

Submission by Copydan Billeder, Denmark, to U.S Copyright Offices call for comments on Mass Digitization Pilot Program (docket no 2015-3)

About Copydan Billeder:

Copydan Billeder (Copydan Visual) is a rightsholders organization for visual arts in Denmark. We administer reproduction rights for approximately 2.300 Danish and 80.000 foreign visual artists.

We are appointed by the Danish Ministry of Culture to collect remuneration under the Danish resale rights (droit de suite) legislation, as well as to administer extended collective licensing for visual arts.

Copydan Visual is a non-profit organization within the Copydan organizational framework. The remuneration collected by Copydan Visual is distributed back to the rightsholders, in order to support the continued creation of visual arts.

Our American counterpart is the Artists Rights Society (ARS) which administers our own and other European repertoires in the U.S. with great care and attention. They are unfailingly responsive to the needs of our members, and play an important role in international deliberations on intellectual property rights matters, presenting the American perspective.

About the Extended Collective License for visual works:

The extended collective licensing (ECL) system is based on Nordic copyright law and was introduced in all the Nordic countries in the 1960ies. The system is a method for clearing copyrights where it is not possible or practical for the users to clear the rights on an individual basis. This is for instance the case in educational establishments, where a massive numbers of works are being used every day.

The ECL system is based on the existence of a collective rights management organisation (CMO) representing a substantial number of the rightsholders to the type of works being licensed. The ECL agreement is extended to cover also the non-represented rights holders.

On behalf of its members the collective organisation enter into agreements with users of copyright protected works within a certain area. Under the provisions in the Danish Copyright Act on the ECL system the effects of the collective agreements are then extended to rightsholders not represented by the collective organisations. In practice this means that the collective licensing agreements have the same effect as a compulsory license on the rightsholders not represented by the collective organisations. At the same time the system gives the users legal certainty that they have cleared all relevant rights (provided obviously that users respect the conditions in the licensing agreements). The collective organisation distributes remuneration generated from the licenses to the individual rights holders, both represented and non-represented, Danish as well as foreign.

Copydan Visual is appointed by the Danish Ministry of Culture to license the secondary use of visual works under the ECL scheme.

One main application of ECL by Copydan Visual is for the secondary use of digital images in the educational sector. All educational institutions in Denmark holds an ECL license from Copydan Visual which allows teachers and students to copy, download and store copyright protected images from the internet and reuse them for educational purposes, such as use in digital presentations, on digital whiteboards etc. They are also allowed to share the images with other teachers and students at other institutions.

The educational institutions pay an annual fee to Copydan Visual for this license, which is calculated pr. student. The remuneration ranges typically from 15 to 30 DKK pr. student pr. Year (between \$ 3 and \$ 6.)

Being an ECL based license, the license covers all works by all authors, regardless of nationality and source. This grants educational institutions a legal certainty that their use of visual works for educational purposes is covered by a license and thus legal. The definition of allowed uses can be made clear because they have been set in a contract. In addition, this also grants flexibility towards using new technology and trends, since the parties at any time can revise licensing agreements or administrative practice and interpretations.

The remuneration collected is allocated and distributed to the individual rights holders on the basis of an annual survey of which images have been used. Copydan Visual cooperates with the Danish CMO for reprographic rights management, Copydan Writing, which is a collective management organization that represents all written works and mixed publications on an ECL basis. The cooperation concerns the use of images in connection with text (embedded images). Copydan Writing collects a sample and analyses, which works have been used and to which rights holder the remuneration should be distributed. In addition, Copydan Visual also applies data collected from other areas of activity in order to establish a statistically based distribution of the remuneration.

The distribution is conducted automatically to all registered rights holders of Copydan Visual and all sister organizations holding reciprocal agreements. Remuneration allocated for rightsholders who are unknown at the time of the allocation is kept in escrow while dedicated staff at Copydan Visual conducts diligent searches in order to locate and remunerate the rightsholders.

A smaller portion of remuneration however cannot be distributed to individual rightsholders because of lack of data or because nothing is found during a diligent search. Such remuneration is used for cultural, educational and social purposes. Examples of this include activities that supports rightsholders improve skills and build networks as well a funding new art projects. Copydan Visual therefore plays an important role in protecting national cultural life, contributing to the recirculation of investments in new visual works.

Key principles for ECL management:

Through our experience with ECL licensing, we can identify some key principles, which contribute to a successful ECL management:

- ECL management must be based on principles of efficiency and transparency. Agreements, accounts and distribution schemes should be made public and communicated to both rightsholders and users.
- All rightsholders must be treated equal without preference to nationality and membership.
- Any group of rightsholders can choose not to include categories of rights in licensing agreements with users. Such decisions should always be fully acknowledged and respected by the appointed CMO. When the rights holders grant the rights and decide on the ECL license conditions, the rightsholders control the activities of the CMO, including the areas of licensing, the level of remuneration, distribution of remuneration, administrative costs etc.

Copydan Visual would like to thank the U.S. Copyright Office for the opportunity to file a submission on the ECL and will be more than happy to provide a follow up on any doubts or questions which may arise from our submission.