

User Guidelines for the Higher Education Licence

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Introduction

To reflect the provisions of the Copyright and Other Intellectual Property Law Provisions Act of 2019, ICLA has developed a new Higher Education Licence for universities and colleges. The Licence authorises the use for educational purposes of works protected by copyright. It has been certified for the purpose of the legislation by the Minister for Enterprise Trade and Employment, under Statutory Instrument No. 277 of 2020.

The Licence provides enhanced support for blended learning and a streamlined approach to content. Higher Education Institutions holding the Licence can, subject to the terms and conditions, copy and re-use extracts of text and still images from printed books, journals, magazines and newspapers, and from digital publications, including e-books, journals and digital resources. They can also use website content and other materials available on the Internet, unless specifically restricted by the terms on which the content is made available on the Internet, or by the Licence terms.

The full terms and conditions of the Licence can be found on our website at <https://www.icla.ie/licences/higher-education-licence>

These Guidelines have been put together by ICLA to help provide a 'plain English' guide to the Licence with links to further resources. They are particularly for anyone who creates course materials, such as library and e-learning staff, graduate trainees, academics, and course administrators.

It should be noted that these Guidelines do not replace the Licence terms. Where there is any conflict between the Licence terms and these Guidelines, the Licence terms will prevail.

The guiding principles of the ICLA Licence

- Provide the licence override for the 2019 Copyright Act Section 57.
- Facilitate legal use of extracts within the information landscape in Higher Education without making 'textbook substitution' possible.
- Fairly remunerate authors, visual creators and publishers for their work.

Background and context

ICLA has a mandate from publishers, authors and visual artists to offer collective licences on their behalf.

The ICLA HE Licence is intended to broaden and enrich the student learning experience, by allowing HEIs to provide wider access to copyright materials than would otherwise be legally possible. It enables the institutions to avoid copyright infringement. In parallel, it enables publishers, authors and visual artists to be remunerated appropriately for the use of their works.

The ICLA HE Licence is available to all of the Republic of Ireland's HEIs, including those funded entirely through private means.

The Licence should be viewed in the wider context of copyright in the Republic of Ireland. In December 2019 the new Copyright and Other Intellectual Property Law Provisions Act came into force, amending and adding new provisions to the Copyright and Related Rights Act 2000 ('CRRA'). Certain new exceptions to copyright for the purposes of education have been added to the legislation. The ICLA Licence overrides the educational exceptions in the new Section 57 CRRA and goes beyond them in allowing additional uses. The 'override' means that an exception cannot be relied upon by a user if a certified licence for the particular use is available.

The Licence doesn't prevent an HEI from securing direct permission to copy/re-use from the publisher (ad hoc or via a primary licence). An HEI might, for example, want to purchase permission to copy in excess of 10% of a publication, or to copy from a publication that isn't covered by the Licence. (See 'How does the ICLA Licence fit with publishers' primary licences?' on page 20.)

Open Access: Some of the publications that a HEI might wish to distribute to students and colleagues are made available under Open Access publishing agreements or Creative Commons licences and the number of these is set to increase over time and increasingly to include monographs as well as journals. These can be used, depending on the agreement or licence, without reference to the ICLA licence – the authors are permitting their work to be read, copied and re-used freely and in full, though they should always be acknowledged, and their Moral Rights respected. It is not always easy to see what the © status of an article or chapter is, especially if it has been published as part of a 'hybrid' journal or monograph series (only partly Open Access). Your HEI's library will have a policy on the due diligence required for checking this, but if you are using material within the limits of the ICLA licence (10%/one chapter/article) you can be reassured you are covered either way. If any usage is subsequently reported inadvertently under an ICLA sample survey, ICLA and the publishers it represents will be able to exclude such copying events from the HE Licence data (see Data Collection page 20).



Responsibilities of ICLA

For further details of ICLA's responsibilities please see <https://www.icla.ie/governance/> which sets out our Rules of Administration; our website also provides other useful information about what we do and how we work. In general, ICLA's obligations can be summarised as follows:

- We operate the HEI licensing scheme in accordance with the CRRA and in compliance with the SI 156/2016 European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016.
- We indemnify HEIs against claims of copyright infringement where the HEI has been acting in accordance with our Licence terms and conditions.
- We collect and validate copying data to inform the distribution of licence fees to publishers, authors and visual creators – see page 20.
- In addition to the operation of our licensing scheme, we seek to facilitate the granting of transactional licences, where required.
- We publish clear and transparent information regarding our licences including fees.
- We publish guidance and advice on the HE Licence and related areas.
- We welcome ad hoc enquiries regarding the Licence via info@icla.ie and seek to assist HEIs in making the best use of the Licence.

Please note that we cannot provide legal advice. HEIs requiring legal advice should seek this independently.

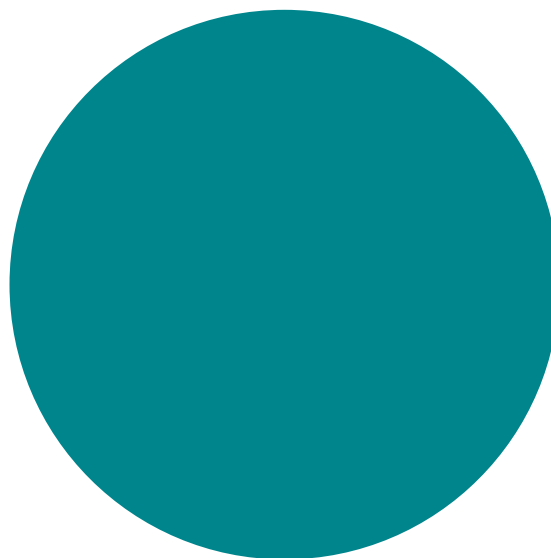


Responsibilities of HEIs

HEIs holding the Licence undertake to do the following:

- Observe the terms and conditions of the Licence (and in particular the constraints contained at clause 3 of the Licence captioned ‘Conditions of Licence’) and communicate to all staff (particularly anyone involved in the creation of course materials) the fact that the HEI is bound by the Licence terms.
- Pay their Licence fees on time.
- Ensure they declare accurate data to ICLA, e.g. student numbers for invoicing, as well as usage data.
- Co-operate with ICLA if selected for a survey (there is more information about copying-data collection on page 20).

The allocation of overall responsibility for the Licence at an HEI is an institutional decision. Whatever arrangements are in place, it is important that the person(s) charged with this have the active support of senior management. We believe it’s preferable (though not essential) that the Licence arrangements and internal responsibilities for compliance are documented within institutional policy.



Licence co-ordinator

To ensure smooth administration and act as a central point of contact, we ask each HEI to nominate an ICLA licence co-ordinator. We will address all official communication to this person (unless it is indicated otherwise – for example, if invoices should be sent direct to the Finance Department).

The precise responsibilities of the HEI's licence co-ordinator will depend on the way the HEI is organised, but some examples might be:



- Ensuring copyright notices are in place throughout the HEI beside photocopiers, printers and scanners.
- Receiving and communicating to staff and students updates from ICLA on excluded publications and categories of publication.
- Liaising with ICLA with regard to collecting copying data relating to use of the Licence.
- Advising staff and students with regard to the use of the Licence in the broader copyright context.

Please remember to tell us if the licence co-ordinator changes.



Who can make copies under the ICLA Licence?



Under the Licence, all members of staff can make copies. This includes individuals who, although not employed by the HEI, are engaged to provide teaching, research or consultancy services. It also includes honorary members of staff, such as Emeritus Professors, and visiting academics.

The making of copies (both paper and digital) can also be outsourced – for example, the making of digital copies is one of the options offered by the British Library via EHESS (page 21), but it must be remembered that the ultimate responsibility for abiding by the terms and conditions of the Licence remains with the individual HEI.

Who can copies be made for?

Course users

Copies can be made for ‘Course Users’ – that is, students taking a particular course plus any staff (as described under ‘Who can make copies’ above) teaching it.

Students on credit-bearing courses

The licence allows copying for all students based on a campus in the Republic of Ireland taking a credit-bearing course, both undergraduate and taught postgraduate, whether learning on campus or distantly. This includes all such students authorised to use the HEI’s Intranet or VLE via secure access. Distance learners can download and store copies for personal study at a later time that is convenient to them.

NB: ‘Distance learners’ does not include Overseas Campus-Based Students or students taking part in MOOCs.

Non-credit bearing students (NCBs)

These are students taking a course that doesn’t lead to a qualification or institutional credit (for example, a professional development course, summer school or course run by a Centre for Lifelong Learning).

Staff of regulatory agencies

Copies can be made in connection with regulatory work that agencies such as QQI undertake.

Non-academic staff

In addition to copies related to teaching, copies can be made for activities related to the administration of the HEI, for example, making copies for HR or financial management purposes.

Types of copying

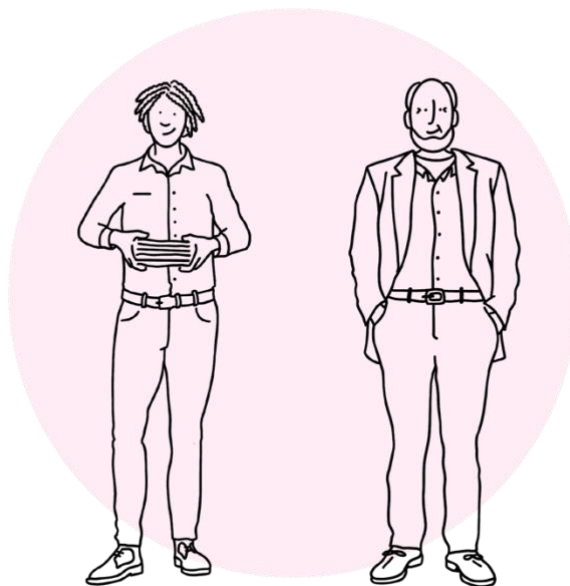
The Licence enables the making of paper copies and digital copies in the following ways:

Making paper copies

- Photocopying of paper materials.
- Printouts of digital materials.

Making digital copies

- Scanning paper copies.
- Making digital copies by any other means from digital publications and material available on the Internet.



Moral rights and adaptation of extracts (integrity)

Moral rights

Moral rights are enshrined in copyright law and include the following on behalf of authors and visual creators:

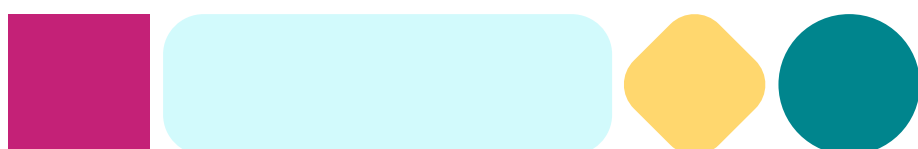
- the right to be identified as the author (or visual creator) of a work;
- the right not to have their work misrepresented;
- the right not to have a work that they did not create falsely accredited to them;
- the right to object to derogatory treatment of their work.

Adaptation of extracts

Provided the moral rights of the creator are not breached, the HEI can adapt extracts, but any adaptation must be entirely for pedagogical purposes. No other form of alteration or manipulation of the work is permitted under the Licence.

Note however:

- Adaptations must include an indication that the extract has been altered – e.g., for an English Literature course, ‘Please review this extract which has been adapted from [Title] by [Author]’.
- If the text of an extract is abridged or shortened, any omissions must be clearly marked and must not affect the meaning or sense of the text in any way that might affect the author’s moral rights. For example, parts can be blanked out, or some of the words translated from/into English or Irish or another language, for the purposes of asking students questions about it.
- Copies can be annotated, e.g. in the form of a commentary, or by adding some narrative text/commentary to an image.
- As noted on page 15, a copy can be made of an image disembedded from its accompanying text. In addition, text and/or images can be synchronised that are otherwise separated by the layout of the source.





Accessible copies

An exception for creating Accessible Copies of whole works for a person with a disability has been created under Section 26 of the 2019 Copyright and Other Intellectual Property Law Provisions Act, amending Section 104 of the Principal Act. All HEIs, including those that are privately funded, can now rely on this and no longer need the ICLA Licence for the creation of Accessible Copies.

Processes for digital copying

Any person authorised to make and distribute digital copies under the ICLA Licence should be familiar with the following:



How to store digital copies and make them available

It is important to ensure that digital copies aren't accessible to anyone outside the HEI, by making them available only via a secure, password-protected network – usually the VLE. Storage must also be secure – either via the VLE or another secure environment, such as Talis Aspire, the Digital Content Store or another secure third-party repository. Digital copies can be stored and made available for the full duration of a student's degree programme.

We advise placing digital copies in secure, course-specific collections. Only 'course users' (those students taking the course in question, and those staff teaching it) are entitled to download, store and print digital copies made for their course. If it's impractical to lock down access in this way, extra care should be taken to ensure a Copyright Notice (see page 13) is in place; we would also advise adding some extra wording to the effect that the digital copy 'should not be downloaded or printed out by anyone other than a student enrolled on the [named course] or a member of staff teaching it'.

Many HEIs cite digital copies in an online reading list, providing hyperlinks via their VLE, and this is permitted under the Licence.

NB: Copies cannot be stored in a department- or HEI-centralised depository that allows searching by subject, author etc, but only on a course-specific basis. Licence-compliant storage can best be facilitated by a system such as the CLA's Digital Content Store, Talis Aspire, or equivalent support software.

The following can also be done under the Licence:

- Send a digital copy to a course user or member of staff by sending it to their secure email address as an attachment.
- Use digital copies in the lecture theatre or classroom or online equivalent to illustrate a lecture or tutorial (provided that only course users are attending).
- Use digital copies during teaching sessions on Zoom and equivalent.
- Distribute digital copies on USB sticks (and other removable/portable storage media), provided that one copy only is delivered to each course user or staff member.



Copyright notice

Every digital copy distributed to students must include some kind of copyright notice. ICLA's Copyright Notice (sometimes referred to as a coversheet) should include the information set out in the box below. This ensures that relevant author accreditation is listed as well as including clear information regarding Licence compliance for staff and students.

Copyright coversheet

This copy is made available to students on

[course of study]

under the ICLA Higher Education Licence.

It is to support private study, but is not to be shared, republished, or otherwise made available to others not taking this course.

It is taken from:

Title: [book or journal title]

ISBN/ISSN/DOI: [identifier]

URL: [where relevant]

Author(s): [name(s)]

Publisher: [name]

Page numbers: [from-to]



If a digital copy already incorporates a publisher's copyright notice that includes the title, creator and publisher of the work, a further copyright notice does not need to be added, though it may still be helpful to ensure Licence compliance (e.g. to advise non-course users that they should not download or print out where there are no technical means to stop them doing to – see page 8). Sometimes, it might be impractical to display the full text of ICLA's Copyright Notice – e.g. within the main body of a PowerPoint presentation. In these cases, an abbreviated form can be used, e.g. 'Copied under ICLA Licence – please refer to the full Copyright Notice', so long as the full Copyright Notice is available elsewhere.

What can be copied under the Licence?

There are a few threshold rules:

- The works copied must be lawfully owned, held or accessed by the HEI.
- Works on the Excluded Works list (see page 16) must NOT be copied.
- A whole work can never be copied under the ICLA HE Licence, but only a proportion per course of study. (See 'How much can be copied?' on page 18.)

Print publications

- Journals and periodicals
- Conference proceedings
- Books (including plays and other works published in book form)
- Magazines
- Newspapers
- Law reports



Digital Publications

- Books, journals, and periodicals published in digital format subscribed to by the HEI or lawfully available on the Internet.
- Websites, blogs, and other digital materials (including text and still images) lawfully available on the internet.
- Newspapers published as digital originals in Ireland and the UK.



Digital publications can be copied unless specifically restricted by the terms on which the content is made available on the Internet or by the primary Licence terms.

All of these published in Ireland and many published in countries with which ICLA has a Reciprocal Rights Agreement can be copied unless they have been specifically excluded and appear on the Excluded Works list. At the time of launching this guide ICLA has Reciprocal Rights Agreements with: Great Britain and Northern Ireland; Argentina; Australia; Austria; Belgium; Canada (including Quebec); Denmark; France; Germany; Greece; Hong Kong; Iceland; Italy; Jamaica; Japan; Lichtenstein; Mexico; the Netherlands; New Zealand; Norway; South Africa; Spain; Switzerland; Trinidad & Tobago; Turkey and the United States of America.

Images

Images (including book covers) from publications that are covered by the Licence, can be copied by:

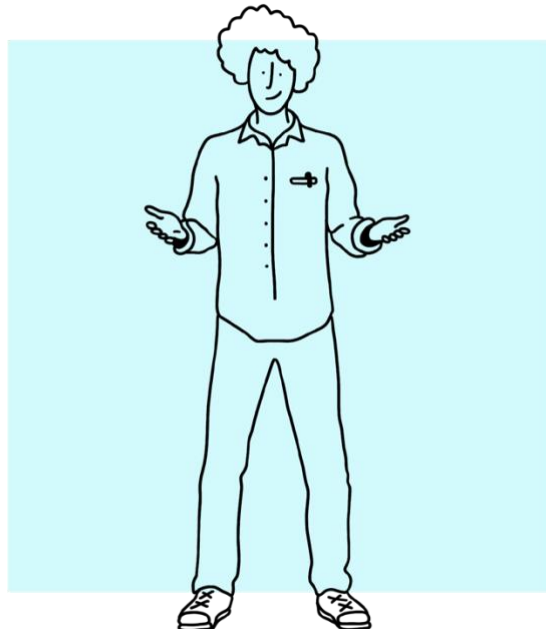
- preparing a copy of a whole-page visual image; or
- extracting a part-page visual image, from a page that may also include text and other images (this process is often referred to as 'disembedding').

Digital copies of, or which include, images made under the Licence should be recorded if the HEI is requested to take part in a survey (see page 20).



Editions

Copies can be made from any edition of a published work. However, it must be remembered that the Licence does not permit the copying of more than 10% (or one chapter, article, etc.) across different editions of the same publication.



Excluded Works

A wide variety of print and digital publications can be copied under the HE Licence. However, authors and publishers have the right to exclude all or selected works from any or all of ICLA's licences.

Checking the Excluded Works list

ICLA updates the list of Excluded Works (www.icla.ie/licences/exclusions-list) at the start of each academic year. The Licensee should check for any changes at that time, but need not check on the occasion of each use of a work.

What to do if a copied work becomes excluded during the Licence term

If a work not previously excluded becomes excluded during a Licence period, we will notify all HEIs. Any digital copies of that work should be deleted within one month of receipt of such notification. However, if any of these digital copies are still being used for a course at the time of notification, the use can be continued until the end of the academic year.

Excluded categories

None of the following categories of works is included in the definition of Licensed Material because ICLA is not in a position to authorise their use. These materials cannot be copied.

Maps and charts

Works that consist predominantly of maps/charts. 'Charts' means charts that are similar to maps, e.g. sea charts, weather charts and hydrographic charts. (Other types of charts – e.g. pie charts and flow charts – are covered by the Licence). Information about the licensing of Ordnance Survey Ireland products can be found at www.osi.ie

Workcards and assignment sheets

Publications intended for a student to write on and for once-only use.

'Copying not permitted under the ICLA Licence'

Any publication which includes a notice expressly stipulating that it cannot be copied under an ICLA Licence. This would normally appear at the front of a publication along with the name of the publisher and the general copyright notice.



Source copies

The Licence states (Clause 3(a)) that it can only be exercised in relation to Works lawfully owned, held or accessed by the Licensee – that is, the individual HEI.

These are valid 'source copies':

- Publications that have been purchased or subscribed to by the HEI.
- Copyright-fee paid copies (see next).
- Publications that are owned by the HEI but not necessarily purchased – e.g. acquired as donations or via bequests.
- Publications 'available on the internet' - that is, where the copyright holder has chosen to make their work available and the HEI can access it without circumventing any digital barriers or paywalls. (This excludes any copies made available by other parties without the permission of the copyright holder.)

Copyright-fee paid copies

- Publications borrowed on inter-library loan (from any other library, including HE, FE and HSE libraries) and Library privilege copies acquired from other libraries, including the British Library, can be used only in accordance with the 'library privilege' exception, i.e. as a single copy for a library user based in the Republic of Ireland for private study or non-commercial research. For creating copies for Course Users and other Authorised Persons a Copyright-fee paid copy will be needed.
- If the HEI does not own or subscribe to the source publication required, a copyright-fee paid copy of the relevant extract can be purchased and then used as a source copy under the Licence. Copyright-fee paid copies are available from organisations that hold licences enabling them to do this – for example, the British Library (see page 21).
- The copyright fee paid by the HEI is passed on to the relevant publisher; once a copyright-fee paid copy has been purchased, it should be treated in the same way as a publication purchased in the traditional sense and any copying of it should be included in any Data Collection (see page 20).
- All the usual Licence terms and conditions apply to Copyright-fee paid copies. It should be remembered in particular that if 10% of a publication (or one chapter, article etc) has already been copied for a specific course, acquiring a Copyright-fee paid copy doesn't allow a further 10% (or chapter, article etc) to be made available for that same course.

How much can be copied under the Licence?

The limits to copying per course of study are set out in clause 3(b) of the Licence. In summary, up to the following amounts can be copied for each course of study:

- One whole chapter from a book including references and notes (this by extension, includes one scene from a play).
- One whole article from a magazine/journal issue (this by extension, includes a whole paper from a set of conference proceedings and a whole report of a single case from a volume of judicial proceedings).
- A whole short story, poem or play from an anthology (not exceeding 10 pages in length).
- Where a digital or Internet publication is not organised in a similar way to a conventional printed item, best judgement should be exercised to copy reasonable extracts, using the limits for conventionally organised publications as the guiding principle.

Or, if it is greater than the above, 10% of the total publication.

The following additional detail may also be helpful:

If copies are made under the 'one chapter or article' provision:

- If a book is subdivided into parts or sections that, while not actually called chapters, are demonstrably equivalent to a chapter-based organisation of topics, the whole part or Section can be copied as for a chapter.
- If notes and/or references integral to a specific chapter or article are given at the end of a book or journal etc, they can be treated as part of that chapter or article.

If copies are made under the '10%' provision:

- The easiest way to calculate 10% of a total publication is by number of pages.
- Count the whole of the publication from start to finish, including items such as index and bibliography. If, for example, any of the pages in the publication are blank, they all count towards the total pagination.
- If the extract to be copied includes substantial white spaces or advertisements, these can be omitted for the purpose of calculating 10%.
- If two chapters or articles comprise no more than 10% of the total publication, both can be copied.

General

- No more than the specified limits for a particular course can be copied by copying incrementally – e.g., making 10% of a publication available for two weeks of the course only and then a further 10% for the following two weeks. In such a case, copying would be substituting for purchasing the original book and it is a guiding principle of the Licence not to enable that.
- It should be remembered that the Licence does not permit the copying of more than 10% (or one chapter, article, etc) across different editions of the same publication.
- As many paper copies of an extract can be made as are needed to ensure that each student taking the relevant course, and each member of staff teaching it, has access to a copy.
- There is no limit on the number of times a digital copy can be opened and viewed on screen.
- As indicated above, the Licence is not intended to substitute for the purchase of original material (a concept that is sometimes referred to as ‘Textbook Substitution’). This could occur if a particular combination of copies made under the Licence (usually made available within a course pack) had an adverse impact on a decision to purchase the original publication.
- The following cannot be done with copies generated under the Licence:
 - They cannot be re-published; they cannot be included in a publicly available website or made available on the Internet generally.
 - They cannot be collected or stored in a centralised, systematically organised and searchable repository or similar resource.
 - They cannot be rented or sold (unless to students at a charge representing the cost of copying only).



Record keeping, data collection and reporting for licence fee distribution to rightsholders

Statutory Instrument (SI) 277/2020, mirrored by the 2020 Licence, requires Licensees to 'comply with the record-keeping procedures approved from time to time by ICLA, and to make such data available to ICLA upon request.' We need copying data to help inform the accurate re-distribution of Licence fees to authors, visual creators and publishers. To do this fairly we need to capture all types of copying, from print and digital, within any period set for data collection. To identify the copyright holder of what has been copied we need the names of authors, titles of books and journals, and identifiers such as ISBNs and ISSNs, or URLs in the case of material available on the Internet – the same 'metadata' that appear on the copyright cover sheet (see page 13). We also need to know numbers of pages copied and numbers of students to whom they are made available so that fees can be distributed proportionately.

Former methods of data collection from photocopiers have been made obsolete by the move to online learning but we have been aware that decentralised use of VLEs has made provision of data from digital resources very difficult. With the increasing adoption of reading list and content management systems (including Key Links, Leganto, Talis Aspire and the Digital Content Store or 'DCS') such data become easily retrievable, and we are happy to work with each HEI individually to find a method of reporting that is minimally demanding for their set up.

The provision of copying data is also an obligation for licensees under the *European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016*.

How does the ICLA licence fit with publishers' primary licences?

Clause 3(p) of the 2020 Higher Education Licence says: 'For the avoidance of doubt, this Licence does not supersede any licences agreed between the Licensee and the publisher or distributor of Licensed Material.'

The Licence is intended to complement primary (or subscription) licences that come with digital publications (including those issued by e-book platforms). If the HEI wants to make copies from a digital publication, this can be done either under the primary licence or the ICLA Licence, subject to the terms and conditions of the specific licence.

If the ICLA Licence is more generous than the primary licence, that's fine – provided any digital rights management (DRM) protocols embedded within a product are not overridden or circumvented.

HEIs are free to make a digital copy by a variety of means (provided again that any DRM protocols are not overridden or circumvented) – including, for example, by copying and pasting, or by copying one page at a time (including into a different format). Copies from a digital product can also be printed out and then scanned under the Licence.

The Enhanced Higher Education Supply Service (EHES)

The British Library's EHES is a means of purchasing Copyright-fee paid (CFP) copies or of outsourcing scanning of material a Higher Education institution owns. Unencrypted, high-quality documents with Optical Character Recognition (OCR) for various uses within any institution with an ICLA Higher Education Licence can be obtained within 48 hours. It gives the HEI the opportunity to own the copy and use it under the ICLA Licence (provided it is included in the Licence and is within extent limits), which is not the case with copies received under Library Privilege or Inter Library Loans.

Such uses can include uploading to the HEI's VLE to support reading lists and as part of course-packs.





The Irish Copyright Licensing Agency CLG

63 Patrick Street, Dún Laoghaire, Co. Dublin, A96 WF25

Tel: 01 662 4211
Email: info@icla.ie
www.icla.ie