

Humboldt Universität zu Berlin
in cooperation with ALAI Deutschland e.V. and The Copyright Society
present:

What Every Practitioner Needs to Know About the Differences in Collective and Individual Licensing between the EU and in North America

MONDAY, OCTOBER 16TH – DAY 2 – PRINCIPAL TOPICS: TEXT & IMAGES

10:00 AM – 11:15 AM GMT+2

Session 3: Managing Rights in Written Works

Speakers: Catherine Zaller Rowland, General Counsel, CCC; Dr. Robert Staats, CEO VG Wort; Dr. Rudolf Leska, Partner, ŠTAIDL LEŠKA ADVOKÁTI; and moderator Joshua Graubart.

Collective Licensing of Literary Works and the Challenge of Artificial Intelligence

1. *J. Graubart*: Introduction
 - 1.1. Introductions of panelists
 - 1.2. Agenda outline
2. Collective Licensing: Existing Structures
 - 2.1. *R. Staats*: Statutory collective licensing: “How VG Wort works”
 - 2.1.1. **CLE material: DSM Directive, German Statutory Provisions**
 - **Council & Parliament Directive on Copyright in the Digital Single Market 2019/790, recitals, Arts. 2-4.**
 - **Urheberrechtsgesetz [Copyright Law], Arts. 44b, 60a**
 - **Verwertungsgesellschaftengesetz [Collecting Society Law], Arts. 2, 9, 27, 27a, 27b, 32, 34, 38, 51, 51a, 51b, 58, 75, 92, 128**
 - 2.2. *C. Rowland*: Voluntary collective licensing: “How CCC works”
 - 2.2.1. **CLE material: LOIS WASOFF, MARK SEELEY & R. BRUCE RICH, CREATING SOLUTIONS TOGETHER (2020). (available at https://www.copyright.com/wp-content/uploads/2021/01/CCC_CreatingSolutionsTogether_Ebook_2020.pdf)**
 - 2.3. Discussion: Advances and disadvantages of voluntary/statutory licensing
 - 2.3.1. Voluntary licensing:
 - 2.3.1.1. from the rightsholders’ perspective
 - 2.3.1.2. from the users’ perspective
 - 2.3.2. Statutory licensing: how to bridge the gap where no statutory licenses exist
 - 2.3.3. A third option: Extended collective licensing

3. The Challenge of AI

3.1. Input: Training AI

3.1.1. R. Leska: Introduction: “Challenges for International Collective and Individual Licensing in the Advent of AI”

3.1.2. *R. Staats and/or R. Leska*: AI licensing options under European law

3.1.3. *C. Rowland and/or J. Graubart*: AI licensing options under US law

3.1.3.1. **CLE material: Artificial Intelligence and Copyright, 59942 FED. REG. 88,167 (Aug. 30, 2023) (available at <https://www.copyright.gov/ai/docs/Federal-Register-Document-Artificial-Intelligence-and-Copyright-NOI.pdf>)**

3.1.4. *J. Graubart & R. Leska*: The data mining frontier: Japan and Ukraine

3.1.4.1. **CLE material: 著作権法 [Copyright Law] (Japan) Act. No. 48 of 1970 (as amended) Art. 30-4.**

4. General discussion and audience Q&A

Materials:

[DSM-RL.pdf](#)

[Japan Copyright Act 30-4.pdf](#)

[UrhG .pdf](#)

[VGG.pdf](#)

11:45 AM – 1:00 PM GMT+2

Session 4: Managing Rights in Visual Works

Speakers: Dr. Anke Schierholz, General Counsel, VG BildKunst (Germany); Janet Hicks, Vice President, Director of Licensing Artists Rights Society (US), and moderator Eric Schwartz, Partner, Mitchell Silberberg & Knupp.

U.S. Law and Collective Administration

- Copyright Law
- Anti-trust issues
- The role of Artists Rights Society (ARS) and the American Society for Collective Rights Licensing, Inc. (ASCRL)
- Copyright Office Studies: (i) Collective Rights Management Practices Around the World (2020; for musical works); (ii) Resale Royalty Rights (2013)

<https://www.copyright.gov/policy/unclaimed-royalties/cmo-report/>

<https://www.copyright.gov/docs/resaleroyalty/usco-resaleroyalty.pdf>

German (and European Union) Law and Collective Administration

- European Union Directives
- Copyright in the Digital Single Market (DSM) -- EU 2019/790
<https://eur-lex.europa.eu/eli/dir/2019/790/oj>
- Article 12: Collective Licensing
- Digital Services Act -- EU 2022/2065
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>
- Obligations and liability of online platforms
- German Copyright Law -- (Permissive) Extended Collective Licensing

Other Issues

Moral rights (attribution; integrity; destruction)

- a. European Union (e.g., Germany)
- b. U.S. – Section 106A – Visual Artists Rights Act
 - i. <https://www.copyright.gov/title17/92chap1.html#106a>

Resale royalty – Section 26 (German Copyright Law)

A. The Purpose of Collective Licensing for Visual Material?

Collective Licensing is a licensing solution where markets fail (education, business, government, private social media, artificial intelligence.) [*Discussion of the application of collective licensing in different markets*].

Collective Licensing can take different forms (Statutory, Extended, Collective, Voluntary). Objective is to make license available, compensate the rights owner, provide use of material where that may not otherwise occur).

[Explanation of how collective licensing systems work for visual material].

Resources:

IFRRO <https://ifrro.org/>

CISAC <https://www.cisac.org/>

EVA <https://www.eartists.org/>

B. Obstacles to Collective Licensing in the USA

Market competition and consolidation of licensing authority.

[Explanation of key issues affecting the implementation of collective licensing systems in the US].

Resources:

US DOJ Guidelines

https://www.ftc.gov/system/files/documents/public_statements/1049793/ip_guidelines_2017.pdf

Glenn A. Clark, Blanket Licensing: The Clash between Copyright Protection and the Sherman Act, 55 Notre Dame L. Rev. 729 (1980). Available at: <http://scholarship.law.nd.edu/ndlr/vol55/iss5/5>

Remarks by Assistant Attorney General Makan Delrahim on the Future of ASCAP and BMI Consent Decrees

<https://www.justice.gov/opa/speech/remarks-assistant-attorney-general-makan-delrahim-future-ascap-and-bmi-consent-decrees>

Pricing competition between authors.

Market competition and consolidation of licensing authority.

[Explanation of key issues affecting the implementation of collective licensing systems in the US].

Resources:

US DOJ Guidelines

https://www.ftc.gov/system/files/documents/public_statements/1049793/ip_guidelines_2017.pdf

C. Pending Gateways to Collective Licensing in the USA