

**OPEN AND ANONYMOUS LETTER TO MEMBERS OF THE PUBLISHING INDUSTRY,
CONTENT CONSUMERS AND OTHER INFORMATION INDUSTRY MEMBERS REGARDING
THE COPYRIGHT CLEARANCE CENTER (CCC)**

You are a recipient of this letter because you have shown an interest in discussing issues that are of importance to the above communities, and due to the objective nature of your public discourse and analysis. This letter is being written to bring up serious concerns with regards to the increasingly aggressive and misleading behavior of the Copyright Clearance Center (CCC) which is potentially harmful to the legitimacy of the publishing and information industry at large. These concerns have arisen, and have been discussed very privately, within the RRO (Reproductive Rights Organization) Community, the Content Buying Community, the Publishing Industry as well as the University Library Community. These concerns are real, potentially scandalous, and deserve to be discussed in a public forum, such as the forums in which you are engaged.

The CCC claims it is a non-for-profit organization in almost every presentation, and in most, if not all of the contracts with its customers and vendors. Yet it behaves as a for-profit organization. Furthermore it may actually be a for-profit organization as recently revealed by the "Open Letter" from the Association of Southeastern Research Libraries, the Boston Library Consortium, the Greater Western Library Alliance, the Triangle Research Libraries Network, and the Washington Research Library Consortium. Their letter points out the fact that the CCC is not actually a not-for-profit at all. Additionally, upon closer inspection it's noticeable that the Chairman of CCC's Board of Directors is a Venture Capitalist and the CEO has little experience, outside of the CCC, of running a not-for-profit nor an RRO. The "not-for-profit" moniker may be a false claim at best, and is certainly a disarming factor for any person or organization that deals with the CCC. Additionally, the CCC makes inferences regarding it being a quasi-governmental organization, created at the "suggestion of Congress."

The CCC is, at its core, supposed to be an Reproductive Rights Organization (RRO). It is an active member of the International Federation of Reproduction Rights Organizations (IFRRO), however, it does not comply with many aspects of the IFRRO Code of Conduct (<http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations>), particularly in matters of ensuring transparency, cost minimization, acting with integrity in the collection and distribution of funds received, and publicizing and explaining their operations, practices and procedures (see sections 1.7, 2.1.2, 3.1.1, 3.1.4, 4.1.2, 4.1.3, 5.1.3, 5.2, 5.3, 5.3.1, 5.4.1, and above all 5.6). The CCC's Annual Report is a prime example of non-transparency and obfuscation. In fact, it is not an Annual Report at all, but rather a few HTML pages with a small fraction of the information that most organizations would put into an Annual Report, especially one that claims to be a not-for-profit created at the "suggestion of Congress." This lack of transparency is quite startling in and of itself and a clear violation of IFRRO's Code of Conduct.

Many of the CCC's contracts with its Publishers, Customers, Vendors, and other partners would likely have been negotiated differently if it was more widely known that the CCC had its tax-exempt, nonprofit status revoked by the U.S. Tax Court in 1982. In other words it is a profitable private company that has no government affiliation or endorsement of any kind. Additionally, one may ask: Has the CCC used money intended for copyright holders to create an inaccurate image as a non-profit quasi-government agency, to simply disarm customers, vendors, and publishers, and to discourage any legitimate competition in order to maintain their stronghold, some would say monopoly, as an RRO in the U.S.? Has the CCC used money intended for copyright holders to sue

academic institutions (such as Georgia State University) on the behalf of a handful of large publishers that have influence at the CCC? Why does the CCC only distribute 70% of the royalties it collects to publishers, when the Copyright Licensing Agency (CLA) and other similar organizations distribute close to 85% of the royalties they collect to publishers?

Unfortunately, the non-transparency of the CCC and the leeway that the CCC has using their publishers or customer's money (either publishers are not being paid-out enough, or their customers are being overcharged), paired with their aggressive behavior ultimately harms the Publishing industry the most. First and foremost, publishers large, medium and small should be receiving tens of millions of dollars more from the CCC. Period. The lack of transparency and proper governance at the CCC has led to tremendous waste of publisher monies. Secondly, the libraries and organizations that are paying royalties to the CCC will lose confidence in the organization which could have long-term damaging effects. These effects are already coming to surface as witnessed in the recent "Open Letter" mentioned at the beginning of this letter and which is attached.. Paragraphs 3 and 4 of said letter open up a Pandora's box of questions that many segments of the information industry are starting to ask. Some of which are outlined below:

For Publishers

1. Why does CCC reportedly only distribute 70% of revenues to publishers when other similar rights licensing organizations such as Copyright Licensing Agency, BMI, and ASCAP send back 83 to 86%? If the CCC distributed to publishers at the same rate as their peers (see below chart), publishers would receive tens of millions of dollars more annually. Publishers should demand a more efficient CCC.
2. Does the CCC really serve the best interest of ALL publishers, particularly the small and mid-sized publishers that represent the majority of entities in the industry, or do large publishers that are represented on the board receive preferential treatment? What are the CCC's algorithms for distribution of funds to publishers, and why does the CCC spend publisher money on legal activities on behalf of just a few large publishers. Shouldn't small and medium sized publishers' legal/copyright enforcement expenditures also then be covered by the CCC?
3. Is the CCC a royalty collection agency, or is it also a copyright enforcement agency? Their website does not indicate that copyright enforcement is part of their mission, yet they use funds collected as "royalties" to sue institutions such as Georgia State University on behalf of a few publishers. Is this a strong-arm tactic to sell more licenses?
4. Is it appropriate for the CCC to retain a disproportionate share of royalties compared to other royalty collection agencies and to use those funds to undertake profit-generating activities that compete with publishers themselves and other commercial entities, while under the guise of being a not-for-profit company?
5. If the CCC is in the copyright licensing, content delivery and search/discovery business, then what's next for capturing content buyers and drawing them further away from publishers' websites?

For Content Buyers and Users

1. Who are CCC's owners or members? Do the owners or members elect the board of directors, if not, who does?
2. Is the CCC's mission to serve publishers? Content buyers? Or to perpetuate the financial interests of their owners, officers, and directors?
3. Is CCC really a not-for-profit organization and if so, why are their financial statements and governance documents not publically available? Under the annual report section of their website they simply list revenues and amounts paid to publishers, a fraction of the financial data that is available in a real annual report for large non-profit organizations. Normally non-profits file federal tax returns that disclose financial info, amounts paid to directors, executives and top vendors; is any of this information publically available for the CCC? Are the CCC financials audited by an independent auditor, if so, why are the reports not publically disclosed?
4. If the CCC isn't a not-for-profit organization (as the Association of Southeastern Research Libraries suggests), then have their representations or misrepresentations impacted their thousands of corporate and individual customers – if so, how and at what cost?
5. Has CCC funded other copyright-related lawsuits as it did against Georgia State University and if so, then is this a conflict of interest for their non-publisher customers?
6. Is there any real value in a CCC license and if so, what is it?
7. At least one major type CCC contract (the ACL) states blanket protection against (past and future) copyright infringement lawsuits: 1) Which publishers does this cover? 2) Is there any official documentation to substantiate this claim of protection? and 3) is CCC even legally able to deliver on this promise?
8. Does the CCC enter into identical agreements with all publishers, or do some receive more financial incentives and better treatment? If a publisher or content buyer chooses not to enter into an agreement with the CCC are there any repercussions?
9. Are customers double-paying CCC by charging them for a copyright license then charging them again for software that enables them to discover what they've purchased? Does the software report rights check usage and if so, what is the usage?
10. In the digital age, are customers double-paying for content by paying publishers for organization-wide subscriptions and CCC for licenses to use/re-use that same content for which an "all you can eat" subscription license has been acquired already directly from the publisher?
11. Is a CCC license essential in this era where digital transmission of information has surpassed the photocopy machine? Isn't "use" and "re-use" one and the same thing in the era of electronic subscriptions? In the era of print subscriptions, simultaneous use of a subscription by multiple users required reproduction via a photocopy machine. In the digital era, simultaneous use by multiple users no longer requires reproduction. At the very

least, shouldn't the CCC ACL license allow for carve-outs for content the customer has already licensed directly from a publisher?

- 12 From the business perspective of risk and reward, what is the length of time that a positive return-on-investment (versus any potential legal settlement amounts using historical precedents) once a license is eliminated? Suppose an organization acquires most of its content resources electronically and directly from publishers and their partners, is a CCC ACL license even necessary? Isn't such an organization better off keeping the money otherwise spent with the CCC and "self-insuring" against potential re-use infringements?

For Reproduction Rights Organizations (RROs)

1. Why isn't the CCC compliant with IFRRO's voluntary code of conduct? (see sections 1.7, 2.1.2, 3.1.1, 3.1.4, 4.1.2, 4.1.3, 5.1.3, 5.2, 5.3, 5.3.1, 5.4.1, and above all 5.6)
2. Does the CCC control IFRRO?
3. Is the CCC over-reaching by expanding outside of the U.S. and into other countries where national RROs already exist and if so, why are they opting for this approach instead of partnering with existing RROs?

For Information Aggregators

1. Is CCC employing unfair trade practices by holding themselves out, possibly inaccurately, as a non-profit and then expanding its business into the categories of other for profit niche information industry aggregators?

For the Industry as a Whole

1. Can the information industry as a whole be damaged by the CCC's misleading and aggressive behavior?
2. Shouldn't the CCC distribute more royalties to rights holders? Why does it keep so much of what it collects compared to its peer organizations? (see below chart)
3. Is there real governance by the Board of Directors, or are the Board Members simply complacent advisors to Management? Can large and disruptive lawsuits against the CCC emerge due to its misleading claims regarding its status as a non-profit and its obscure use of "license" or "royalty" fees?

These are all important questions, and it's time that they are asked and discussed publicly. You can play a pivotal role to help clear up these questions in an open forum which should result in a more

open and transparent CCC. A more open and transparent CCC would benefit all members of the information industry, the CCC most of all.

