

Understanding the value of the CLA Licence to UK higher education

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Executive Summary

This report presents findings of research conducted in late 2018 to understand the value of the Copyright Licensing Agency (CLA)'s HE Licence. This Licence permits higher education institutions to copy material (both from print and digital originals) for use in teaching and learning, and the research was undertaken to inform future negotiations between the CLA and the Universities UK Copyright Negotiation and Advisory Committee (CNAC). The research also sought to explore the value of secondary copying more broadly, at a time when higher education institutions are increasingly preferring to purchase primary digital resources. The term 'value' is used in the broadest sense to mean the benefits this licence provides to the higher education sector as well as the 'value for money' it offers.

Key Findings

The findings will be of interest to library directors, library acquisitions managers and copyright and licensing specialists in higher education institutions. The findings of most significance to these groups of staff are listed below followed by 17 recommendations:

UK Law and the International Comparison

- Changes made to UK copyright law in 2014 following the Hargreaves review have not shifted perceptions of the value of the CLA Licence, which is still used to provide students with access to copies of course readings.
- A comparison of the Licence with other countries' educational copying regimes exposes tensions in global copyright between private and public interests. There are cultural, economic and legal reasons why regimes differ and although the UK exceptions-backed licensing model has critics, it is generally supported by institutions who often bear the costs centrally, rather than from library budgets.

What is being scanned?

- The volume of scanning under the Licence may be beginning to decrease, although this needs to be tracked on an ongoing basis to determine trends.
- The Licence is currently mainly used by the sector as a way of providing students with copies of digitised extracts, largely from books. Many of these are either not currently available in electronic format, or are only available on overly restrictive licensing terms.
- The Licence has limited relevance when providing access to journal articles, which are largely available through subscriptions or increasingly under open access models.
- The sharing provision under the Licence (this allows licensed institutions to share scanned content) is largely unused, either for practical reasons or because there is little overlap in demand for titles.

¹ With thanks for Ruth Mallalieu and Neil Sprunt for their work on the international comparison.

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- Even though there is minimal overlap in titles being scanned, a number of frequently scanned titles are being used under the Licence by multiple HEIs because they are not available in electronic format.

Comparison of Institutions' use of the Licence

- Patterns of scanning suggest that a small number of institutions make extensive use of the Licence. 51% of all scans are undertaken by the top 20 institutions. Those 20 institutions have 22% of all FTES reported in 2016/17 and are in the main larger well-funded Russell Group universities.
- The patterns of scanning suggest a large number of institutions make a limited use of the CLA Licence, with 133 institutions reporting less than 500 scans per year in 2017-18.
- There is no clear link between institutions' use of the Licence and their overall spend on information provision.

Impact of Open Access

- Open access has yet to impact significantly on the way the CLA Licence is used in institutions despite this research finding that 38% of journal content copied under the CLA Licence for teaching is also openly available. This may be because institutions face challenges identifying legitimate open access material with clear reuse terms that can be used for teaching.
- 60% of sample titles scanned were written by UK academics which is relevant when considering national policy on open access monographs and textbooks.

Conclusions and Recommendations

The study revealed that the CLA Licence is used inconsistently across the sector, with a relatively small number of institutions making intensive use of the digital copying provisions. As a result, the Licence delivers the greatest level of value (in terms of scanning volume at least) to only a small number of HEIs. Data from 2016-17 suggests that the volume of scanning may be starting to decline. However, it is important to monitor use of the Licence to provide HEIs with further evidence when developing strategies and negotiating licensed access to content with publishers and the CLA.

The CLA Licence largely facilitates digital access to print books for use in teaching, which institutions would often rather purchase as e-books, but are unable to do so because either the content or appropriate licences are unavailable. It is clear from interviews with acquisitions librarians that a number of e-book business models are not working for HEIs. The CLA Licence has therefore shifted in its purpose as a mechanism to remunerate authors and publishers for photocopying of print books, to a way of providing students with access to books in digital form where primary e-book licences are restrictive or unaffordable. To this extent, the CLA Licence provides HEIs with a valuable proposition, but one that may be at odds with many publishers' desire to sell access to digital content under primary licences. It is recognised however that some publishers would prefer to sell access to licensed content directly to students rather than to University libraries on their students' behalf. The CLA Licence therefore acts as a consistent and reliable way for HEIs to get access to digital content where the primary market doesn't provide them with what they need.

Another tension inherent in the provision of teaching resources under the Licence is the amount of content written by academics employed by UK institutions and the policy shift towards open access publishing. The open access publishing movement initially focused on journal publishing where

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authors rarely receive royalty payments for their work. However, national policy has been looking at open access as a suitable model for monographs for some time, and the open text book movement is gaining momentum around the world. Institutions may find it useful to consider the incentives provided to their academic staff to create monographs and textbooks which are subsequently used in teaching.

The current publishing system requires authors to assign copyright to publishers who create products that are subsequently purchased mainly by HE institutions. In addition to this, HEIs pay both licensing fees to CLA and the administration costs associated with the operation of CLA-licensed scanning services. In return for authoring content and assigning copyright to publishers the majority of academic authors receive relatively small royalty payments. As national and international open access policy develops, it may be possible for HE institutions to consider whether funds currently assigned to reprographic licensing fees could instead directly fund academic staff to create open access content. The evidence in this report could help make the economic case for transitioning from reliance on a secondary licensing regime originally devised for print publishing towards the open digital publication and sharing of educational content, without the expectation that academic authors should do more for less.

In order to address the challenges and opportunities raised by this research the following recommendations are provided. They are arranged into different categories according to the relevant audience.

Recommendations for institutions / library directors

R1. Library directors are urged to review and monitor the use their institution makes of the CLA Licence to consider how this might compare with the sector as a whole and with similar institutions to their own. We recommend that:

- a. Institutions should review how the CLA Licence supports their approach to supporting teaching and learning in their overall approach to purchasing content.
- b. Institutions making high use of the Licence should consider whether there are alternative routes to sourcing content, such as use of primary licensed or open access content.
- c. Those institutions making low use of the Licence should consider the reasons why this is the case, and consider whether it would be beneficial to promote greater use of the Licence where it is not possible to source content any other way.

R2. Acquisitions librarians may benefit from closer working relationships with research support teams who generally have a good understanding of open access to explore the opportunities for using openly licensed content in teaching.

R3. Institutions should consider whether they could fund UK academics to create openly licensed teaching content, which may provide costs savings as well as more equitable and inclusive resources.

Recommendations for SCOUNL, RLUK and Jisc Collections

R4. SCOUNL should investigate the feasibility of collecting the annual institutional CLA usage data on behalf of the community to avoid the need to obtain this data and permission for public analysis of the data from the CLA.

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R5. The SCONUL Statistics Steering group should explore how to encourage member institutions to provide data for the optional questions on information provision which will enable more robust analysis of information resource expenditure to take place.

R6. SCONUL / RLUK / Jisc Collections should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and working with CNAC should provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access

R7. SCONUL / RLUK should liaise with CNAC and other relevant organisations such as LACA to provide guidance to HEIs around where they may rely on post-Hargreaves exceptions to support learning and teaching.

R8. SCONUL / RLUK / Jisc Collections should explore open textbook and other open access models as a solution to deficiencies in resourcing which primary or CLA licensing are unable to resolve. This should involve the following activities:

- a) SCONUL / RLUK should continue to provide guidance to HEIs about the identification and use of open access content to support teaching activity, and liaise with organisations such as the British Library to explore use of open access discovery tools.
- b) SCONUL / RLUK / Jisc Collections should undertake further research with UK-based authors of highly re-used textbooks currently being digitised under the CLA Licence, to consider exploring whether open publishing models might better support the sector.

R9. Jisc Collections should explore with publishers the lack of availability of high demand titles used in teaching in HE based on the data provided in this study in order to create effective licensing models.

R10. Jisc Collections should examine publisher infrastructure so that there is greater standardisation of access to subscription content to minimise duplication of effort for institutions who are copying digital to digital content under the CLA licence because of unsuitable primary access models.

Recommendations for CNAC

R11. The study establishes a baseline from which to monitor and track copying volumes and the nature of content copied under the CLA Licence going forward which CNAC should continue to monitor on an ongoing basis.

R12. Following the introduction of the DCS and the changes to CLA's distribution methodology, for reliability and robustness of data, 2016-17 should be considered to be a 'fresh start' when it comes to reviewing the data that is collected on scanning across the sector.

R13. Further research is recommended to explore whether there are disciplinary differences in use of the Licence.

R14. Working with SCONUL and RLUK, CNAC should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access.

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Recommendations for CLA

R15. CLA should develop a search facility as part of DCS that allows institutions to identify existing digitised content, at least for admin users. This would facilitate use of the sharing provision under the CLA Licence where both licensees own the primary source or copyright fee paid copy, and minimise scanning duplication for HEIs.

R16. CLA should encourage publishers not to opt out works from the CLA repertoire, given that the licence limit of 10% on copying and ownership requirements make it unlikely in practice that the availability and use of the CLA licence will affect primary sales.

R17. CLA should continue to work with CNAC on research to understand the role of the CLA Licence in the higher education sector as the needs of the sector change and scholarly communication evolves.

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