

Experiences with licensing systems for mass digitization of works of visual art in Norway

Submission to U.S. Copyright Office, Library of Congress

BONO, Norway

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Brief background information:

BONO (Norwegian Visual Artists Copyright Society) is the Norwegian Copyright Management Organisation (CMO) for visual artists in Norway. Established in 1994 it has now more than 2.200 Norwegian members (living artists as well as rightsholders after deceased artists). In addition, BONO represents approx. 100.000 foreign visual artists through reciprocal contracts with similar societies around the world (42 societies in total). BONO's reciprocal sister society in the United States, representing our rights there, and with which we have had a long and very fruitful relationship, is the Artists Rights Society.

Our society enter into agreements and issue licenses for various kinds of use of the works of the artists we represent, and distributes remuneration on an individual basis to the respective artist/rightsholder. We operate within various rights areas: Reproduction Rights, Resale Rights, Television and Broadcasting Rights, Making Available Rights, Database Rights, among others.

The two Extended Collective License models (ECL) described below, illustrates how efficient this kind of system for mass digitization can be when administered by an authorized CMO and applied to works of visual arts.

Collective Management for artists/rightsholders who are not represented directly:

Within certain areas our society are entitled to collect and distribute remuneration to artists who are not a direct member of our society (or one of our foreign sister societies). For example, the collective management of the Resale Right in Norway is mandatory through law, and the Ministry of Culture has authorized BONO as the one society entitled to collect and distribute Resale Right remuneration for non-members.

In addition, our society is entering into agreements with users under the scope of Extended Collective Licensing (ECL). BONO is at present authorized by the Ministry of Education to enter into agreements with ECL-effect in the following areas: Broadcasting/TV and Archives, Libraries and Museums (ALM-institutions).

ECL covering works of visual art in Broadcasting/TV:

Regulated in the Norwegian Copyright Act, § 38a, cf. §§ 36 and 30.

BONO has since 2013 a so-called lump-sum agreement with ECL-effect with the Norwegian Broadcasting Corporation (NRK). The agreement covers visual art and allows NRK to broadcast works of visual art without having to clear rights on a case-to-case basis. This has resulted in cost- and resource-savings for the broadcaster, and made it possible for the broadcaster to increase the use of

works of visual arts in their productions. At the same time, it secures artists and rightsholders payment whenever their works are shown in a manner that are subject to copyright remuneration. NRK and BONO are jointly surveying and registering the actual use of works of visual arts. This registration is in turn the basis for allocating the proper share of the lump sum to each artist/rightsholder.

The agreement includes an opt out clause so that any artist/rightsholder covered by it can exclude some or all of their work. In the almost 2 years the agreement has been in place, no opt out claims have been set forth.

The remuneration being allocated to non-members follows the same principles that of members of our society, so that non-members are remunerated on equal terms as members. Guidelines and routines for finding artists/rightsholders (diligent search) that are not members have been established and secures that as much of the remuneration that can feasibly can be distributed, actually are distributed. The routines typically covers online-publication of names of artists with outstanding remuneration, search in normal address registers, as well as search in public registers and official archives. If it is not possible to identify or find an artist/rightsholder, the monies will be available to use for purposes relevant to visual artists and the protection of their copyright, according to standard statutes of limitations.

The distribution of remuneration from BONO is done at a quarterly basis (4 times a year).

ECL covering works of visual art in Archives, Libraries and Museums (ALM-institutions):
Regulated in the Norwegian Copyright Act, § 38a, cf. §§36 and 16a.

This ECL-regulation covers the mass digitization of works of visual arts from the ALM-institutions physical collections. It allows for instance a museum to enter into an agreement with BONO that allows it to publish their entire collection of copyright-protected works on the museums web site, or a joint web site/portal for a group of museums (for example www.digitaltmuseum.no).

BONO are at present negotiating with several institutions that have art collections in order to make agreements under this ECL-regulation. This regulation effectively removes the obstacles the institutions previously have experienced concerning clearing rights and obtaining permission. ECL thus reduces the resources spent on rights clearance, and generally has a positive side effect concerning the users' opinion/view on copyright.

Institutions who have art collections as a rule has detailed information on the various works in their collection. In other words, the vast majority of works and artists in their collection are known. This information makes it possible to allocate remuneration to each artist/rightsholder, whether they are members of our society or not.

Agreements made under this ECL-clause also contains an opt out function, similar to the one described above. The same follows with regards to the routines for allocating remuneration to unknown artists/rightsholders, and with regards to the quarterly distribution of remuneration.