

NEW DIRECTIONS FOR CLA

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The CLA, the UK's Reproduction Rights Organisation, representing authors and publishers collectively, administers photocopying rights on their behalf. It is now moving to obtain rights to license the digitisation of existing print material to the pharmaceutical and higher education sectors. In addition, in higher education in particular, CLA administers photocopy coursepack clearances. It has recently launched a protocol to the university licence allowing coursepacks to be produced and sold by campus bookshops on behalf of the university.

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Introduction

The Copyright Licensing Agency (CLA) represents the interests of the UK's authors and publishers, and, through its reciprocal agreements with counterpart organisations overseas and its membership of the International Federation of Reproduction Rights Organisations (IFRRO), the copyright holders of many other countries. Since its incorporation in 1982, CLA has been concerned almost entirely with photocopying on to paper and most regular users of serials in the UK are likely to be familiar with its licences. All UK institutions of Higher Education, most Government Departments and many major companies are licensed.

Photocopying from paper journals however is likely to have peaked, as new forms of digital exploitation take hold. Although there have been persistent requests from licensees for various forms of digital use, until now the Agency has not been in a position to offer licences covering digital uses. Copyright holders, on whom CLA relies for mandates, were reluctant to allow the collective administration of digital uses until the nature of primary digital rights became clearer. Over the last few years, as the strategy of journal publishers in the digital environment has tended to concentrate on the site licensing of digital versions of current journals, the need for a mechanism to handle the digitisation of existing print material has become apparent.

A critical factor in highlighting this need was undoubtedly the first phase of the UK Joint Information Systems Committee's Electronic Libraries (eLib) programme. Many of the early eLib projects ran into problems with copyright clearance, which took longer than anticipated and used more resources than budgeted. These projects typically obtained copyright clearance direct from the publishers, most of whom took a keen interest in them and frequently made no charge for the rights provided that they received detailed usage statistics. However, many of those publishers who had become involved realised that the administration of small-scale digitisation rights could become a significant task for most rights departments, and one which they were simply not equipped to do efficiently. The solution, as with

photocopying, would be some form of collective administration and they already had, in CLA, an organisation established precisely to administer rights collectively. The authors' associations, equally important within CLA, had independently reached the same conclusion and in January 1998 CLA announced that it had the support of rightsholders to develop licenses for digitisation.

At the same time, a joint statement was issued by STM, the International Association of Scientific, Technical and Medical Publishers and IFRRO, in which it was agreed that digitisation on certain terms and conditions would appropriately be handled by RROs.

This early broad approval was not a mandate to issue licences. For this, CLA would require the specific authorisation of individual rightsholders for each class of licence to be issued, and it was therefore necessary to develop the appropriate licences. With a number of sectors competing for its attention, the Agency quickly concentrated on dealing first with the two sectors which made most use of its transactional clearance service, CLARCS for photocopy permissions - the pharmaceutical business and the Higher Education sector. In the pharmaceutical sector, a Task Force was set up by the Association of the British Pharmaceutical Industry through which contact with CLA has been channelled; for Higher Education, CLA organised a 'requirements-gathering' meeting with specially-invited delegates from the sector and has also maintained close links with the eLib project HERON. A report of the requirements-gathering meeting is available on the CLA website.

These two channels helped CLA to determine precisely the requirements of the sector. Further consultation with rightsholders via CLA's constituent bodies led to attempts to draw up a licensing scheme which would be satisfactory to both sides. It is constructive to compare this process with CLA's experience in establishing its photocopying licence in the 1980s. Firstly, the digital environment - both technical and economic - is much more complex: there are variations in format, and in particular the difference between pure bitmapped page images and machine-readable OCR'd (optical character recognition) formats to consider. The parallel changes in the nature of the primary market with the move to online provision and site licensing mean that CLA

had to be even more careful not to license activities which would conflict with its rightsholders' primary interests. Being closely involved in the technology and the economic issues gave CLA a head start in developing solutions; but these solutions have to be sold to rightsholders. Consultation is a two-way process, and has taken longer than expected. On the other hand, CLA is now a firmly-established institution with good working relations with its licensees, who broadly want the licences it is proposing, whereas in the 1980s most potential licensees needed substantial persuasion that the photocopying they were already doing might even need to be licensed at all, and many regarded CLA with deep suspicion.

Draft licences for both Higher Education and the pharmaceutical sector have now been circulated for consultation. The principles behind both are the same. Firstly, everything will be transactionally cleared through the CLARCS system. Secondly, only those publications from those publishers who have chosen to partake in the scheme will be available; however, there is strong support for the development from the publishing establishment so we expect a very rapid take-up. Thirdly, the act of digitisation and the act of using the digitisation will be treated separately. They are separate acts controlled by copyright. Fourthly, there will be publication-specific, rightsholder-determined fees for each type of transaction.

There are of course, also significant differences between the two.

Pharmaceuticals - copying for regulatory submissions

The pharmaceutical industry is one of the most tightly regulated of all, for obvious reasons. Before a product can be licensed for use, the regulatory authorities have to be satisfied that it is both safe and effective. Huge amounts of paperwork are required for a submission to the authorities in each jurisdiction. The evidence will consist primarily of the company's own internal research reports and reports of the clinical trials it has carried out, but it will be supplemented by copies of relevant papers from the published literature. Managing this material is a considerable expense for the pharmaceutical companies and electronic

document management systems allow substantial savings to be made. Before a regulatory submission is sent to the authorities, it must be reviewed by the relevant members of a company's staff. Although every company has its own methods, the process will normally be managed by a regulatory affairs department but the review of different aspects of the product will be carried out by scientists and clinicians from across the company. In a multinational organisation, these people are likely to be physically located in many different countries.

Until now, the process has involved material (including where necessary photocopies of the relevant journal articles) being sent around the world by courier. Clearly digital technology offers companies the opportunity to simplify this process. CLA will license organisations to make digital copies of journal articles and other published material, where individual rightsholders have agreed to opt-in their titles. The copies will be digital page images using TIFF or other such page bitmap formats, rather than OCR'd formats. It is absolutely essential that the digital files are exact representations of the printed page; any possibility of error could have severe consequences.

Higher Education: material for teaching and learning

Higher Education institutions have a quite different set of requirements. Although the integrity of the material copied is important, it is a concern expressed more by rightsholders than by higher education users. Material is required to support teaching and learning and to be distributed over university networks. It became apparent early during the consultation process that the network infrastructure could not cope with the large file sizes associated with page image bitmaps. Conversion to machine readable form using an OCR process is costly and can introduce errors, but the resultant file is typically one tenth the size of the page image bitmap. In addition, the OCR'd file is more useful in that it can be searched and analysed. However, the benefits of small file size are, for the higher education sector, overwhelming. The danger of inaccuracies is one which higher education institutions felt was acceptable and the risks presented to rightsholders could be moderated by

various means including the use of compulsory disclaimers on digitised copies.

The issue of pricing in higher education is understandably contentious. In a study for the Publishers Association and the Joint Information Systems Committee, Mark Bide, Charles Oppenheim and Anne Ramsden proposed two complementary pricing models, depending on the nature of the work. These models have been adopted by CLA and the appropriate one for each type of material will be selected by the copyright holder. Broadly, material that is intended for general reference in an electronic library will incur a flat-rate fee whereas course material intended to support teaching by way of directed reading will incur a fee proportional to the number of students enrolled on the teaching module for which the material is recommended. In both cases actual fee levels will be decided by the copyright holder.

Coursepacks

One use to which the digitisations are likely to be put is the production of paper coursepacks printed from digital master copies. However, the requirements-gathering exercise demonstrated that this is a function which many HEIs see as being at best a transitional requirement. At present, coursepacks are produced by photocopying and the savings from digital production over photocopying are not expected to be substantial. The benefits to HEIs of digital reproduction of paper coursepacks include the possibility of reformatting and rebranding with the institution's identity; this is a form of republishing which quite rightly rightsholders regard with suspicion and which will not be authorised by CLA, although in many cases clearance may be obtained direct from rightsholders. In the longer term, HEIs expect to provide most teaching materials in digital form direct to the student (who may or may not print them out, if appropriate). Many undergraduate rooms are already wired into the university networks. In the case of distance learning, this is likely to be an area where there could be substantial savings. It is not clear how exactly the concept of the paper coursepack translates into the digital environment, or if it can adequately be distinguished from a reading list with hyperlinks to the full text. However, despite these

reservations, coursepacks - paper or digital - are likely to be an important part of educational provision for at least the foreseeable future.

Paper coursepacks

Campus bookshops are in many cases a very suitable outlet for coursepacks, particularly if the production and copyright costs are to be charged to the student. It is usually much simpler for campus bookshops to collect cash or credit-card payments from students than it is for university lecturers or departments to do so. Coursepacks are essential reading for all those on the course for which they are prepared; their sale in campus bookshops should therefore bring all those students over the bookshop threshold where they may in addition purchase other books as well as stationery and other essentials. If coursepacks substitute entirely for textbooks, the bookshops may ultimately be excluded from the student information chain. For these reasons, a number of bookshops have indicated that they may be prepared, if properly licensed, to offer coursepacks at cost. Student unions, who run a number of campus bookshops, also support this approach to simplifying students' access to information.

At the start of the 1998/99 academic year, therefore, CLA introduced a licence permitting bookshops in association with HEIs to produce coursepacks for sale to students. Initially, this licence is for photocopied coursepacks only. Coursepacks are to be cleared through the CLARCS system and it is a requirement to supply information about the teaching module for which they are prepared. Bookshops will act as an outlet for coursepacks prepared with the endorsement of the relevant university; they will not be permitted to make their own coursepacks under the scheme. This would in effect be a form of republishing which would most appropriately be licensed directly with the existing rightsholder. It is also a requirement that the university itself sign a protocol to its existing CLA licence, enabling the sale of its coursepacks in the campus bookshop.

Any licence raises compliance problems. There is both a real and a perceived danger that students may club together to buy a single copy of the coursepack, and photocopy the result between them. This danger has been addressed in the new

licence in a number of ways. Firstly, CLA will monitor clearances to ensure that they cover a reasonable proportion of the enrolled students for the module concerned. Secondly, the proposal may help close the 'economic window of opportunity' for unlawful copying. Although there is considerable variation in the coursepack clearance fees, which are set by the copyright holder and are specific to each publication, the average level is now about 5p per copy page. Photocopy services available to students are typically of this order of magnitude, but the cost to a bookseller operating its own machine is much lower. Consequently, it is possible that bookshops may be able to sell coursepacks for as little as 6p per page, including copyright clearance. The saving to be made by unlawfully photocopying a 100-page coursepack would be approximately £1, which is unlikely to justify the additional effort required.

Thirdly, CLA will provide bookstores with a supply of distinctive stickers which will be affixed to lawfully-made coursepacks, thus providing a means by which the university and other authorities could monitor (and if necessary take action against) students' possession of unlawfully-copied coursepacks.

If, despite all this, it becomes apparent that bookshops are not selling coursepacks in numbers commensurate with the number of students enrolled on the course, the entire situation will be reviewed. However, it is clearly to the bookshop's advantage to ensure that as many students as possible purchase the necessary coursepack and their support for CLA's compliance efforts will be welcome.

Conclusion

CLA is working hard to ensure that new methods of making information available to readers can be fully exploited without undermining the economics of producing the information in the first place. As the information economy develops and evolves, so new methods of licensing and new pricing models will evolve. The new licences for digitisation, and the coursepack licence for campus bookshops, are together indicative of CLA's new directions.