

# Questions and Answers on Policy for Copying of Print Materials Protected by Copyright August 2011

## 1. What is the new policy on copying print publications in NHS Scotland?

1.1 The new default position across NHS Scotland (NHSS) is that, other than in very limited circumstances, no on-site copying or scanning of print publications will take place. Print materials should be considered in most circumstances as being for reading purposes only. Copyright cleared copies will be purchased from appropriate sources and funds will be made available for this purpose..

## 2. What is the background to the new policy on copying print publications in NHS Scotland?

2.1 Scottish Government Health Directorate (SGHD) terminated the Copyright Licensing Agency (CLA) licence for NHSS from 31<sup>st</sup> March 2011. This licence covered photocopying of copyright-protected print publications in NHS Scotland, at a cost of over £1 million per annum. However, the past ten (10) years or so have seen NHSS' use of electronic licensed resources increase exponentially with the reliance on paper resources also correspondingly decreasing. The Knowledge Network now substantially replaces local print subscriptions with national electronic versions. The CLA made it clear to SGHD from the outset that it would not consider a lower cost licence which would reflect this change.

2.2 SGHD, in consultation with NHS Education for Scotland (NES), concluded that in light of the extent of rights available under The Knowledge Network, Boards must be *required* to make maximum use of the electronic books and journals available through The Knowledge Network, already licensed directly from publishers.

2.3 SGHD, NES and Central Legal Office (CLO) advised Boards that without the CLA licence, obtaining photocopies of print publications, when essential, would need to be managed strictly within the terms of copyright law to ensure compliance with the relevant copyright legislation.

2.4 SGHD gained support for the termination of the CLA licence from Directors of Finance in the NHSS Boards, and issued several communications to Chief Executives and NHSS librarians, jointly with NES, and in some situations, also with CLO. These communications explained the rationale for withdrawal of the licence, and included draft guidance issued for feedback and discussion on conducting NHSS business in line with copyright legislation. Such draft guidance adopted copyright principles commonly used across the public sector. It also made clear that the default position in Boards should be to revert to The Knowledge Network in the first instance with any photocopying requiring to be made within limited "exceptions" available in terms of copyright law. These "exceptions" include copying for the purposes of non-commercial research, private study, criticism and review, under the terms of "fair dealing" and "library privilege". SGHD further explained that there was no intention to devolve costs to the Boards.

2.5 The nature of the key exceptions for “non-commercial research and private study” in particular is such that each situation must be analysed on a case by case basis to ascertain whether the relevant exception applies. Some NHSS Boards have expressed concern at the risks and overheads associated with interpreting copyright law in this way, requesting more definitive guidance.

2.6 In response to this feedback, and appraising the situation as a whole with further legal and specialist advice, SGHD, NES and CLO have agreed on implementation of a new policy which streamlines processes, minimises risk and reinforces the key message set out in the original guidance that rather than copy print resources, reliance should instead be placed on electronic resources where these are available.

2.7 The new *default* position on copying is that print publications will **not** be copied on site except in *very* limited circumstances. This approach removes the requirement to consider each situation to decide whether or not an exception applies. It provides certainty to NHSS staff and library services. Further information on the new policy is set out in sections 8, 9 and 10 below.

### **3. What is the Copyright Licensing Agency?**

3.1 The CLA is a licensing body as defined by the key piece of copyright legislation in the UK- the Copyright Designs and Patents Act 1988 (CDPA). The CLA is owned by the Authors' Licensing and Collecting Society Ltd. (ALCS) and the Publishers' Licensing Society Ltd. (PLS) to perform collective licensing on their behalf. CLA pays copyright holders through licence fees and takes a “cut” for its own role as collecting agency.

3.2 CLA is a *commercial* body, not a government or statutory organisation.

3.4 NES licenses electronic publications directly from publishers or via aggregators, not via CLA. It is notable that most of these publishers do not work with CLA for electronic licensing.

### **4. What is copyright in the UK?**

4.1 Copyright arises automatically upon creation of a relevant work without the requirement for any formal registration. CDPA is the main legislation for copyright in the UK.

4.2 Literary works (i.e. anything written), dramatic, musical and artistic works, sound recordings, films, videos, radio and TV broadcasts are all covered by copyright law. Literary works may be printed, hand-written, in machine-readable form, on the Internet etc.

4.3 Literary works normally enjoy copyright protection for the duration of the author's life plus 70 years. After copyright has expired, the material is said to be “in the public domain”, and you can then do what you like with it. It is in most cases, reasonable to assume that anything published that is over 120 years old, and not edited or printed more recently, is out of copyright.

## 5. What acts are restricted by copyright law?

### 5.1 General

Copying, disseminating copies to the public, renting or lending (other than by certain libraries – NHSS libraries are allowed to lend), performing, broadcasting, adapting or amending a copyright work, communicating to the public by placing on a website or Intranet, attaching to emails etc, are all restricted acts. In other words, you may not undertake these activities without the permission of the copyright owner unless you are able to do so within the terms of an exception in CDPA.

### 5.2 What is copying?

“Copying” means reproducing the relevant work in any material form, including storing it in any medium by electronic means. Unless:

- there is a licence in place permitting copying (whether direct from the copyright owner or via a “Creative Commons Licence”<sup>1</sup> for example); or
- the copying in question is so insubstantial that it does not constitute infringement i.e. it only comprises tiny, inconsequential extracts,

then copying is not permitted unless it falls within one of the exceptions contained in CDPA.

### 5.3 Does the whole of the work in question have to be copied in order for there to be infringement?

Clearly, if the whole work is copied, there will be infringement. However, the position is often not as clear cut as this. The key test is whether a *substantial* part of the material concerned has been copied – i.e. a part of the work that is critical to its meaning and value. Strictly speaking, rather than consider exact percentages of the overall work in question, the test is *qualitative*, not quantitative.

## 6. So when can I photocopy?

There are a few specific situations in which it is straightforward to photocopy:

- 1) For judicial proceedings, statutory inquiries and Royal Commissions, as permitted by CDPA.
- 2) Crown Copyright material is normally available under a free licence – government publications will often be covered by Crown Copyright so copying can be undertaken within the relevant terms.
- 3) Where the owner has explicitly given permission, or given a Creative Commons or similar free licence – e.g. material in Open Access repositories.
- 4) For publications where your NHSS Board owns the copyright.

---

<sup>1</sup> See [www.creativecommons.org.uk](http://www.creativecommons.org.uk)

## 7. What about the exceptions to copyright?

### 7.1 Overall approach

The CDPA does permit a number of exceptions, some of which are outlined below for the sake of completeness and clarity.

These exceptions need to be analysed on a case by case basis to determine whether a particular exception applies to a particular set of circumstances. Many aspects of interpretation of the scope of the exceptions have not been fully tested in case law so there is a degree of uncertainty regarding what activities are, and are not, included within the scope of a particular exception. To address concerns regarding the level of responsibility placed upon individuals and Boards in applying these exceptions, and bearing in mind that improper use of an exception could give rise to legal proceedings, SGHD policy is therefore clear that unless a situation falls within that described in Section 6 above, ***on-site copying for NHS Scotland business should not take place even when certain other exceptions might seem appropriate.***

### 7.2 “Fair dealing”

Broadly speaking, the “**Fair dealing**” exceptions permit copying where such copying is “fair”, i.e. does not damage the legitimate commercial interests of the copyright owner, is for the person him/herself or for a friend or colleague, and is for one of the permitted purposes under CDPA, i.e. non-commercial research or private study, or criticism or review, or reporting current events (NB. education is not a permitted purpose for fair dealing.) However, as stated above, application of these exceptions requires a judgement call to be made. Again, the “no-copying” rule avoids staff having to go through the necessary analysis.

### 7.3 What about library staff copying for users and inter-library copying?

7.3.1 “Library Privilege” as defined in CDPA permits “prescribed libraries” (broadly speaking, libraries **not** associated with commercial bodies) to make copies for users and for other libraries, as long as a number of ground rules are adhered to. Most importantly, requests can only be made for the purposes of non-commercial research and private study and require a signed declaration to be submitted stating that such purposes apply.

7.3.2 NHSS libraries are prescribed libraries. However, in light of the overall NHSS aim of removing the requirement for users and library staff to consider the applicability of an exception, SGHD policy is therefore that ***library copying for NHSS users, and inter-library copying within NHSS, will be discontinued.***

7.3.3 It is still possible for NHSS libraries to copy for users and prescribed libraries *outside* the NHSS, provided that the rules associated with Library Privilege are adhered to. Local library policy will determine whether to make use of Library Privilege in this way:

- The onus is on individual requestor or requesting library to confirm that the copying is for the purpose of non-commercial research or private study.

- A declaration form confirming this purpose must be signed and submitted – a personal signature for each request.
- Money to cover costs must change hands, at the time or later. This may be a notional transfer of funds at the end of the year.
- No more than one copy of any one item may be made “at substantially the same time for substantially the same purpose.”
- The requestor can only have one copy of any item.
- The requestor can only have one article from a journal issue or a reasonable proportion of a monograph (usually taken as one chapter or 5%, whichever is the greater).

## **8. How can I obtain a copy if I don't photocopy?**

Photocopies of materials can be obtained using the British Library copyright cleared service . Further advice about this process has also been issued by NES separately. Please also see Sections 9 and 10 below.

## **9. What about multiple copies?**

9.1 British Library copyright-cleared copies can be further copied for purposes “covered by statute” – this would include fair dealing for non-commercial research or private study, criticism or review, as defined under copyright law. However, again, in terms of the “no copying” policy across NHSS, the aim is to remove the requirement for users and library staff to consider the applicability of an exception. Accordingly, rather than look to “purposes covered by statute” library staff should simply purchase multiple copies. Multiple copying generally should only be undertaken when it is genuinely essential to the user to have multiple copies and no alternative solution is available – e.g. circulating a URL for an electronic version of an article or summarising the article for distribution. Multiple requests should be placed with the British Library copyright cleared service. Alternatively, permission for multiple copies may be sought directly from the publisher. For larger volume copies, items may be obtained via the British Library multiple copies service.

9.2 NES is also investigating the possibility of using a permissions agent to support the occasional requirement for multiple copies.

## **10. What about retrospective copyright permission?**

NES is investigating the possibility of using a permissions agent to obtain retrospective copyright permission in exceptional cases.

## **11. What about making copies of “free” publications – e.g., from other Boards, public sector or voluntary sector organisations?**

Copyright law applies to publications from these organisations as it does to commercially published material. Unless permission is already expressly given, it should be sought before using another organisation’s copyright material, even on an NHSS created resource.

## **12. What are the obligations in relation to record keeping?**

12.1 If library staff continue to carry out copying for non-NHSS staff and libraries under Library Privilege they must retain records of signed copyright declarations, and of payment transactions. Appendix 1 provides details of record keeping requirements.

12.2 Although there is no requirement for library staff to obtain signed declarations from users in the event of copying by library staff for parliamentary and judicial proceedings, enquiries etc, library staff must be properly satisfied that the request is indeed for that purpose and should keep a record of such requests.

12.3 There is no requirement for library staff to keep records of “fair dealing” or other permitted copies made by a user in a NHSS Library.

## **13. What about electronic resources?**

The former CLA licence did not cover electronic publications (other than scanned copies). The CLA is not involved with the electronic licences NES has established direct with publishers. A summary of key points relating to electronic licences is attached in Appendix 2.

## **14. What about internal enforcement of the new policy?**

14.1 The obligation to comply with the guidance set out in this note will be one of the general obligations incumbent upon all employees and contractors to the Health Boards as part of their contract of employment or engagement. We would emphasise that in relation to individual Users who are NHSS employees, failure to do so could be considered a *disciplinary matter*.

14.2 NES will work with library staff and Boards during September to December 2011 to implement a monitoring process to ensure local adherence to copyright law.

## 15. The bigger picture for the future

These changes in copyright policy in NHSS are part of a national picture recognising the need for change in the way copyright is managed in the UK. The UK government-sponsored Hargreaves Review of 2011<sup>2</sup> recognised the need for a raft of new and extended exceptions to copyright law.

---

<sup>2</sup> <http://www.ipo.gov.uk/ipreview.htm>

## **Appendix 1**

### **Record keeping for 'library privilege' copies**

#### **1. Supplying copies (Library Privilege)**

If you are asked by another library to provide a copy for one of its users, you should keep a record of what you have provided. You are not permitted to supply more than one copy of an article or the whole or part of a published edition, and if asked for more than one article in the same issue of a periodical, or for a copy of the whole or part of a published edition, the requesting library must furnish "a written statement to the effect that it is a prescribed library and that it does not know, and could not by reasonable inquiry ascertain, the name and address of a person entitled to authorise the making of the copy". You would have to retain that statement to show you were not wilfully providing an infringing copy.

#### **2. Copies made for replacement**

If you are asked to provide a copy of an item as a replacement, the conditions are that it must be from your permanent collection, and that the copy must be for the requesting library's permanent reference collection, and not made available for loan to individuals (loans to other prescribed libraries are permitted). It should also not be 'reasonably practicable' for the librarian or archivist to buy a copy, and a written statement should be obtained from the requesting library that the item is lost, destroyed or damaged, it is not reasonably practicable to purchase a copy, and that the purpose is to replace an item in the permanent collection. Again, you should retain the written statement.

#### **3. Money handling**

You must have a clear record of the charges you have made and the monies you have received for any photocopies you supply under library privilege.

## Appendix 2: Summary guidance on use of electronic resources

### Copyright Permissions for Electronic Journals covered by Publishers' Licences

NES's Knowledge Network ([www.knowledge.scot.nhs.uk](http://www.knowledge.scot.nhs.uk)) provides a combination of subscription and free electronic journals. Subscription electronic journals are normally those accessed through an ATHENS username and password, but some are made available through I.P. recognition or other authentication method. For these journals, NHS Education for Scotland signs licences with publishers or providers which govern the use of that publisher's online content. Failure to stay within the terms of the license risks losing access to resources for all users.

If you want to use an electronic journal for anything other than making single copies of individual articles for personal use, you are advised to consult the licence terms for that journal. Licence terms vary from publisher to publisher, but a few general principles are set out below.

#### Authorised users **may usually**:

- print a copy of an article for personal use (research, teaching, private study) - but systematic downloading is usually forbidden - see below
- download a copy of an article for personal use (research, teaching, private study)
- send a copy of an article to another authorised user
- create documents with live links to electronic journal articles
- save links to electronic journal articles in Shared Spaces and community websites.

#### **Some** licences permit authorised users to:

- incorporate articles or portions of articles into course packs for teaching
- make articles available through a secure intranet or Virtual Learning Environment for teaching use (each article should carry appropriate acknowledgement of its source in the link)

#### Licence terms will **usually not allow** authorised users to:

- systematically download, save, or print articles from an e-journal (e.g. all articles from one issue of a journal)
- remove or alter the authors' names, the journal title, the publisher's copyright notices, or other means of identification from an article
- make multiple print or electronic copies
- mount articles on an internet server (although mounting on a secure Intranet server may be permitted). This includes saving pdf files and uploading them to Shared Spaces or community websites. You can, however, upload links to the original source.
- use articles for commercial purposes
- send printed or electronic articles to unauthorised users (i.e. anyone who is not an authorised user of The Knowledge Network)
- alter, abridge, adapt or modify articles
- make photocopies from a downloaded pdf file

**For more information, contact [knowledge@nes.scot.nhs.uk](mailto:knowledge@nes.scot.nhs.uk)**