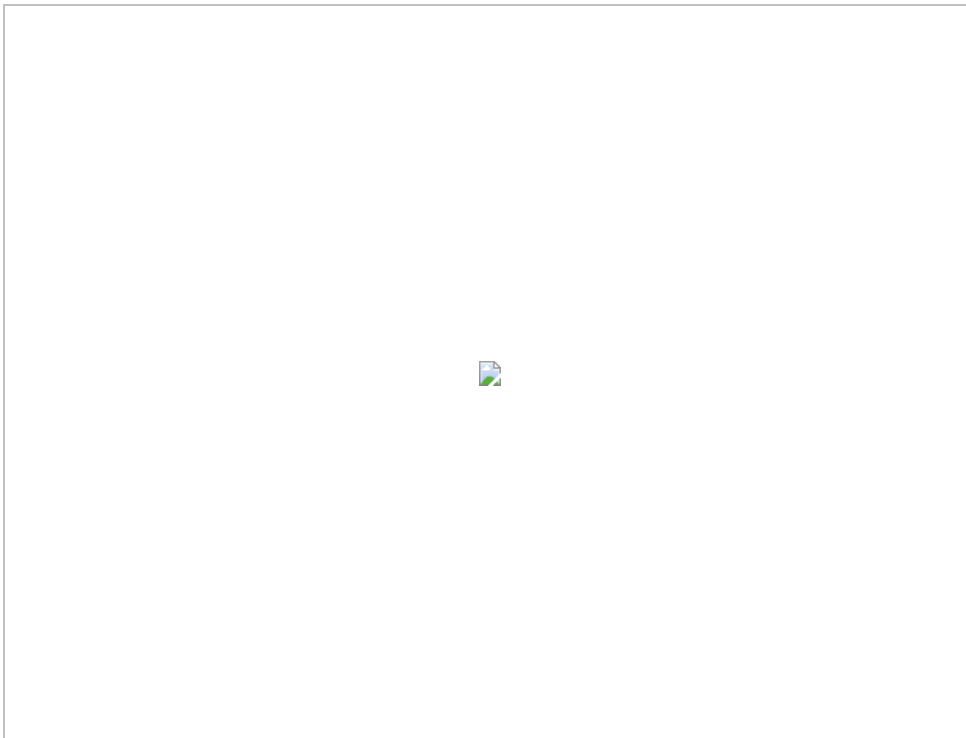


## The CRC Report 2011: DALRO licensing agreements

After the release of the Copyright Review Commission Report a few days ago various articles have spoken of the recommendations made by the commission particularly the call to amend the Copyright Act to include provisions that take into account various technological advancements. I fully support this as I have shown [elsewhere on this site](#) the contrasts between the technological developments and legislative developments in copyright law in South Africa. On skimming over the paper, one aspect of the report which immediately stood out for me was the section on the DALRO (The Dramatic, Artistic and Literary Rights Organisation) licensing agreements with tertiary institutions, especially the assumptions made by DALRO as to the content of the rights publishers have over specific works. In the coming two weeks I will look at other issues raised in the report but in this post I would like to focus on this section concerning DALRO's licensing agreements with tertiary institutions. The report section begins by providing background on DALRO and their functioning as a copyright agent for publishers in providing blanket and transactional licenses to tertiary institutions. It then continues with a comment on the rights which are granted via the licenses by DALRO.

The graphic below sketches the legal relationships between the author, publisher, DALRO and tertiary institutions as explained in the report. Its mentioned in the report that DALRO licenses relate directly to Section 6(a) of the Copyright Act and Section 11 of the Act as illustrated below. Section 11 concerns published editions and publishers have the exclusive right to reproduce and to license reproduction. Whereas in the case of Section 6(a), DALRO does not have the authority to administer these rights on behalf of all authors



My main concern lies in paragraph 9.2.8 of the report (the Report has also recognised these issues):

Mr Robinson said DALRO assumed the publishers that gave it the mandate to license the reproduction of their publications were permitted by the holders of the copyrights in the literary works to authorise DALRO in turn to license the reproduction of the literary works as well as the typographical arrangement thereof.

DALRO assumes that publishers have the necessary permissions to license reproduction of literary works besides the published editions (Section 6(a) related rights) – but how was that assumption made, what was it based on? Contract terms? Good faith as mentioned in the report? The assumption in my view was irresponsible and since DALRO defines itself as “ultimately a Copyright Asset Management organisation”, they should have better processes and procedures in place to monitor and check copyright asset ownership. Yes contracts can absolve a party from the obligation of ensuring correct ownership when receiving assets via transfers or mandates but DALRO as South Africa's RRO has the responsibility and I believe the duty, to ensure legal copyright practices by virtue of its function.

I would strongly recommend that in light of the report, there has to be an in house systematic review of all agreements between local publishers and DALRO specifically concentrating on Section 6(a) related mandates. If it is the case that DALRO in good faith has made assumptions about the content and ethos of the mandates provided by the publishers, then those publishers need to be held accountable for infringing copyright via illegal sub-licensing to DALRO. You can only give away that which you own or have permission to, if you don't fall into either category it is a violation of the law. If it happened as a result of oversight on the part of publishers, then they need to make amends. Publishers have previously [requested DALRO perform an enforcement function](#) to monitor alleged copyright infringements which resulted in DALRO facilitating a relationship between the South African Federation Against Copyright Theft (SAFACT) and members of the Publishers' Association of South Africa (PASA). It is now time for the spotlight to turn to the publishers and their processes and procedures in relation to royalties and specific rights they are granted by authors. While I commend DALRO's

honesty and acknowledgements in their representations, following this report, something has to be done.

In light of open licensed literary works, there also needs to be a review of how many of the works mandated to DALRO by publishers in terms of Section 6(a) are open licensed works. And what about fair dealing? How much are tertiary institutions paying for usage of materials (via transactional licenses) that qualify as fair dealing and therefore no permission is needed or royalties need to be paid to use the copyrighted works? A hypothetical scenario that speaks to this is: Let's say a transactional license is sought for permission to use a specific copyrighted handout and the academic or departmental administrator is not familiar with fair dealing. The handout is to be issued to a class for use in that lecture and the papers with the students' notes are returned to the lecturer at the end of the period. In this instance use of the copyrighted handout qualifies as fair dealing – fair dealing allows for use of a copyrighted work, without permission from the copyright holder, for illustrative purposes in teaching in any publication, broadcast or sound or visual record for teaching. How would DALRO respond to this? Do they conclude a transactional license with the institution or academic? Would they advise regarding fair dealing instead?

Other issues raised in the report are needletime rights, using wireless service providers as collecting agents and distribution of music royalties to name a few. More on the issues raised in the CRC report will follow soon.

by Shahaam



### Add comment

Your name

Subject

Comment \*

Text format Filtered HTML ▾

[More information about text formats](#) ?

Web page addresses and e-mail addresses turn into links automatically.  
Allowed HTML tags: <a> <em> <strong> <cite> <blockquote> <code> <ul> <ol> <li> <dl> <dt> <dd>  
Lines and paragraphs break automatically.

- [Home](#)
- [About Us](#)
- [Output](#)
- [Events](#)
- [Blog](#)
- [Support](#)
- [Contact Us](#)

This site and its contents are licensed in terms of a [Creative Commons Attribution Share Alike](#) license, unless specified otherwise - Open UCT 2012.  
A [Drupal Website](#) by 2Stroke Interactive