latter to join IRRO. This is expected to boost licensing activities in India the coming FY. China, India, Indonesia and the Philippines remain priority countries. There is also renewed interest for a RRO in Malaysia which the APC will continue to monitor. The APC Chair is *Caroline Morgan* (CAL).

African Development Committee

Since the last report the Middle East has been separated out from the scope of the mandate of the African Development Committee. Africa counts 11 RROs as members of IFRRO. ZARRSO (Zambia) was approved as a new RRO member during the FY under review, and URRO, the RRO in Uganda, received its final approval by the authorities. The African Development Committee, chaired by *Greenfield Chilongo* (Zimcopy) who replaced *John-Willy Rudolph* as from 1 November 2010, with *Gérard Louise* (MASA) as Vice Chair, met once during the year under review. The development of a Code of Conduct specific to African RROs is high on the Committee's agenda.

European Group and European Development Committee

European Group (EG)

The European Group met twice during the FY. The Executive Committee consists of *Kevin Fitzgerald* (CLA) as Chair, *Rainer Just* (VG Wort) and *Yngve Slettholm* (Kopinor). A main focus was on the development of solutions for multi-territory licensing in Europe compatible with European Union competition and other

legislation¹². Following a decision at the European Group meeting in June 2010 to develop tools to assist in the lobbying of EU institutions, the RROs in the EU Member States, European Economic Area (EEA) countries and Switzerland have been asked to nominate representatives to an IFRRO contact network. Besides being responsible for disseminating relevant information received from IFRRO they will coordinate the RRO support to IFRRO in its information and lobbying efforts in EU matters and provide information, especially to the Secretariat and the Executive Committee, when required. Alongside this initiative the invaluable co-operation and coordination with the Brussels based member organisations continue.

European Development Committee (EDC)

The EDC did not meet during the year under review but its members and the Secretariat were involved in various initiatives. DHK (the Croatian authors' association which also acts as the authors' RRO) and LIBRIUS (the Belgian Flemish publishers' CMO) joined IFRRO as Associate Members during the FY. Europe now has 39 Collective Management Organisations administering reproduction rights with IFRRO membership, of which 25 are full RRO members. During this FY, an RRO has been approved in Kazakhstan and an RRO is about to be authorised in Moldova to administer the levy on reprographic devices which came into force on 1 January 2011. Both are in the process of applying for IFRRO membership. Levies in relation to reprography have also been introduced in the legislations of Bosnia and Montenegro.

In May 2011 the Bulgarian Parliament approved a proposal from the government to scrap the levies on reprographic devices. There are currently two RROs in Bulgaria and the EDC will decide on the further work in the country as soon as it is clear which of the two will be approved by the authorities. The Balkan States remain target countries for the work of the EDC which is chaired by *Samantha Holman* (ICLA).

Latin America and the Caribbean (LAC)

There are 9 RROs members of IFRRO in the region. PERUREPRO, ECCLA and BECLA, the RROs in Peru, OECS and Belize were all approved by the authorities in their respective countries during the last year. Proposed amendments to the Brazilian Copyright Act were withdrawn following changes in the government; no new bill has been introduced as at the time of the finalising of the Annual Report. The first licences were signed by SADEL in Chile, and licensing has progressed in other countries in Latin America and in the Caribbean. Main targets remain the RROs in Peru, OECS and Belize, and the development of a Caribbean wide database, a work that was initiated in 2010 with the involvement and assistance of Access Copyright and WIPO. *Ana Maria Cabanellas* (CADRA) chairs LAC, with *Brian O'Donnell* (Access Copyright) as Vice Chair responsible for the Caribbean. The Committee met twice during the period under review.

8. TECHNICAL WORKING GROUPS AND FORA

IFRRO Education and Enforcement Task Force

The purpose of the IFRRO Education and Enforcement Task Force (IEETF), chaired by *Jim Alexander* (CAL), is to assess education and enforcement activities, communicate best practices and make recommendations on such activities to the IFRRO membership, and identify those that IFRRO could support. Best practice information has been collected and posted to a dedicated structured page on the Members Only.

Musical Working Group

The WG studies and suggests solutions to relevant issues to the reproduction of musical works in print. The current focus of the WG is to expand the licensing of musical work in print to more countries. To this end, meetings have been held with music publishers and RROs in various countries and with the International Confederation of Music Publishers (ICMP). A pilot project on digital licensing of musical works open to any interested RRO was presented by SEMU to IFRRO members and others. The Musical WG is chaired by *Marc Hofkens* (SEMU).

Newspaper and similar periodicals Working Group

The WG provides and exchanges relevant information to IFRRO members on the analogue and digital licensing of material from newspapers and similar periodicals. This includes information on requirements for digital services in the news and journalistic media and how these can be monetised for the rightholders of original content. The current focus is on business models, including the licensing of web content, and on

¹² See further on this under Multi-territory licensing under chapter 5 on pages 6 and 7

relevant technical standards and identifiers. The WG, which is chaired by *Martèl Bakker Schut* (SR) met twice during the FY. *Sandra Chastanet* (CFC) will replace Bakker Schut as chair during the coming FY.

Technical Standards Committee (TSC)

The TSC is tasked with supporting IFRRO work on technical standards including examining the need for and possibly developing an IFRRO Party Identifier, a work that it will pursue in the next FY through exploring at the RRO executive level the interest for a federated scheme. It also acts as a resource group for the Board and the Secretariat in relation to IFRRO's work on ISNI. The TSC held one telephone conference and a smaller preparatory group met twice during the FY under review, chaired by *Franziska Eberhard* (ProLitteris)

Visual Material Working Group

The Visual Material WG is chartered to study and recommend solutions on matters involved in reprography and similar reproduction of still images contained within books, journals and newspapers and to determine strategies for co-operation and closer involvement of the visual creators in the field of reprography. Orphan works, the Google settlement and its potential impact on visual material, digital rights and distribution issues continued to be high on the agenda of the WG which met twice, chaired by *Mats Lindberg* (BUS).

Equipment Levy Forum

The Equipment Levy Forum (ELF) is an informal forum open to all IFRRO members for the exchange of information between RROs administering equipment levies and others that take an interest in these issues. It met twice during the FY. The consequences of the Padawan¹³ case and online cross-border sales of devices are high on the agenda of ELF which is chaired by *Benoit Proot* (Reprobel).

IFRRO Public Lending Rights Forum

The IFRRO Public Lending Rights Forum (IPF) under the chairmanship of *Benoît Proot* (Reprobel) is an informal forum open to all IFRRO members. It was convened twice during the period under review, in conjunction with the IFRRO AGM 2010 and in Brussels in June 2011. The focus of the Forum is on the sharing of best practices to enhance administration of PLR among RROs which administer those rights. A database with key information is under development and will be available on the Members Only during the coming FY.

Legal Issues Forum

The Legal Issues Forum (LIF) is a forum open to all IFRRO members for the exchange of information on legal issues. During the year under review, it met twice under the chairmanship of *Caroline Morgan* (CAL) to examine *inter alia* legal issues arising from multi territory licensing and the licensing of web content.

9. FINANCES

Operational accounts

The year-end balance on the operation, i.e. excluding the Development Fund and the Communication Policy Project, resulted in a surplus of € 29,730 against a budget surplus of € 600. This is mainly due to the receipt of unbudgeted income from the European Commission for the ARROW project. A total of € 258,000 was allocated towards development work and transferred as a contribution to the Development Fund.

The Board proposes that of the FY's surplus, € 15,000 be earmarked towards communications and information activities and the balance of € 14,730 be added to the operational reserve which will then amount to a total of € 468,312, as of 30 June 2011. This equals some seven months of the budget yearly spending which is considered indicative of a sound fiduciary policy.

Communication Project

The 2003 AGM allocated € 200,000 and the AGM 2008 an additional € 45,000 towards the Communication Project, the funds for which have been set aside in a separate fund and accounted for separately. The entire fund has been spent as of 30 June 2011.

¹³ See Levies in relation to reprographic reproduction under chapter 5 on page 7

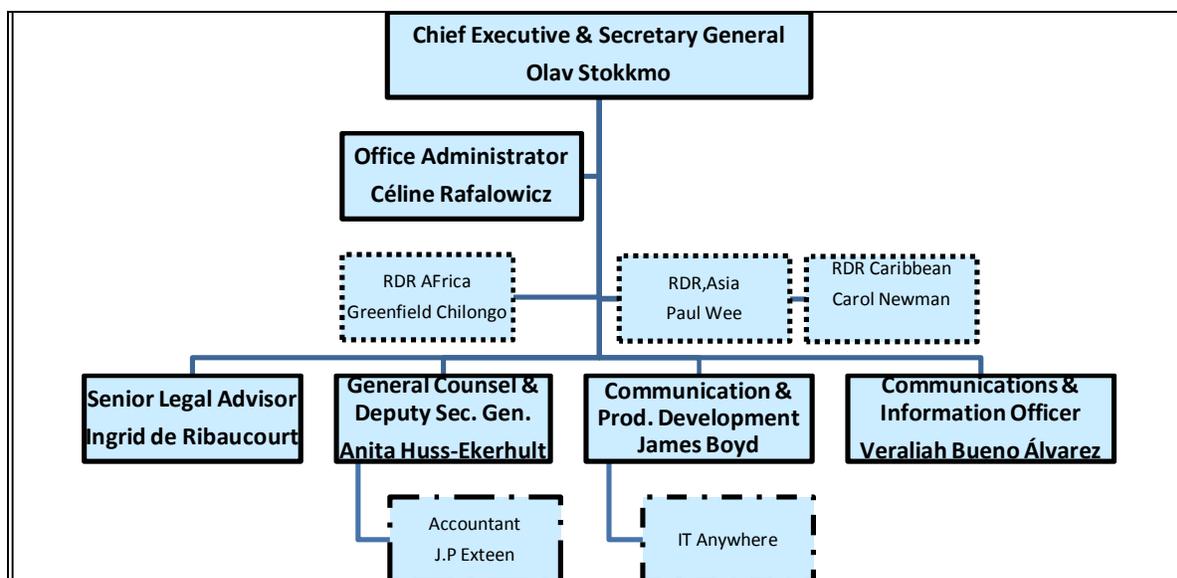
Development Fund

Three IFRRO members contributed a total of € 29,198 directly to the Fund during the FY. € 258,000 was transferred from the membership fees, resulting in a total Development Fund contribution of € 287,198. As in previous years, members also contributed financially through their own development funds and by not charging IFRRO when participating in development activities.

A total of € 324,168 was paid out towards previously approved grants during the FY. Loans of € 32,870 were paid out to B-COPY and TTRRO. As at 30 June 2011, the Development Fund amounts to € 1,116,524, of which € 433,911 has already been allocated through Board decisions towards specific projects. This leaves a total of € 682,613 available for new projects.

10. THE SECRETARIAT

The Secretariat moved offices in June 2011 and is now based at Rue Joseph II, 9-13, Brussels (Belgium). One new employee, *Ingrid de Ribaucourt*, as Senior Legal Advisor, was added to the staff as from January 2011, with responsibilities linked to EU, WIPO and specific legal matters as well as to regional development activities. *Olav Stokkmo* is Chief Executive and Secretary General with *Anita Huss* as General Counsel and Deputy Secretary General. *James Boyd* is responsible for IFRRO's work on technical standards, communications, and product development, and *Veraliah Bueno Álvarez* is responsible for the IFRRO website, selected communication and information activities, and event managing. *Céline Rafalowicz* handles secretarial matters, including the day-to-day book keeping. *Jean Pierre Exsteen* is engaged on a consultancy basis to assist with the book keeping and IT is outsourced to IT Anywhere, a Belgian IT service company. The organisation chart of the Secretariat looks like this:



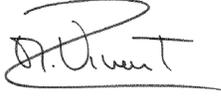
Regional Development Representatives (RDR) reporting directly to the Chief Executive were contracted to assist as follows: Africa: Zimcopy/*Greenfield Chilongo* with priority countries Tanzania, Uganda, Zambia; Asia: CLASS/*Paul Wee*, with focus on Indonesia and the Philippines; Caribbean: *Carol Newman* focusing OCES, Belize and the Caribbean network. RROs have been established in all target countries, the RROs in Indonesia, Philippines, and Zambia are IFRRO members.

11. FUTURE PERSPECTIVES

IFRRO and RROs are enablers rather than blockers of legal access to copyright text and image based works, as are creators and publishers in the sector. Looking forward, the IFRRO Board will pay considerable attention to getting this message through – to policy makers at various levels, nationally, regionally and internationally - as well as to consumers. This messaging will focus on IFRRO's leadership and contributions to developing dynamic and forward looking solutions to user and rightsholder needs, examples of

which include efforts around ARROW, TIGAR, and ETIN, MoUs on enhanced access to works for persons with print disabilities, and the digitisation and making available of cultural heritage through collective licensing. The challenge is to communicate those and other achievements. To meet that challenge will require concerted action through intensive collaboration with and broad support from the entire IFRRO community.

Brussels, 30 June 2011

A handwritten signature in black ink, appearing to read 'M. Vinent', with a large, sweeping flourish above the name.

Magdalena Vinent
President