Legally Speaking / Licensing Agreements: The Nordic Track

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Legally Speaking

by Glen M. Secor, J.D. (Yankee Book Peddler, Inc.)

Fair Use: The Nordic Track

Recent editions of this column have addressed the problems of copyright management in the context of scholarly communication. In the September column, the tension generated by the all-or-none nature of fair use was examined. Again, fair use equals free use. Assuming a valid copyright, any unauthorized use which does not qualify as fair use is an infringement. Permissions are generally obtained from the copyright holder, and the copyright holder determines fees. This system is cumbersome and has caused friction between copyright holders and those who want to use copyrighted works. Some of that friction is probably healthy, but some clearly is not, as shown by the continuing stream of litigation over fair use.

The Copyright Clearance Center provides a welcome alternative to the negotiation of rights and fees with each rights holder. Participation in CCC by copyright holders is not mandatory, and it is not clear yet just how much a voluntary reproductive rights organization (RRO) can do to reduce the tensions between rights holders and copyists. In this column, without necessarily endorsing the approach, I would like to examine one country’s alternative to a purely voluntary system. (The following overview is culled from a paper entitled “Reproductive Rights Organizations: Their Role and Function ... The Nordic Approach,” presented by John-Willy Rudolph, Executive Director of Kopinor, at an annual meeting of the Professional & Scholarly Publishing Division of the AAP, in February 1993.)

Kopinor, the Norwegian RRO, was established in 1980. Membership in Kopinor is comprised of five publishers’ associations and sixteen authors’ associations. These associations obtain non-exclusive rights from their members, and then assign those rights to Kopinor for the purpose of having Kopinor collectively administer permissions and fees relating to third-party copying. Kopinor focuses on photocopying of books, journals, and newspapers, but also administers rights for sheet music and other copyrighted material. Kopinor negotiates licenses with schools, businesses, libraries, copy shops, and others.

One key to the Norwegian approach, and a major distinguishing factor from the American system, is the “Extended Collective Agreement License.” This statutory license, passed into law in 1979, brings many rights holders who are not members of the twenty-one Kopinor membership associations under Kopinor’s administrative umbrella. Quoting from Mr. Rudolph’s paper: “If the Norwegian Union of Journalists ... is party to the agreement through the RRO, the user may legally photocopy works of all non-member journalists at home and abroad.

“This law ... allows the RRO to concentrate on negotiating agreements with users rather than on soliciting authorizations by tracking down individual rights holders ... [f]urther, it allows the RRO to collect fees from all copyright works, thereby preventing the undermining of respect for copyright.

“From the user’s perspective, the advantage is that as NO organization will ever be able to represent all relevant rights holders, non-represented rights holders are covered by the statutory license, and the user does not have to check if the rights holder ... is represented by the RRO ...

“(speaking on the voluntary nature of the system) ... The statutory license only takes effect if the organized rights holders choose to license a user (emphasis added).”

Mr. Rudolph’s presentation was late in the day, and not much time was left for Q&A. Thus, I do not profess to understand completely the interplay between the voluntary and compulsory aspects of the Norwegian system. What is most intriguing in this system is that it attempts both approaches — compulsory and voluntary. Also of interest is the fact that the statutory license kicks in when a rightsholder belongs to a certain profession or occupation for which there is a professional association which belongs to Kopinor, even if the individual rightsholder does not belong to that professional association. Further, it covers only users with whom Kopinor has negotiated a license. Thus, it seems, if a rightsholder belongs to a professional category for which there is no professional association which belongs to Kopinor, or if the user seeking to copy a work has not signed a Kopinor license, then that user must obtain permission from the individual rightsholder. This is similar to the situation in the U.S. when a publisher/rightsholder does not participate in CCC, or when a user elects not to utilize CCC, and when the use is not fair use. One difference between Kopinor and CCC is that Kopinor secures rights through professional associations, while CCC obtains its rights from individual rightsholders. CCC, of course, has no statutory license authority under which it can claim rights which have not been expressly granted to it by the individual rightsholder.

Another difference between Kopinor and CCC is that Kopinor, like all Nordic RROs except Denmark’s, practices collective distribution of fees. Fees are distributed through the 21 member organizations, and are split 50/50 between publishers and authors. Again to quote from Mr. Rudolph’s paper: “The various authors’ associations generally distribute to individual authors in the form of grants. The publishers’ associations tend to distribute to individual publishers according to sales figures for the relevant type of publication. Non-represented rightsholders are entitled by law to equal treatment with members when the associations distribute users fees. Funds may also be used by an association for activities which benefit the whole group of rightsholders which the association serves.”

Clearly, this approach places a considerable economic power in the hands of the professional associations. No suggestion is being made here that this system would work in the U.S., as such is continued on page 70
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continued from page 31

tedly not easily transferable to the U.S.

ystem, provides some interesting al-

ternatives to certain aspects of the U.S.
approach to copyright. It grew out of a
recognition on the part of Norwegian
government officials, publishers, authors,
et al, that too much uncompensated copy-
ing was being done, but that a system of
purely individual rights and permissions
would be cumbersome and inefficient.
These are some of the very problems
being faced in the U.S. today. Whether
technology, the CCC, or other factors
can come together to solve these prob-
lems without compromising our individu-

alistic (market-based?) system to copy-
right remains to be seen. As we continue
to assess the situation, we should not
close our minds to some of the alterna-
tive approaches practiced elsewhere.
Kopinor, through its use of statutory li-
enses and collective distribution, is a
model worth studying.

Gilles de La Rochefoucauld
continued from page 40

just finished Felicien Marceau's La Ter-
race de Lucrezia. It is fiction, an at times
humorous story of a woman living in
Italy as a concierge and the story is about
all the people that live in the apartment
building.

ATG: What does the future hold for
AAL?

GLR: There is a very common pro-
verb in France. It is “don’t give up prey
to chase a shadow.” Our main market is
the American market and we want to work
hard to please that market. We believe
that the dollar is undervalued compared to
the European currencies. Obviously,
we want to capture market share against
our competitors. There is no question
that it is easier to get French titles from a
French bookseller. We have recently
hired a representative in the United
States. Edna Laughrey will represent
AAL abroad. We are anxious to know
what our customers think and we are
always working to improve.

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Prof. CC: Mail, All-in-One, Vax-
Mail, In-Box are some of the names you
may have heard of. They are all differ-
ent and some are easier to use than oth-
ers. Be aware that whatever you are us-
ing may not be the only thing available
at your institution or work place. Ask
your systems people what the choices
are and maybe you'll find one you like
better. Where I work there are at least
two different e-mail set-ups and some
people prefer one over the other; some
people despise both of them, and others
don’t even know the difference!

Meanwhile, the next piece of furni-
ture that I suspect will leave my office
will be my desk. That big, clunky piece
gofigment-issued walnut-veneer has
never been anything except a place to
pile papers on anyway. If the sleek, func-
tional computer table I requested ever
gets ordered, the boxy old desk can go!