

UNDERSTANDING REPROGRAPHIC RIGHTS

What is Reprography?

Reprography is a form of reproduction, i.e. the duplication of a published graphic image or text. The word derives from the combination of two words: “Reproduce” and “Photography.” Reprography produces a facsimile of a published graphic image or text using mechanical or electronic means, for example by the following processes:

1. Printing
2. Photocopying
3. Scanning
4. Digitizing
5. Electronic transmission, such as faxing
6. Electronic storage in databases

The exact definition of reprography varies from country to country, but essentially it boils down to making a copy by mechanical or electronic means of an existing image or text.

Reprography as an activity is common in educational institutions, libraries, archives, academic publishing, and government agencies, settings in which images are reproduced for purposes such as classroom instruction, study and reference materials, cataloguing and archiving, scholarly journals, and information documentation.

What are Reprographic Rights?

Reprographic rights are the rights used in the process of reprography. From the perspective of rights holders, reprographic rights are considered “secondary rights,” in contrast to a rights holder’s primary right to license the original publication of the graphic image or text. This characteristic as a secondary right plays out in different ways based on whether the particular reprographic use takes place in the U.S. or abroad.

How are Reprographic Rights Structured?

The U.S. handles reprographic rights differently from other countries. In the U.S., it is likely that the types of purposes that engender reprography may fall under the “fair use doctrine,” which requires no specific permission from rights holders if an image is used for such purposes as criticism, commentary, news reporting, teaching, scholarship, and research, and further complies with four factors used to determine fair use¹. With no permission required, there would also be no compensation paid to the rights holder. Reprographic uses that are not qualified as fair use would in fact require the rights holder’s permission and, potentially, associated compensation, and this use would be negotiated with the rights holder or their representative.

In other countries, the view is that rights holders should be compensated for reprographic use of their images in all cases, even for what in the U.S. would be considered fair use. Rather than burden rights holders and rights users with the need for direct interactions for reprographic licensing purposes, however, these countries have adopted regulations by which such rights are handled collectively. Under this type of arrangement, no direct interaction is required between rights users and rights holders. Rights holders are compensated for the use of their reprographic rights not on a per-use basis, but based on broad calculations informed by algorithms and other evidenced-based projections that determine the extent to which an image or text is likely to be deployed in a reprographic use.

¹ Per the U.S. Copyright Office, the four factors deployed to ascertain fair use include: purpose and character of the use (commercial vs. nonprofit educational); nature of the copyrighted work (creative vs. factual); amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use on the potential market for or value of the copyrighted work.

How are Reprographic Rights Compensated?

To compensate rights holders for use of their reprographic rights, countries garner funds from a range of sources. Among these are blanket licensing agreements with sectoral institutions (higher education, libraries, broadcast systems, government agencies, photocopy firms, etc.), taxes on equipment and materials used in reprographic processes (photocopiers, laser printers, scanners, software, copy paper, etc.), and fees on services involved in reprographic processes (internet providers, cable services, etc.).

The distribution of payments for reprographic rights is managed via an international network of country-specific Copyright Management Organizations (CMOs) that coordinate globally via associations such as CISAC (International Federation of Societies of Authors and Composers) and IFRRO (International Federation of Reproduction Rights Organizations). This interactive system of entities will receive funds, often from governments of the respective countries where reprographic uses have taken place, allocated for reprographic rights payments and in turn distribute these funds to the individual rights holders, wherever they are located. Rights holders participate in this international, interactive system by acquiring an exclusive Interested Party Information (IPI) number, assigned to them at no charge through a rights holder's respective country-specific CMO.

What Stake Does a U.S. Rights Holder Have in This System?

Although this collective rights system for reprographic uses does not operate within the U.S., U.S. rights holders are still eligible to receive payments if their reprographic rights are utilized in countries where this system is in effect. For artists, their estates, and their foundations who are rights holders in the U.S., reprographic rights collections and payments are managed via Artists Rights Society (ARS), the US-specific CMO that collaborates internationally with its sister societies and the global networks - CISAC and IFRRO - to implement this system on behalf of U.S. rights owners that hold an IPI number.

Will Reprographic Rights Payments to U.S. Rights Holders Increase?

Collections for reprographic rights globally have increased strongly since legislation to spur collective management strategies was introduced in the E.U. in 2001. This trend is expected to grow as additional countries implement their respective systems and as legislation approved in 2019 that extends blanket licenses to on-line platforms such as Google and Facebook takes effect. Moreover, ARS is partnering with its sister societies in a new technology initiative, the Automated Image Recognition (AIR) project, which is designed to identify and document artistic images as they are found across the internet. With a more robust body of data documenting the variety of images and the nature and frequency of their use, ARS will be positioned to advocate for adjustments to the calculations that determine payments made to rights holders for reprographic uses. With payments ranging from several hundred dollars to thousands of dollars per year based on the artist and associated images, all of this bodes well for increased payments to U.S. rights holders.

For Additional Information

For further information on reprographic rights, or to learn how you might participate as a rights holder in the AIR project to help ARS boost reprographic rights collections, please contact Janet Hicks, Vice President and Director of Licensing, ARS: jhicks@arsny.com.