

Library and inter-library document supply and copyright in the NHS: guidance for library staff

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Please note that this document is intended for guidance only and is not a substitute for either the CLA Licence Plus for the NHS in England or UK copyright legislation. If you have any queries or suggestions for improving the guidance, please contact Helen.Bingham@hee.nhs.uk

Summary

This summary is intended for library staff working in NHS-funded library services in England (including in university libraries with contracts to provide library services to NHS organisations).

Licences and legislation

The Department of Health pays the Copyright Licensing Agency (CLA) for a Licence that allows staff in the NHS in England to make/share copies of copyright materials owned/subscribed to by the NHS in England. The Licence adopts a broad and inclusive definition of the NHS, and treats the NHS in England as a single entity. The Licence covers the majority of the copying you will need to do from journals and books, both for your customers and other NHS-funded libraries.

In addition, under the 1988 Copyright Act (updated in 2014), libraries may make 'Library Privilege' copies of small 'fair dealing' amounts from copyright works, digital or print, for individual, non-commercial use.

The next section provides more information about copying under the CLA Licence and the Copyright Act.

The CLA Licence

Who can make and receive copies under the Licence?

The CLA Licence covers all those working for, and contracted by, the NHS and other organisations created under the Health & Social Care Act 2012. This includes public health staff employed by local authorities, the staff of all Department of Health arms' length bodies and special health authorities, as well as students on placement, university staff contracted to work for the NHS, and non-NHS librarians who provide services to the NHS staff. Under the CLA Licence 'Plus', staff working for NHS 'collaboration partners' (non-NHS organisations with their own CLA Licence who need to share copies with NHS staff as part of collaboration projects) are also covered. For more information, see the FAQs on p.7.

What can be copied under the Licence?

The Licence enables all of the above to make copies from almost everything that has been purchased by or is subscribed to by any organisation within the NHS in England. A small number of books and journals are excluded from the licence, and some works published outside the UK may not be copied digitally. The best way to check is via the CLA's Check Permissions tool at <https://www.cla.co.uk/> (select the Public Sector Licence option from the drop-down list).

If a journal or other copyright work has been donated to your library, it may be regarded as being owned by the NHS.

Under the CLA Licence:

- You may copy two articles from a single issue of a journal (or several articles from an issue if on the same theme), or up to one chapter or 5% of a book (whichever is greater)
- Multiple copies and 'copies of copies' are allowed
- Copyright declarations are not needed
- Scanned and digital copies may be stored on an intranet or secure network, but not within an indexed and searchable centralised database
- Only single paper copies may be made for patients and carers

The Copyright Act and Library Privilege

Where copies cannot be supplied under the CLA Licence (because your customer and/or the requested item is not covered by the CLA Licence) and are required for non-commercial research or private study, they may be made under the 'Library Privilege' terms of the Copyright Act. From 2014, library staff may make Library Privilege copies for other not-for-profit libraries from *any* copyright work, including e-journals and from works excluded from the CLA Licence.

In these cases:

- You may only copy one article from an issue of a journal, or a 'reasonable' proportion of any other published work.
- The requester must have provided a declaration in writing to say that they have not previously been supplied with a copy, that the copy is required for non-commercial research or private study, that they won't supply the copy to anyone else, and that as far as they know, no one else is going to be asking for the same copy for the same purpose at the same time. This declaration does not have to be signed, and can be sent electronically, so for instance requester could type their name or tick a check box to confirm agreement. See Appendix for a form of words to use on electronic declarations.
- You can supply the copy digitally, but the individual receiving it may only store it digitally for their own personal use.
- **Library Privilege copies may not be further copied or shared.**

Copyright Fee Paid (CFP) copies

In instances where copies cannot be supplied under the CLA Licence and are required for purposes other than for non-commercial research or private study (including for sharing with others), you should obtain a Copyright Fee Paid (CFP) copy. CFP copies can be treated as if owned by the NHS, and further copies made under the CLA Licence. An allocation of CFP copies is included with the CLA Licence Plus: see the FAQs on p.7.

A note about publishers' licences

Electronic databases and journals are typically licensed for access by those who work for specific organisations, and library staff may make copies for everyone covered by these licences – although more usually you would provide customers with their own direct links. Beyond this, publisher licences are usually quite restrictive in terms of the copying that is allowed. However, as above, you may well be able to make copies under the CLA Licence (use the CLA Check Permissions tool at <https://www.cla.co.uk/>) and failing this, you may make Library Privilege copies for another not-for-profit library from *any* copyright work. Library Privilege cannot be overridden by a publisher's contract. Remember that in these instances, you will need a written/ticked declaration from your customer, and they may not share the copies you supply with others.

Professional judgement and common sense

Copyright is about respecting the rights of those who have created or own the material we wish to share. Our job is to source and supply copies, quickly and with minimum bureaucracy, to staff in the NHS working directly and indirectly to improve the quality of patient care.

The key points to remember are:

- always ensure that authors/publishers of the copies you supply are clearly identified so that they can be properly acknowledged;
- do your best to ensure that service users know what they can/cannot do with the copies you supply;
- the extent of copying must not directly or indirectly substitute for the purchase of original material.

‘At a glance’ summary table for NHS libraries¹ supplying copies to own service users

	Which licence/legislation is relevant?	Is a written/ticked declaration required?	Are there any restrictions on WHAT or HOW MUCH can be copied?	Are there any restrictions on WHO you can send the copy to?	Are there restrictions on WHAT YOUR SERVICE USER CAN DO with the copy?
A. An article from a journal/extract from a book which your library or another NHS library¹ holds or subscribes to	CLA Licence for the NHS in England	No	<p>Almost every journal and book owned by/subscribed to by the NHS is covered by the CLA Licence, but to be sure, use the Check Permissions tool at https://www.cla.co.uk/ (select Public Sector Licence).</p> <p>You may only copy up to two articles from a single journal issue, or up to one chapter or 5% of a book but there is no restriction on the number of copies that may be made.</p> <p><i>If the journal or book is not covered by the CLA Licence, obtain a declaration, supply a single copy only, and use statement 2.</i></p>	<p>Most NHS-funded library services may assume that all registered library service users are covered by the CLA Licence, as the ‘authorised persons’ list is very inclusive.</p> <p><i>If your service user is not covered by the CLA Licence, obtain a declaration, supply a single copy only, and use statement 2.</i></p>	<p>Personal use, sharing and storage permitted. Use statement 1.</p>
B. An article from a journal/extract from a book not covered by the CLA Licence for the NHS in England²	Library Privilege permissions in the Copyright Act	Yes	<p>The library will only be able to supply you with a single copy from a journal issue, or up to one chapter or 5% of a book, and no further copies are allowed.</p>	<p>You can only send this to the user who has supplied/ticked the declaration.</p>	<p>Private study and non-commercial research only. Strictly no further copying. Use statement 2.</p>

¹ This includes HEI and other non-NHS libraries with a contract to deliver library services to NHS organisations.

² For instance where the original is held by the British Library, BMA Library, a Royal College/Professional Association Library, or a library outside England.

	Which licence/ legislation is relevant?	Is a written/ ticked declaration required?	Are there any restrictions on WHAT or HOW MUCH can be copied?	Are there any restrictions on WHO you can send the copy to?	Are there restrictions on WHAT YOUR SERVICE USER can do with the copy?
C. A 'Copyright Fee Paid' (CFP) copy obtained from BL or other document supply service	CLA Licence for the NHS in England.	No	No, provided the title is covered by the CLA Licence. To check what types of further copying are allowed, use the CLA Check Permissions tool at https://www.cla.co.uk/	No – you may send this to anyone covered by the CLA Licence.	Personal use, sharing and storage permitted. Use statement 1.
D. A copy obtained from a 'collaboration partner'³ on behalf of staff involved in 'collaboration projects'⁴	CLA Licence for the NHS in England.	No	No. To check what types of further copying are allowed, use the CLA Check Permissions tool at https://www.cla.co.uk/	Those involved in the collaboration project(s).	Personal use, sharing and storage permitted. Use statement 1.
E. An copy purchased from a publisher's website ('pay per view' or PPV)	Publisher licence	No	No, provided the title is covered by the CLA Licence. To check what types of further copying are allowed, use the CLA Check Permissions tool at https://www.cla.co.uk/	No – you may send this to anyone covered by the CLA Licence.	Personal use, sharing and storage permitted. Use statement 1.
F. An 'open access' article or book that you find free on a website	The website will usually clarify the copyright status of the item and the extent to which copies may be made. You must ensure that it is clear to your service user where the copy has come from: it is good practice to send your end-user the link to the item, rather than a downloaded copy.				

³ A collaboration partner is an organisation whose staff are working with NHS staff on collaboration projects, which the CLA has confirmed has its own CLA Licence.

⁴ A collaboration project is a specific project which involves partnership working between organisations

‘At a glance’ summary table for NHS libraries⁵ supplying copies to other libraries

	Which licence/legislation is relevant?	Does the other library need to have obtained a written/ticked declaration?	Are there any restrictions on WHAT or HOW MUCH can be copied?
A. To a library covered by the CLA Licence for the NHS in England⁵	CLA Licence for the NHS in England	No	<p>Almost every journal and book owned by/subscribed to by the NHS is covered by the CLA Licence, but to be sure, use the CLA Check Permissions tool at https://www.cla.co.uk/ (select Public Sector Licence).</p> <p>You may supply up to two articles from a single journal issue, or up to one chapter or 5% of a book.</p> <p><i>If the journal is not covered by the CLA Licence, you may supply a Library Privilege copy, as below.</i></p>
B. To a not-for-profit library not covered by the CLA Licence for the NHS in England	Library Privilege permissions in the Copyright Act	Yes	You may only copy one article per journal issue, or up to one chapter or 5% of a book.

⁵ This includes HEI and other non-NHS libraries contracted to provide library services to the NHS. For project related sharing, it also includes libraries in "collaboration partner" organisations.

Declarations and statements

Service-user declaration for copies that will be supplied under the Library Privilege terms of the Copyright Act

I declare that:

- a) *I have not previously been supplied with a copy of this by you or any other librarian;*
- b) *I will not use the copy except for research for a non-commercial purpose or private study and will not supply the copy to any other person; and*
- c) *to the best of my knowledge, no other person with whom I work or study has made or intends to make, at or about the same time as this request, a request for substantially the same material for substantially the same purpose.*

I understand that if the declaration is false in a material particular, the copy supplied to me by you will be an infringing copy, and that I shall be liable for infringement of copyright as if I had made the copy myself.

Note: this wording is derived from the model declaration provided by CILIP, whose guidance on copyright declarations is available here:

<http://www.cilip.org.uk/cilip/advocacy-awards-and-projects/advocacy-and-campaigns/copyright/copyright-briefings-and-2>

Statements to use with copies supplied to service users

1. Copies supplied under the NHS CLA Licence

“This copy has been supplied to you under the terms of the CLA Licence for the NHS in England. You may store your own copy (e.g. on your personal drive or own PC), and make further copies for other NHS colleagues. You may store it on a secure NHS network, but not place it on the internet. Thank you for your co-operation.”

2. Copies supplied under the Copyright Act, a Publisher Licence, or obtained from the BL, BMA, RSM or another non-NHS library

“This copy has been supplied to you under the terms of the Copyright Act. It is for your personal, non-commercial use only. You may not make further copies. Thank you for your co-operation.”

FAQs

What are the 'plus' features of the CLA Licence Plus for the NHS in England?

The CLA Licence Plus has two additional features:

1. It includes an annual allocation of copyright-fee paid (CFP) articles, obtainable from the British Library (BL) and Royal Society of Medicine (RSM) Library.
2. It allows NHS staff working on projects with staff of non-NHS organisations to share copies under the terms of the CLA Licence, where the non-NHS organisation ("collaboration partner") has its own CLA Licence.

When and why would we need CFP articles?

These are useful when: a) the BL or RSM is unable to provide a Library Privilege copy; or b) your service user needs to be able to share the copy amongst their colleagues (as you know, Library Privilege copies are for individual use only and no further copies may be made from them). The CFP articles come unencrypted and become the property of the NHS, and thus can be stored and shared under the CLA Licence terms.

How do we request CFP articles?

To obtain these from the British Library, you need to set up a second account with the BL and use this to request CFP articles. If your library does not yet have a second BL account for this purpose, contact Ania Nogal (ania.nogal@ncel.hee.nhs.uk) for an application form. To obtain CFP articles from the RSM, email full citation details to docdeliv@rsm.ac.uk and state 'article requested under the terms and conditions of the CLA Licence Plus'.

What is meant by a 'collaboration partner' and a 'collaboration project'?

A collaboration partner would be a non-NHS organisation which the CLA has confirmed has its own CLA Licence, which is engaged with an NHS organisation or NHS staff on a collaborative project. Examples may include universities, charities, professional associations, research organisation or local authorities. NHS staff involved in the project can share copies from NHS-owned/subscribed to originals with them; they can share copies from originals owned by/subscribed to with their NHS colleagues. Before sharing copies with potential collaboration partners, check and register with the [CLA: cs@cla.co.uk](mailto:CLA:cs@cla.co.uk).

Do copies made and supplied under the CLA Licence have to be sent to NHS email addresses?

No. The person to whom you are supplying the copy must be covered by the CLA Licence. To verify their identity and eligibility, you will have expected them to provide an individual work/professional email address when registering to use your service and for an OpenAthens account. If for expedience they ask you to send a copy to an alternative individual email account, this is acceptable. Always accompany the copy with the statement that explains the copy has been supplied under the terms of the Licence and clarifies what further copying/storage is/is not allowed.

Is it possible for library staff or other NHS staff to make copies for patients under the CLA Licence?

Currently it is only possible to make single, paper copies for patients and carers.

Are primary care staff and public health staff working for local authorities included under the CLA Licence for the NHS in England?

Yes.

Are hospice staff included under the CLA Licence?

Generally speaking no, unless the hospice or individual staff member has been commissioned or contracted to work for the NHS, or the hospice has its own CLA Licence and has been identified as a collaboration partner. However, you may make Library Privilege copies for hospice staff.

Are social care staff included under the CLA Licence?

Generally speaking no - unless they are working for the NHS or as part of an integrated care team which is funded by the NHS. However, most local authorities have a CLA Licence, and if NHS staff are working on a collaboration project with social care staff, you can share copies between them under the CLA Licence (first check with the CLA that the authority in question does have a Licence). And again, you may make Library Privilege copies for social care staff.

So, we always have the back-up option of supplying Library Privilege copies?

Yes – but this is where the person you are supplying it to must still declare to you that the copy you are supplying is for their own private study or non-commercial research, and they may not make further copies.

Is it the case that the declarations no longer need to be physically signed?

Correct. This follows an amendment to the copyright legislation in 2014. You have to receive the declaration 'in writing' but they can do this electronically so it is now acceptable to ask them to 'tick' to agree to a written statement which you provide on an electronic request form or website. Suggested wording is included on p7.

Do these written/ticked declarations still need to be kept?

You should ideally keep declarations for six years beyond the end of the year in which you supply the copy, just in case a copyright owner ever made a legal challenge.

Is it the case that Library Privilege copies may be made for other libraries from electronic journals, including those published outside the UK?

Yes. The updated Copyright Act allows libraries to copy small amounts of copyright works, for private study and non-commercial research, regardless of the format of the original. Under the Act, this is a fundamental right which cannot be overridden by a contract, such as a publisher's licence.

In theory, a USA-based publisher could challenge this, but as we are UK-based we can apply UK legislation. Remember that you may only make single copies of small amounts for other libraries, and their end-user must have confirmed/ticked a declaration.

Useful references

About the CLA Licence Plus

The details of the CLA Licence Plus for the NHS in England
<https://www.cla.co.uk/nhs-england-licence>

The CLA Check Permissions tool (select Public Sector Licence)
<https://www.cla.co.uk/nhs-england-licence>

About the changes to the Copyright Act made in 2014

An update provided by CILIP:
<http://www.cilip.org.uk/cilip/advocacy-campaigns-awards/advocacy-campaigns/copyright/changes-uk-copyright-law-update>

Guides produced by the Intellectual Property Office (IPO):
<https://www.gov.uk/government/publications/changes-to-copyright-law>

The details of the amendments:
<https://www.gov.uk/government/news/changes-to-copyright-law>

An illustrative draft of the 1988 Copyright Act update to include the 2014 amends:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308729/cdpa1988-unofficial.pdf

Other

The CILIP copyright poster
<http://www.cilip.org.uk/advocacy-campaigns-awards/advocacy-campaigns/copyright/briefings-resources/copyright-poster>

The CILIP copyright model declaration form
<http://www.cilip.org.uk/cilip/advocacy-awards-and-projects/advocacy-and-campaigns/copyright/copyright-briefings-and-2>

A summary about how long copyright lasts, including a flow chart:
<http://www.nationalarchives.gov.uk/documents/information-management/copyright-related-rights.pdf>

Guidance on Orphan Works, including how to get permission to copy a creative work for which the right holder(s) cannot be found
<https://www.gov.uk/guidance/copyright-orphan-works>

Information about Creative Commons licences, which are increasingly used to encourage sharing whilst also acknowledging copyright owners:
<http://creativecommons.org/>

Information about the Open Government Licence, which is increasingly encouraged for public sector information: <http://www.nationalarchives.gov.uk/doc/open-government-licence/>