

Application for Authorisation to operate an Extended Collective Licensing Scheme

An Application made under Regulation 4 of The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 (the “Regulations”) under s. 116D (5) of the Copyright, Designs and Patents Act 1988 (the “1988 Act”)

This Application is made by:

The Copyright Licensing Agency Ltd

Barnard’s Inn, 86 Fetter Lane, London, EC4A 1EN,
Company Registration Number 1690026 (“CLA”)

on behalf of its Members:

- (1) The Authors’ Licensing and Collecting Society, Barnard’s Inn, 86 Fetter Lane, London, EC4A 1EN, Company Registration Number 01310636 (“ALCS”)
- (2) Publishers Licensing Society, Barnard’s Inn, 86 Fetter Lane, London, EC4A 1EN, Company Registration Number 1575236 (“PLS”)
- (3) Design and Artists Copyright Society, 33 Old Bethnal Green Road, London, E2 6AA, Company Registration Number 1780482 (“DACS”)
- (4) Picture Industry Collecting Society for Effective Licensing, 112 Western Road, Brighton BN1 2AB, Company Registration Number 09899186 (“PICSEL”)

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1. ECL application - Regulation 5 requirements

(a) A summary of the application
Summary contained in Section 2 of the Application
(b) The name of the applicant
The Copyright Licensing Agency Ltd (on behalf of its members: The Authors' Licensing and Collecting Society, Publishers Licensing Society, Design and Artists Copyright Society and Picture Industry Collecting Society for Effective Licensing).
(c) Evidence that the applicant is a relevant licensing body
<p>A "relevant licensing body" as defined by the Regulations is any body that is a "licensing body" (as defined by s.116 (2) of the 1988 Act) and which is:</p> <ol style="list-style-type: none"> authorised by way of assignment, licence or other contractual arrangement to manage the rights of right holders in relevant works on behalf of more than one rights holder, for the collective benefit of those right holders, as its sole or main purpose; and is either owned or controlled by its members or organised on a not-for-profit basis. <p>A "licensing body", in accordance with s. 116 of the 1988 Act, means a body which has, as its main object (or one of its main objects), the negotiation or granting of copyright licences for works of more than one author when acting as owner or prospective owner of copyright or as agent for the copyright owner.</p> <p><i>"Licensing Body":</i></p> <p>The functions which CLA may carry out are set out in Article 9 of its Articles of Association and include:</p> <ul style="list-style-type: none"> - the granting of permission on behalf of copyright owners for the exploitation of works protected by copyright permitting their reproduction and/or use, whatever the format of the primary publication (including all print, online and digital format); - the negotiation of the terms and conditions to which such grants of permission shall be subject; - the collection of fees, royalties or other monies arising from the exercise of such rights and the allocation and distribution of all such sums. <p>CLA is therefore a 'licensing body' as defined in the 1988 Act.</p> <p><i>"Relevant Licensing Body"</i></p> <p>ALCS, PLS, DACS and PICSEL are each collective management organisations that receive mandates directly from individual right holders to be included in CLA's licensing scheme.</p> <p>CLA is appointed as the agent of ALCS, PLS, DACS and PICSEL to grant copyright licences under the Authority to Act (see Appendix 7). CLA is therefore a "relevant licensing body" as, by virtue of the Authority to Act, it is "authorised by means of a non-exclusive licence and/or other contractual</p>

arrangement” to manage the rights of right holders in relevant works. Its members are ALCS, PLS, DACS and PICSEL and it is a not-for-profit company limited by guarantee.	
(d) An address for service on the applicant in the European Economic Area	
Barnard’s Inn, 86 Fetter Lane London EC4A 1EN	
(e) The types of relevant work to which the Extended Collective Licensing Scheme will apply	
Published editions of literary works (as defined in s.3 (1) of the 1988 Act) including any artistic works (as defined in s.4 of the 1988 Act) embedded of such editions.	
(f) The right holders’ rights in relation to relevant works which the relevant licensing body seeks to be authorised to license	
<p>(i) the right of reproduction (photocopying and scanning from printed books, journals and magazines, making digital copies from digital works)</p> <p>(ii) the right of communication (distributing copies made internally, in certain cases copies may be distributed externally, making available digital copies of works in secure networks)</p>	
(g) The opt out arrangements that the relevant licensing body will adopt including the steps which a non-member right holder is required to take to opt out of a proposed Extended Collective Licensing Scheme before the scheme commences and whether the consent of the Secretary of State is sought as described in regulation 16(5)(b)	
<p>See paragraphs 3.2.4, 3.3.4, 3.4.4, 3.5.4 and 5 for a description of the opt-out arrangements CLA has implemented. These arrangements apply both to those right holders wishing to opt-out before the scheme commences as well as to any right holders wishing to opt-out after the scheme commences.</p> <p>No consent of the Secretary of State, as described in Regulation 16(5)(b), is being sought.</p>	
(h) The number of right holders:	
<p>(i) Who have notified the relevant licensing body that they wish to opt out of the proposed Extended Collective Licensing Scheme; or</p> <p>(ii) whose rights, as a result of contractual arrangements with the relevant licensing body, will not fall within the Extended Collective Licensing Scheme</p> <p>Together, in each case and to the extent that the relevant licensing body has been notified by the relevant right holder, with the number of relevant works in which those right holders have rights</p>	
<p>(i) To date, no right holders have opted out of the proposed ECL scheme.</p> <p>(ii) In summary, 7 authors and visual creators and 303 publishers have previously opted out of CLA’s existing licences and will therefore not fall within the proposed ECL Scheme. It is possible that further right holders will opt-out as a result of the further publicity campaign to be</p>	

<p>undertaken. Users can check what is or is not covered by a licence by using CLA's Check Permissions tool (www.cla.co.uk)</p> <p>CLA has been provided with incomplete details of the number of relevant works these opt outs represent which is estimated to be not more than 0.2 % of the total of works covered by the proposed licence.</p>	
(i)	Evidence of the representation provided by the relevant licensing body
See paragraph 4	
(j)	Evidence that the relevant licensing body has obtained the required consent
See paragraph 3	
(k)	The information that was provided by the relevant licensing body to the relevant members, when seeking the required consent
See paragraph 3 and Appendix 15	
(l)	A copy of any collective licence, in force at the date of the application for authorisation, under which the relevant licensing body licenses relevant works of the type which will be the subject of the proposed Extended Collective Licensing Scheme
See Appendix 1	
(m)	DELETED BY CRM REGS
(n)	DELETED BY CRM REGS
(o)	A declaration signed on behalf of the relevant licensing body confirming that, at the time of the application, it is complying in all material respects with the Regulations
See Appendix 16	
(p)	A copy of the terms and conditions of the licence which the relevant licensing body proposes to grant its licensees under the Extended Collective Licensing Scheme
See Appendix 2	
(q)	A copy of the distribution policy which the relevant licensing body proposes to operate in relation to its licensing activities if the authorisation is granted
See Appendix 3	
(r)	The arrangements for publicising the Extended Collective Licensing Scheme to non-member right holders and third parties before its introduction and during the life of the scheme
See paragraphs 7 & 8	
(s)	The methods by which the relevant licensing body will contact non-member right holders and distribute the net licence fees to them.

2. Summary of Application

The Applicant

- 2.1 On behalf of its members CLA operates a collective licensing scheme in the United Kingdom for the copying of extracts from books, journals, magazines and websites whether published in hard copy form or electronically (“Licensed Works”).
- 2.2 CLA is a not-for-profit company, limited by guarantee founded in 1983 by ALCS and PLS. In 2017, DACS and PICSEL also joined CLA as members. ALCS, PLS, DACS and PICSEL represent, directly or indirectly, authors, visual creators and publishers of books, journals, magazines and websites used under CLA licences.
- 2.3 ALCS is a not-for-profit company, limited by guarantee founded in 1977. It represents the authors and other creators of Licensed Works and their successors.
- 2.4 PLS is a not-for-profit company, limited by guarantee founded in 1981. It represents the publishers of Licensed Works.
- 2.5 DACS is a not-for-profit company, limited by guarantee founded in 1984. It represents the authors, creators and authorised representatives holding rights in artistic works embedded in Licensed Works.
- 2.6 PICSEL is a not-for-profit company, limited by guarantee founded in 2015. PICSEL represents authors, creators and authorised representatives holding and controlling (through licensing) rights in artistic works (such as images, as defined in PICSEL’s Articles of Association).
- 2.7 ALCS, PLS, DACS and PICSEL acquire the rights to license Licensed Works which are then combined in their grant of authority to CLA, enabling CLA to enter into collective copyright licences granting permissions to users. CLA distributes its licence fees, after deduction of its

running costs, to ALCS, PLS, DACS and PICSEL in accordance with the 2015 [rights valuation](#) (Appendix 4) undertaken by Mark Bezant. It also distributes to other CMOs overseas for onward distribution to the relevant right holders.

- 2.8 CLA has distributed over £1bn to copyright owners since it commenced operations.

Collective Management Organisations and Membership of CLA

- 2.9 CLA, ALCS, PLS, DACS and PICSEL are each a Collective Management Organisation (a “CMO”) as set out in the Collective Management of Copyright (EU Directive) Regulations 2016 (the “CMO Regulations”).
- 2.10 Other CMOs may apply to join CLA as a Member if they can demonstrate that they represent a substantial repertoire of rights that can be licensed as part of CLA’s business and is not already represented by its existing Members. More detail on this is included in paragraph 3.
- 2.11 CLA has a network of reciprocal representation agreements with CMOs throughout the world enabling CLA to include a large number of overseas publications in its collective licences.

CLA Licences

- 2.12 CLA licences permit the copying of extracts from Licensed Works by photocopying and other reprographic means, by scanning and by licensing the use and re-use of electronic publications.
- 2.13 CLA issues licences to organisations in all sectors of the economy. Virtually all of the UK’s schools, colleges and universities are licensed by CLA as well as a large number of other organisations in both the public and private sectors. CLA licences allow media monitoring organisations and other information providers (such as the British Library) to keep their clients up-to-date on important news and developments relevant to their businesses. Licences tailored to the needs of businesses that depend heavily on information and

research such as law firms and pharmaceutical companies have been developed in consultation with those sectors.

- 2.14 CLA's licences provide an effective solution for users who need to be able to make use of Licensed Works to which they have lawful access at a reasonable price whilst ensuring a fair return to the creators and producers of those Licensed Works.

The Application

- 2.14 Authorisation is sought to operate an ECL scheme covering CLA's existing core licences in the education, business and public administration sectors (the "proposed ECL licence"). The existing licences offered by CLA are contained in Appendix 1 and the terms and conditions applicable to the proposed ECL licence are contained in Appendix 2.

3. The Requirement for Member Consent: Governance Structures of CLA, ALCS, PLS, DACS and PICSEL

3.1 *The Copyright Licensing Agency Ltd*

3.1.1 Constitution

CLA is a private company limited by guarantee owned by its members. CLA is a licensing body (as defined in s. 116 of the Act) established in 1983.

3.1.2 Membership Structure

CLA has two membership categories, these being the Creators category and the Publisher/Producer category. Applicants for membership must be a CMO and must choose which category to join. The CMO must be able to demonstrate that it represents a substantial repertoire of rights that can be licensed as part of CLA's business, but which is not already represented by the existing members. The Members Agreement and Membership Application Form are in Appendix 6.

3.1.3 Governance Structure

CLA is governed by a Board of Directors which consists of not more than twelve Directors. Four Directors are appointed from the Creator category (one of which represents visual creators) and four from the Publisher category. In addition, a Chairman, two Independent Directors (one of which represents non-members, in particular non-member rights holders under ECL schemes), and the CEO may be appointed.

The Directors are appointed as follows:

- each of the four Directors appointed from each membership category requires approval from members within the relevant category. One of the creator Directors shall be nominated by the Members representing visual creators.
- the Chairman and the CEO are appointed by the Members.
- each of the two Independent Directors are appointed by the Board in consultation with appropriate third parties.

All appointments are up to three years (renewable for two further terms of three years each).

3.1.4 CLA's Authority from Right holders

There are two main routes by which CLA derives its authority for the licence to be extended:

- i) a formal grant of authority from its members: each member enters into a grant of authority to CLA on accession to membership (Appendix 7);
- ii) Representation Agreements with non-members: CLA has signed 39 reciprocal Representation Agreements with CMOs based overseas (sample Representation Agreement at Appendix 13).

3.1.5 Member Consent

At a CLA Board Meeting held on 19 September 2017 CLA's Members unanimously approved this Application. Copies of the letters confirming member consent are contained in Appendix 17.

3.2 ***Authors Licensing and Collecting Society Ltd.***

3.2.1 Constitution

ALCS is a collective rights management organisation representing the interests of authors. ALCS represents authors working across diverse genres for print, audio, audio-visual and digital publications. At the date of this application the current membership of ALCS comprises around 90,000 authors/ their successors, with a further 18,000 authors/ successors represented by ALCS through its agreements with overseas partner organisations. ALCS is a private company limited by guarantee owned by its members.

3.2.2 Membership Structure

ALCS has two categories of membership: Ordinary Members (authors) and Successor Members (the successors/beneficiaries of deceased authors/Members). All members are given equal voting rights and all have the right to stand for election to the board when vacancies arise.

3.2.3 Governance Structure

ALCS is governed by a board of directors comprising the CEO, Chair and members elected by the membership. The board has the option to appoint up to three directors who may not be members subject to the proviso that the appointments are ratified by the members. In any event the majority of directors must be members elected by the membership. Decisions at board meetings require a majority vote. Any changes to the ALCS constitution or Distribution Rules are subject to approval by the members.

3.2.4 ALCS Authority from Right holders

Authors joining ALCS are required to sign an application form which confirms their acceptance of the terms of membership as reflected in the company's Articles of Association. Under the terms of the Articles, authors provide a non-exclusive authority to ALCS to license certain rights on their behalf and institute proceedings in the event of any infringement of the rights. In the event of any proposal to extend the scope of the mandated rights, the Articles provide Members with the right to exclude their works from any such extension. The Articles also provide for a general right for members to opt their works out of any scheme on giving notice to the company. Any such exclusions are notified to CLA as soon as they are received for notification to licensees.

3.2.5 ALCS Members Consent

ALCS polled around 44,000 members, being the authors of Licensed Works. Of those that responded, 2007 (99%) consented to the proposed ECL application and 16 did not consent.

3.3 ***Publishers Licensing Society Ltd.***

3.3.1 Constitution

PLS is a collective management organisation representing the interests of publishers. It is authorised under its Articles of Association to exercise and enforce, and to authorise others to exercise and enforce, the copyright and related rights of right holders in their works. In practice its core activity is the managing of collective licensing on behalf of book, journal, magazine and website publishers and the centralised administration of their rights. Over 3,748 publishers are currently signed up to PLS.

PLS is a private company limited by guarantee and was incorporated in 1981.

3.3.2 Membership Structure

Those eligible for membership of PLS are properly constituted trade associations representing right holders of Licensed Works.

The current members of PLS are the Association of Learned and Professional Society Publishers, the Independent Publishers Guild, the Professional Publishers Association and the Publishers Association. All members have equal voting rights.

3.3.3 Governance Structure

Each member is entitled to nominate up to three directors, one of whom may be its designated representative director. Nominees must be approved in a general meeting of the members. The members may appoint a paid chairperson independent of any appointment by the members. The members may also appoint such number of executive directors as they see fit.

Directors are appointed to serve for four years and may serve up to one further term of four years if reappointed. Save for any designated representative director, a director nominated by a member shall not be reappointed more than once. The chairperson shall be appointed for a term of three years and may be appointed for one further term only of three years. Designated representative directors and executive directors are not be subject to retirement by rotation.

The Board currently comprises the Chairman, the Chief Executive and twelve directors. The practice of the members is to appoint one employee or consultant as their designated representative director and two publishers from their membership.

Each member may appoint the same number of delegates as directors for the same terms as directors are appointed. The twelve representative directors are all delegates.

The members have established a Supervisory Committee, consisting of the delegates and the independent Chairperson, to monitor the activities and performance of the duties of the persons who manage the business of PLS.

3.3.4 PLS Authority from Right holders

PLS obtains signed mandates from publishers directly. A publisher need not be a member of a trade association member of PLS in order to mandate PLS. PLS currently holds mandates from 3,748 publishers.

The mandate grants PLS the non-exclusive right to reproduce and / or use and / or to authorise the reproduction and / or use of the publisher's repertoire, in whatever format, by means of collective licensing, whether itself or through an appointed collective management organisation.

Publishers may exclude particular titles from their mandate at any time by updating their PLSe account (an online rights management account service). Publishers may also choose to be excluded entirely from collective licensing by notifying PLS. Any such exclusions are automatically notified to CLA immediately for notification on to licensees. Exclusions are notified to CLA's licensees via CLA's website and take effect and the next quarter day. Publishers may terminate their PLS mandate on six months written notice.

PLS authorises CLA to license the relevant rights for which PLS has mandates under the terms of the CLA Authority to Act (Appendix 7).

3.3.5 Monies in Trust

Under the PLS [Distribution Charter](#) (Appendix 3) PLS holds monies which it cannot distribute in a separate account whilst it takes all necessary measures to try to locate and pay those monies to the entitled publisher.

If after a period of at least three years PLS has been unable to pay such monies to the entitled publisher they are distributed to publishers in accordance with the Charter. Notwithstanding any such distribution, any publisher may claim from PLS (and PLS will pay out) sums to which that publisher is entitled, but which it has not received, for up to six years from the date on which PLS received such sums.

3.3.5 Publishers' Consent

In July 2017, PLS polled 2,833 publishers signed up to PLS, being those with active accounts. 59% of those polled responded, and of these, 98.63% were supportive of CLA's proposed ECL application.

3.4 ***Design and Artists Copyright Society Ltd***

3.4.1 Constitution

DACS is a collective management organisation representing the interests of visual artists and their beneficiaries (estates). DACS administers rights in artistic works as defined by [section 4 of the Copyright, Designs and Patents Act 1988](#) (as amended). DACS also administers the Artist's Resale Right pursuant to the Artist's Resale Right Regulations which implement [European Directive 2001//84/EC](#) which created a harmonised resale right for artists in Europe. DACS collects and distributes royalties to visual artists and their estates through collective licensing (Payback), Artist's Resale Right, Copyright Licensing and Artimage. At the date of this application, the current membership of DACS is comprised of over 10,000 visual artists and estates and represents 100,000 artists and estates through its agreements with its international network of visual arts sister societies.

DACS is a not for profit company, limited by guarantee founded in 1984.

3.4.2 Membership Structure

Visual artists and their estates can become members and mandate DACS via collective licensing (Payback), Copyright Licensing including Artimage, and the Artist's Resale Right. All members have the right to apply for Board Director member positions.

Copyright Licensing members, who have completed DACS' Membership Agreement Term Sheet and have permitted DACS to exercise copyright licensing rights and the secondary rights in the work in all industry sectors, are eligible to become a Voting Member. This allows them to attend DACS' Annual General Meetings and vote on matters of the company.

3.4.3 Governance Structure

DACS is governed by a [Board of Directors](#). The Board ensures that DACS fulfils its mission to translate rights into revenue and recognition for visual artists. DACS has number of committees comprising Board Directors and members of staff, focussing on key areas of the organisation including Business Development, Communications, Finance and Audit, Legal and Remuneration.

Each Director appointed to the Board shall be appointed to serve a term of four years. At the end of such term, a Director shall be eligible for re-appointment to the Board for a further term of four years. There shall be no limit on the number of terms that a Director may serve, subject to approval through the AGM.

The Articles of Association provide that the Board should be made up of not less than six nor more than sixteen Directors and DACS strives to ensure that Directors shall be made up of an equal number of Member Directors and Non-Member Directors, so that visual artists are suitably represented on the Board. DACS strives to ensure that the Member Directors are made up of Copyright Licensing, Payback, and Artist's Resale Right Members equally. Vacant positions shall be filled by vote at the AGM.

3.4.4 DACS Authority from Right holders

DACS obtains a mandate from individual right holders or authorised representatives, who are entitled to act on behalf of right holders. Right holders grant DACS the exclusive right to license the secondary use of their works which are subject to collective licensing schemes such as the CLA licences.

Right holders are free to withdraw their repertoire from DACS' representation either in full or partially at any point, taking effect at the end of the calendar year so that DACS can accurately report to CLA about the specific right holder it represented during that calendar year. Copyright Licensing Members also grant an exclusive licence to DACS for the utilisation of the secondary uses of their works by nature of their agreement with DACS, but are free to restrict the representation to DACS' primary licensing activity.

Through reciprocal agreements DACS is also authorised to represent members of its international sister societies for the secondary use of their works in publications subject to CLA licences.

3.4.5 DACS Members Consent

2004 respondents completed the survey DACS undertook in July 2017, 18.6% of those contacted. Of those that responded, 97% consented to CLA's proposed ECL application and 3% did not consent.

3.5 ***Picture Industry Collecting Society for Effective Licensing***

3.5.1 Constitution

PICSEL is a collecting society founded in 2015 as a not-for-profit private company, limited by guarantee, representing authors, creators and authorised representatives holding and controlling (through licensing) rights in artistic works (such as images, as defined in its Articles of Association).

3.5.2 Membership Structure

PICSEL was created by right holders for right holders who are all equally eligible for membership of PICSEL with equal rights. Membership of PICSEL is open to any person or organisation (including picture libraries) owning or controlling the relevant rights in images.

3.5.3 Governance Structure

Under its Articles of Association PICSEL is governed by a Board of Directors representing a cross section of its membership with at least one representative of small, medium and large picture libraries or agencies, a creator director, and an independent director.

All mandating members can stand for the Board which is voted on by members at a General Assembly each year.

The Board is charged with ensuring that PICSEL fulfils its mission to be an equitable, accountable and transparent collecting society for visual works.

3.5.4 PICSEL Authority from Right holders

PICSEL obtains a mandate from right holders who grant PICSEL the exclusive right to license their work for secondary rights in collective licensing schemes such as those operated by CLA.

Right holders are free to withdraw their works from any scheme with one months' notice which will become effective at the end of the calendar year in which notice is given.

3.5.5 PICSEL Members Consent

PICSEL members were polled in July 2017. Of the 70% that responded, 100% approved the application.

4 The Requirement for Significant Representation

4.1 *History of CLA*

4.1.1 The background to the creation of CLA lay in the various Committees (principally the Whitford Committee and the Wolfenden Committee) studying the problem of photocopying in the years leading up to the 1988 Act. These Committees recommended that a body such as CLA should be created and the various publisher and author organisations of the day, supported by users, agreed to establish CLA to provide a simple and cost-effective solution to the needs of users to obtain copyright permissions for their routine copying. CLA is now recognised in all the leading textbooks on copyright as the major UK collecting society for books, magazines, journals and other periodicals (e.g. see Copinger & Skone James 16th Edition at pp 1833-34 and Laddie, Prescott and Vitoria 4th Edition at pp 1112-17).

4.1.2 The original CLA licences always sought to provide as broad a repertoire as possible even in the absence of complete mandate authority from copyright owners in the UK and around

the world given the impossibility of obtaining all of those consents. It therefore offered an indemnity to its licensees against claims for copyright infringement. This indemnity was cited with approval in the Parliamentary debates before the passing of the 1988 Act and indeed provided the basis of the indemnity contained in s. 136 of the 1988 Act. Thus, at the very outset, CLA established what was in effect a non-statutory extended collective licensing scheme, including within its licences the works of both members and non-members, but which also established an opt-out regime respecting the rights of copyright owners to choose whether or not to participate in the scheme.

4.1.3 CLA has, therefore, a lengthy history of running a non-statutory extended collective licensing scheme with the support of right holders (represented by CLA members), the licensees and Government. CLA has over 30 years of audited accounts confirming the distribution of licence fees to right holders totalling over £1 billion, during which time there have been remarkably few complaints from right holders, none of which has resulted in a legal claim in a UK Court.

4.1.4 The Governance structure of CLA and of its Members (covered in paragraph 2), ensures that UK right holders exercise a high degree of control over the functions of CLA. ALCS currently represents over 90,000 authors and PLS has contractual authority via its mandates from over 3,748 publishers. DACS currently represent over 100,000 right holders in artistic works worldwide and PICSEL represent over 4000. The number of Licensed Works included in CLA licences on the basis of the specific contractual authorities and/or membership arrangements is over 3.2 million and this number increases to over 16 million when the international repertoire is included.

4.1.5 Embedded Artistic Works

The changes made in 2014 to the education exception in s.36 of the 1988 Act as part of the Government's Modernising Copyright agenda has clarified the position of artistic works included within literary and other Licensed Works. The exception allows educational establishments to make copies of extracts of 'relevant works' of up to 5% of the work in any period of 12 months. A 'relevant work' is any copyright work (as defined by the Act) other than a broadcast or 'an artistic work which is not incorporated into another work'. It

is clear therefore that an artistic work that is incorporated into a book, journal, magazine or other periodical is within the scope of the exception.

The exception however does not apply to the extent that licences authorising that amount of copying are available. The clear intention of the legislature therefore is that education licences, including by implication extended collective licences, should cover copying of extracts of anything appearing within a copyright work.

CLA's licences have always included embedded artistic works within the scope of its licences. This position was recognised and endorsed by the Copyright Tribunal in its decision in *Universities UK vs. The Copyright Licensing Agency Ltd.* (CT Cases Nos 71/00 72/00 73/00 74/00 75/01). In an effort to ensure that the owners of copyright in embedded artistic works received an appropriate share of CLA Licence revenues, CLA entered into an agreement with DACS in 1998. This provided for DACS to receive a share of CLA's licence revenues and for them to distribute it onwards to the owners of copyright in embedded artistic works. The agreement with DACS expired in December 2015.

In the meantime ALCS, PLS, DACS, BAPLA (British Association of Picture Libraries and Agencies) and ACS (Artists Collecting Society) jointly commissioned an independent rights valuation in 2015 to determine a fair method of allocation of collective licence fee revenues between publishers and authors/visual creators (see Appendix 4).

In February 2017, DACS and PICSEL joined CLA as members representing visual creators. Between 1 January 2016 and 28 February 2017, when both DACS and PICSEL became members, CLA continued to license artistic works on behalf of visual artists and with the understanding that revenue would be held in escrow until such time as an agreement was reached and revenue could be distributed. The revenue was distributed to the visual artist CMOs in August 2017.

4.2 ***'Significant Representation' for this Application***

- 4.2.1 The number of right holders represented by CLA through its members and via its Representation Agreements has been described in paragraph 3, along with its long history of acting for and with the consent of right holders in conducting its licensing activities. On

any analysis CLA's general representation of right holders is 'significant'. As a guide the PwC report commissioned by CLA for the purposes of the Hargreaves Review estimated that in the Education sector less than 0.2% of works were not covered by the CLA Licence but this included works from countries where CLA had no reciprocal Representation Agreement and which would be covered by virtue of the ECL authorisation.

- 4.2.2 It is hard to estimate the number of right holders from whom no mandate has been received as there are no reliable sources on the total number of authors, visual artists and publishers of works that are to be covered by the proposed licence. The publicity campaign to be undertaken by CLA regarding this Application is described in paragraph 7.
- 4.2.3 As to the numbers of right holders whose works are excluded from the proposed scheme by virtue of an opt out, no right holders have yet specifically opted out from this Application. The number of right holders that have previously opted out of CLA's existing licences (and which will be carried over) is detailed in 1 (h). and it is evident that the number is insignificant in relation to the number of right holders *not* opted out.
- 4.2.4 As noted above, there have been almost no complaints from right holders about the operation of CLA's licences historically and CLA has received very little objection to this Application. Accordingly CLA believes it meets the requirement for 'significant representation' under the Regulations.

5. Opt Out Arrangements

- 5.1 The CLA website (cla.co.uk) has an online search tool with which licensees can check whether titles can be copied under the licence ([Check Permissions](#)). This is also available to licensees to download as a mobile application and through an API.
- 5.2 Any copyright owners and any of their exclusive licensees, or any duly authorised agent acting on their behalf, may opt out of the proposed ECL licence. They may do this by sending an email to CLA at optout@cla.co.uk or by Recorded Delivery post to CLA's Registered Office. They may also opt out via ALCS (see 3.2.4), PLS (see 3.3.4), DACS (see 3.4.4) or PICSEL (see 3.5.4).

- 5.3 Requests to opt out made by email will receive an immediate response. Postal requests will be replied to by letter sent by first class post despatched within 14 days of receipt of the request. All opt-out requests will be implemented within 6 months. Notices received by either ALCS, PLS, DACS or PICSEL will be forwarded automatically to CLA for implementation.
- 5.4 Right holders can opt out from the proposed scheme either some of their Licensed Works or all of their Licensed Works.
- 5.5 Right holders will be asked to identify the list of their Licensed Works they wish to opt out so that CLA may inform its licensees of Licensed Works excluded from the scope of the proposed ECL Licences.
- 5.6 Right holders seeking to exclude Licensed Works must confirm that they are the copyright owner or exclusive licensee and/or have the rights to collective licensing revenues and/or that they are acting as a duly authorised agent of the copyright owner. They will be warned that they face a risk of a legal claim for damages if a copyright work is wrongly opted out without the relevant authority since this may deprive the copyright owner of a share of the revenues from the proposed ECL licences. However CLA will not require proof of entitlement to give notice to opt out.
- 5.7 CLA has always respected the right of right holders to exclude some or all of their works from CLA licences and have implemented requests to opt out in a timely fashion. CLA's opt-out arrangements have always been operated with the consent of its members and of other associations representing right holders. They were approved by the Copyright Tribunal in the Universities UK case (CT Cases Nos 71/00 72/00 73/00 74/00 75/01). They have stood the test of time and are essentially unchanged for the proposed licence. CLA and its members believe therefore that they are adequate to protect right holders' interests. Moreover, CLA's Check Permissions tool makes it easy for users to check what is or is not included in the licences.

6 Distribution Policy

- 6.1 CLA's Distribution Agreement is contained in Appendix 3.

- 6.2 CLA's distribution systems have evolved over time with the detailed involvement and approval of its right holder constituents to strike a fair balance between the need to obtain accurate data to ensure a fair distribution at a proportionate cost and the need to avoid imposing an unduly onerous burden on its licensees.
- 6.3 Through its data collection exercises, CLA generates information needed to enable the allocation of its licence fee revenues to individual publishers and authors/creators. This information is passed, together with their relevant share of licence fee revenues, to ALCS, PLS, DACS and PICSEL and to those organisations with whom it has signed Representation Agreements for onward distribution to individual right holders. For visual creators, CLA's distribution is based on a mix of data of works copied and availability (see the Visual Artist Distribution Methodology Agreement in Appendix 3).
- 6.4 CLA licence fee revenues are allocated between different classes of right holders in accordance with an independent repertoire valuation exercise, details of which are also contained at Appendix 4.
- 6.5 CLA's standard administration charge of 11% compares well with international norms, although it is hard to find accurate comparators given the very different systems of collective rights administration that exists throughout the world. CLA does not distinguish between members (that is members of ALCS, PLS, DACS and PICSEL) and non-members in deducting its administration charge; the same deductions apply equally to distributions to UK and to overseas CMOs.
- 6.6 ALCS' standard administration charge is 9.5%.
- 6.7 PLS' standard administration charge is 6%
- 6.8 DACS' standard administration charge is 16%
- 6.9 PICSEL's standard administration charge is 15%

7. Publicity Arrangements

The publicity arrangements fall into 3 parts:

- 1) publicity already undertaken to UK members/ right holders via ALCS, PLS, DACS and PICSEL

Via the member polls that were conducted in July 2017, ALCS , PLS, DACS and PICSEL have publicised to their members CLA's intention to apply to operate an ECL scheme.

- 2) publicity to overseas CMOs and other right holders

See paragraph 8 below

- 3) intended continuing publicity campaign following approval by Secretary of State designed to alert right holders to the scheme, the possibility to opt out and to locate CMOs and other organisations to whom distributions can be made.

CLA, ALCS, PLS, DACS and PICSEL will maintain relevant information on ECL on each of their respective websites and will deal with queries as and when they arise. See paragraph 8.3 for further information on locating right holders.

8. Contacting Non-Members and Overseas Right holders

- 8.1 CLA has signed 39 representation agreements with CMOs overseas and is a leading member of the International Federation of Reproduction Rights Organisations (IFRRO), the international non-governmental organisation that provides an umbrella structure for CMOs involved in licensing reproduction of print and electronic publications.

- 8.2 CLA will send a briefing note to each one of the CMOs with which it has a Representation Agreement (see Appendix 13) and additionally will contact trade associations both in the UK and overseas where necessary with the aim of reaching non-members. CLA will also notify relevant organisations, such as IFRRO, and will advertise its application in the relevant trade press. A communications plan, with sample communications documents is in Appendix 12.

- 8.3 CLA will monitor copying under the proposed scheme to identify, where reasonably possible, copying of works from countries where it has no reciprocal Representation Agreement or

other organisation to whom to pay relevant distributions. Where such undistributed amounts become significant, in addition to the publicity campaigns mentioned above, CLA will undertake further research to try to locate a reputable organisation to pay and to whom the task of paying right holders can be entrusted.

- 8.4 CLA, ALCS, PLS, DACS and PICSEL will publicise on their websites details of works to which licence fees are distributable. This will be done via search functions, examples of which are available on ALCS' website and PLS' website:

<https://www.alcs.co.uk/royalty-search>

<https://www.pls.org.uk/publishers/undistributed-fees>

Appendices

Appendix 1:	Existing CLA licences
Appendix 2:	Terms and conditions of proposed ECL licence to be authorised (boilerplate)
Appendix 3:	The Distribution Agreement; Visual Artist Distribution Methodology Agreement; Members Distribution Policies
Appendix 4:	FTI Determination of Revenue Shares
Appendix 5:	Articles of Association of CLA, ALCS, PLS, DACS and PICSEL
Appendix 6:	Membership Agreement between ALCS, PLS, DACS and PICSEL and Membership Application Form
Appendix 7:	CLA Authority to Act
Appendix 8:	ALCS Mandate
Appendix 9:	PLS Mandate
Appendix 10:	DACS Mandate
Appendix 11:	PICSEL Mandate
Appendix 12:	Communications Plan for Publicising ECL; Draft Communications Documents
Appendix 13:	CLA Briefing Note to overseas CMOs & Sample CLA overseas Representation Agreement
Appendix 14:	Last set of accounts of CLA, ALCS, PLS, DACS and PICSEL
Appendix 15:	ALCS, PLS, DACS and PICSEL Polls - details and description/copies of information supplied to members
Appendix 16:	CLA declaration on compliance with the Regulations
Appendix 17:	Member Consent Letters