

Introduction

This Licence records the terms on which CLA, as agent for the Authors' Licensing and Collecting Society Ltd, the Publishers Licensing Society Ltd, the Design and Artists Copyright Society Ltd and various reproduction rights organisations overseas, grants a licence to schools in England and Wales to make photocopies of or otherwise reproduce extracts from published material in which copyright subsists.

TERMS AND CONDITIONS

1. DEFINITIONS

In this Licence, the following meanings apply:

'Academic Year': the period of 12 months comprising 3 school terms commencing on the first day of the Autumn school term in September of any calendar year;

'Acetates': reproductions of Licensed Material onto acetate for use with overhead projectors;

'Authorised Persons':

(i) in respect of Paper Copies: all pupils and their parents, teachers (whether temporary or permanent), staff and governors of the Licensee;

(ii) in respect of Digital Copies: all those individuals mentioned in (i) above who are permitted by the Licensee to have access to the Secure Network;

'CLA': The Copyright Licensing Agency Limited;

'CLA's website': www.cla.co.uk or such other site as may be notified to the Licensee;

'Digital Copies': electronic copies of Material Licensed For Scanning, in whole or part, which are direct unaltered copies of the work copied or copies retyped verbatim;

'Excluded Materials': those categories of work and individual works identified on the list of Excluded Categories and Works as listed on CLA's website as this list may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day;

'Guides': the CLA Guides to Surveys, Record Keeping, Information Audits and Data Reporting contained on CLA's website as the same may be amended periodically;

'Licence': the licence granted by clause 2;

'Licence Fee': the product of the Number of Pupils multiplied by the Per Pupil Rate or, if greater, the Minimum Fee (if any) shown on CLA's website as applicable to schools;

'Licence Year': 1st April in any one year to 31st March in the succeeding year;

'Licensee': any school in respect of which the appropriate Licence Fee has been paid;

'Licensed Copies': Paper Copies, Digital Copies or Acetates as appropriate;

'Licensed Material': any and all Material Licensed for Photocopying and Material Licensed for Scanning;

'Material Licensed for Photocopying': original published editions of books, journals, magazines and periodicals published in the Photocopying Mandating Territories in which copyright or any database right subsists, other than any Excluded Material;

'Material Licensed for Scanning': original published editions of books, journals, magazines and other periodicals in which copyright subsists published in the Scanning Mandate Territories other than any Excluded Material;

'Number of Pupils': the number of full time equivalent pupils of the Licensee as notified to the Department for Children, Schools and Families (or other appropriate government department) in the most recent Annual Census for the Licensee available to CLA in the year preceding the start of each Licence Year;

'Paper Copies': photocopies on to paper from original Material Licensed for Photocopying (and copies made therefrom), paper printouts of Digital Copies and paper print outs of Third Party Digital Material but, in all cases, excluding any copy in electronic form;

'Per Pupil Rate': the rate for primary pupils and secondary pupils for each Licence Year as notified to the Licensee at least 3 months before the start of each Licence Year (and a posting on CLA's website shall constitute notification to the Licensee). The rate will increase automatically by the proportion which the General Index of Retail Prices has increased during the calendar year preceding the start of each Licence Year. For these purposes 'primary' and 'secondary'

pupils shall mean those pupils attending primary or secondary schools respectively as notified to the Department for Children, Schools and Families (or other appropriate government department) in the most recent Annual Census for the Licensee available to CLA in the year preceding the start of each Licence Year;

'Photocopying Mandating Territories': The United Kingdom, Australia, Canada (including Quebec), Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Jamaica, The Netherlands, New Zealand, Norway, Singapore, South Africa, Spain, Sweden, Switzerland and the United States of America. This list may be amended periodically by CLA. Any such amendment shall be posted on CLA's website and shall take effect on the next Quarter Day after such amendment is first posted;

'Prescribed Rate': the rate of interest prescribed from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;

'Quarter Day': 1st January, 1st April, 1st July or 1st October;

'Scanning Mandate Territories': the United Kingdom and the United States of America. This list may be amended periodically by CLA. Any such amendment shall take effect on the next Quarter Day after such amendment is first posted;

'Secure Network': a network (whether a standalone network or a virtual network within the Internet) which is only accessible to those Authorised Persons who are approved by the Licensee for access to the Secure Network, whose identity is authenticated at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by the Licensee;

'Third Party Digital Material': material in electronic form supplied to the Licensee by third party document suppliers (including, for example, but without limitation, press cutting suppliers) that have been licensed by CLA to provide such a service. For the avoidance of doubt, this does not include any electronic material supplied direct to the Licensee by, or on behalf of, the copyright owner which will be subject to its own licence conditions.

2. GRANT OF LICENCE

CLA hereby grants to the Licensee the non-exclusive right on the terms and conditions herein to:

2.1 make, or permit the making of, Paper Copies;

2.2 distribute, or permit the distribution of, Paper Copies to Authorised Persons;

2.3 scan Material Licensed for Scanning to produce Digital Copies;

2.4 create Digital Copies by retyping extracts of Licensed Material onto a computer;

2.5 make available, or permit the making available of, Digital Copies, in both cases solely within the Secure Network;

2.6 make available, or permit the making available of, Digital Copies of Third Party Digital Material, in both cases within the Secure Network;

2.7 make copies, or permit the making and distribution of, Accessible Copies in accordance with clause 7;

2.8 make and distribute Acetates in accordance with clause 8.

for educational and teaching purposes only. For the avoidance of doubt pupils accessing the Secure Network remotely within the United Kingdom for the purposes of their studies may open, view and print out a single paper copy but nothing in this licence authorises the making of Digital Copies by pupils.

3. DURATION

The Licence shall come into effect on 1st April 2008 and shall continue from year to year unless and until determined in accordance with clause 13.

4. PAYMENT

The Licence Fee, together with VAT thereon, is payable within 30 days after receipt of an invoice from CLA. CLA reserves the right to charge interest at the Prescribed Rate on any payment after such date.

5. CONDITIONS APPLYING TO THE MAKING OF LICENSED COPIES

5.1 The number of Paper Copies of any one item of Licensed Material taken at any one time shall not exceed the number needed to ensure that there is one Paper Copy for the teacher and each pupil in the class, lesson or course of study within the Academic Year for which the Paper Copies are intended. Where the Paper Copies are intended for a meeting of parents, teachers or governors, the number of Licensed Copies shall not exceed the numbers attending that meeting.

5.2 The Licensee shall ensure that Licensed Copies do not exceed either singly or in aggregate the greater of five (5) per cent of any published edition, or:

(i) in the case of a book, one complete chapter;

(ii) in the case of an issue of a serial publication, or a set of conference proceedings one whole article;

(iii) in the case of an anthology of short stories or poems, one short story or poem not exceeding ten (10) pages in length;

(iv) in the case of a published report of judicial proceedings, the entire report of a single case.

5.3 No systematic or repeated copying of the same Licensed Material or part thereof for any one class, lesson or course of study within an Academic Year beyond the limits set out in Clause 5.2 above is permitted.

5.4 The Licence does not extend to the making of Licensed Copies outside of the United Kingdom.

5.5 The Licensee must own an original (or a copy on which it has paid a copyright fee) of any Licensed Material it copies or scans under the terms of the Licence. The making of Licensed Copies shall not directly or indirectly substitute for the purchase of original Licensed Material or for the commissioning, reproduction, hire or any other use of an original artistic work within Licensed Material.

5.6 Paper Copies made in each Licence Year may be stored and used throughout the Licence Year and for the remainder of any Academic Year beginning within the Licence Year, but must then be destroyed.

6. FURTHER CONDITIONS APPLYING TO THE MAKING OF DIGITAL COPIES

- 6.1 The Licensee shall not edit, amend, manipulate, add to or delete from Digital Copies nor shall it authorise the same.
- 6.2 Except as may be permitted by this clause, by clause 7 or by statute, no digital manipulation, whether by way of optical character recognition, morphing, colour or shade adjustment or otherwise may be made of Digital Copies.
- 6.3 Digital Copies may not be placed on the publicly accessible internet or be linked either directly or indirectly by hypertext links (or the like) to or from any external or third party website.
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- 6.5 Where any work (including an artistic work) appearing within Material Licensed for Scanning incorporates, or has adjacent to it, the identity of the author or creator of the work, no Digital Copy of that work shall be made unless the Digital Copy incorporates the identity of such author or creator.
- 6.6 Without prejudice to its obligations set out in Clause 5.5, the Licensee shall use reasonable endeavours to include, where practicable, in all Digital Copies of artistic or literary works the identity of the author or creator of the literary or artistic work.
- 6.7 The Licensee will delete from the hard drives of all its central and local servers any and all Digital Copies which may be stored there upon notice from the CLA that the copyright holder believes that the Licensed Material contained in the Digital Copies infringes copyright or is or may be defamatory, obscene or otherwise unlawful.
- 6.8 Where extracts of Licensed Material are retyped onto a computer pursuant to clause 2.4, the Licensee shall ensure that the retyped extract is a verbatim copy of the Licensed Material and includes the identity of the author and title of the work from which it is extracted.
- 6.9 Digital Copies may include more than one extract of Licensed Material provided that the identity of the author of each extract is incorporated and that the Digital Copy otherwise observes the moral rights of the author.
- 6.10 Digital Copies may not be stored on a server, or systematically indexed, with the intention of creating an electronic library or similar educational information resource of extracts of Licensed Material except that:
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- 6.10.2 Digital Copies may be stored on a server and/or systematically indexed solely for the purposes of, and for the duration of, the class, lesson or course of study for which the Digital Copy was made and intended to be used and shall, in any event, be deleted at the end of the Academic Year in which the Digital Copy was made.

7. VISUALLY IMPAIRED AND DISABLED PERSONS

- 7.1 The provisions of this clause shall only apply where an Authorised Person is visually impaired or otherwise disabled and by reason of such visual impairment or disability is unable to read or access a Licensed Copy made under the provisions of this Licence.
- 7.2 Notwithstanding the provisions of clause 5.2 the Licensee may make and supply a copy (an "Accessible Copy") of part or the whole of any work within Licensed Material in any alternative format that is more accessible to an Authorised Person (as described in 7.1), whether in digital or audio format, large or small print copies or embossed copies (whether produced in Moon or Braille or otherwise) or in other formats on, and subject to, the following conditions:
- 7.2.1 the Licensee must have lawful possession an original copy of any work from which it makes an Accessible Copy;
- 7.2.2 the Licensee may only make an Accessible Copy of a work if and to the extent that such work is not commercially available in a form accessible to the Authorised Person for whom the Accessible Copy is made;
- 7.2.3 each Accessible Copy that exceeds the limits set out in clause 5.2 shall contain:
- (a) a statement that it is a copy of the original work made under a CLA Licence for the personal use of a visually impaired or a disabled person and that it may not be further copied (including any electronic copying or transmission) or dealt with without permission or save as may be permitted by law;
- (b) the title, as well as the name of the author and publisher, of the original work and the published edition from which it is copied;
- 7.2.4 the Licensee may only charge for the supply of an Accessible Copy an amount which does not exceed the cost of making and supplying it;
- 7.2.5 any Accessible Copy produced in a digital format may include facilities for navigating around the Accessible Copy and any such other facilities or changes (such as enlargement, reduction or colour selection of the text or illustrations) as are necessary to enable the Authorised Person for whom the Accessible Copy is made to access the Accessible Copy provided that:
- (a) such changes do not amount to a derogatory treatment of the work;
- (b) no other digital manipulation of the work is made whether by way of optical character recognition, morphing, colour or shade adjustment beyond what is necessary to make the Accessible Copy accessible to the Authorised Person for whom the Accessible Copy is made;
- 7.2.6 that the Accessible Copy is only to be used for the benefit of Authorised Persons.
- 7.3 An Authorised Person is to be regarded as visually impaired or disabled for the purposes of this clause if he would be regarded as a "visually impaired person" in accordance with s.31F (9) of the Copyright, Designs and Patents Act 1988, or, as appropriate, as a disabled person in accordance with s.1 of the Disability Discrimination Act 1995.

8. ACETATES

- 8.1 Acetates may be made and distributed to Authorised Persons for the purposes of instruction provided that acetate packs of the relevant Licensed Material are not commercially available.
- 8.2 The terms and conditions of this Licence, including in particular the provisions of clause 5, apply to the making of Acetates.

9. NOTIFICATION TO LICENSEE'S STAFF

- 9.1 The Licensee shall ensure that all its staff (and particularly those with responsibility for reprographic and scanning equipment) are made aware of the terms and conditions of the Licence and shall take all reasonable action to ensure that all Authorised Persons comply with such terms and conditions. In particular, the Licensee shall ensure that copies of any User Guidelines supplied by CLA and the list of Excluded Categories and Works are displayed, where reasonably practicable, next to all reprographic equipment.
- 9.2 The Licensee shall appoint an Authorised Person as a CLA Licence Co-ordinator to liaise with CLA in connection with the administration and implementation of the Licence.

10. DATA COLLECTION

- 10.1 CLA may, no more than once in each year, require the Licensee to participate in a data collection exercise; the information obtained will assist CLA to identify the type of photocopying and scanning of Licensed Material and to distribute Licence Fees to authors, artists and publishers.
- 10.2 The data collection exercise may, without limitation, take the form of a survey or a record keeping exercise, including the recording of the creation of Digital Copies during the period of the data collection exercise in accordance with the data reporting requirements of the Guides.
- 10.3 If selected by CLA to participate in a data collection exercise, the Licensee shall co-operate with CLA and provide all reasonable assistance to CLA in accordance with the Guides including, in particular, the data reporting format requirements. The Licensee undertakes to ensure that its employees comply with its obligations under this clause.
- 10.4 CLA undertakes not to disclose any information obtained as a result of any data collection except:
- 11.4.1 as required by a court or other authority of competent jurisdiction; or
 - 11.4.2 in aggregated form from which the identity of the Licensee cannot directly be identified.
- 10.5 Any survey or record-keeping exercise must include all Acetates and Accessible Copies.

11. INDEMNITY

- 11.1 In this clause "Qualifying Claim" shall mean any complaint made in writing that the Licensee acting in pursuance of this Licence has infringed copyright and/or database right in Licensed Material or in the typographical arrangement of the published edition in which Licensed Material is contained.
- 11.2 In the case of any Qualifying Claim CLA will indemnify the Licensee in respect of all reasonable legal costs, expenses and damages awarded against or incurred by the Licensee including any ex-gratia payments made with the prior written consent of CLA, provided the Licensee has complied with the terms of this Licence and has given CLA notice of any Qualifying Claim within 10 working days or, in the case of a Claim Form, within 5 working days of the same having been received by the Licensee.
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- 11.4 The Licensee shall ensure that no admission, or offer of payment or indemnity shall be made or given by or on its behalf or on behalf of CLA without CLA's written consent and shall ensure that all correspondence received in connection with a Qualifying Claim is promptly passed to CLA.

12. BREACH AND TERMINATION

- 12.1 Either CLA or the Licensee may terminate the Licence upon giving at least 30 days written notice served so as to expire at the end of each Licence Year.
- 12.2 Should the Licensee commit any material breach of any of the terms and conditions of this Licence and remain in such breach 14 days after receiving notice to remedy the same (where the breach is remediable) then CLA, without prejudice to any of its other rights, may by notice either terminate or suspend the terms of the Licence until CLA shall be satisfied such breaches will not recur.

13. GENERAL

- 13.1 All notices given under the Licence shall, unless otherwise specified, be in writing and be sent by first class post, in the case of the Licensee to the address shown on the Certificate, and in the case of CLA to: Saffron House, 6-10 Kirby Street, London EC1N 8TS (or any address notified to the Licensee by CLA), and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.
- 13.2 The Licence may only be varied if such variance is acknowledged in writing on behalf of CLA and the Licensee.
- 13.3 The Licence is personal to the Licensee and may not be assigned or otherwise disposed of in whole or in part.
- 13.4 The Licence shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Licence.
- 13.5 The parties do not intend that any term of the Licence shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Licence.
- 13.6 CLA shall have the right on giving reasonable notice to the Licensee to enter the Licensee's premises to review the implementation of the Licence by the Licensee and their compliance with its terms and to inspect the procedures being used by it.