



Extended Collective Licensing

In October 2017, CLA submitted an application to the UK Government for an authorisation to operate an Extended Collective Licensing (ECL) scheme. This note sets out the details of CLA's application.

The key points for you to note are:

- CLA, on behalf of its members, is applying for an ECL authorisation to formalise its rights position under UK law.
- The application has been made in accordance with The Copyright and Rights in Performances (Extended Collective Licensing) Regulations, which were introduced in 2014.
- The UK Government will shortly commence a public consultation on CLA's application. I will send the details for this once it has launched.
- Rightsholders have the right to opt out any or all of their works from CLA licences and this will continue should the ECL authorisation be granted.
- The ECL scheme, if granted, will apply to CLA's licensing in the UK only.
- The majority of works copied under CLA's licences are published in the UK, and therefore the use of foreign works is minimal.

CLA and Extended Collective Licensing

In 2014 the UK Government introduced The Copyright and Rights in Performances (Extended Collective Licensing) Regulations (the Regulations) to enable CMOs in the UK to apply to operate an extended collective licensing scheme.

ECL enables licensing bodies that represent a significant number of rightsholders in a class to extend their licences to cover unrepresented rightsholders in the same class.

CLA has submitted an application to the UK Government for an ECL authorisation to support the collective licences it provides to the education, business and public administration sectors in the UK. CLA's licences enable organisations to copy and re-use short extracts from print and digital published materials, including books, journals and magazines.

CLA is able to offer collective licences through the authorisation it receives from its members representing various classes of rightsholder: The Authors Licensing and Collecting Society (ALCS), Publishers' Licensing Services (PLS), the Design and Artists Copyright Society (DACCS) and the Picture Industry Collecting Society for Effective Licensing (PICSEL). Further information on CLA's membership organisations can be found at the end of this document.

By applying for ECL, CLA will formalise its rights position and enhance transparency for both rightsholders and users. As with CLA's current licences, rightsholders can choose to opt out any or all of their works that they do not wish to be included in the licensing scheme.

During July 2017 ALCS, PLS, DACCS and PICSEL contacted their members to inform them on CLA's intention to apply for an ECL authorisation and to seek their consent. The response to the proposed scheme has been overwhelmingly positive from UK rightsholders.

ECL Benefits for Both Users and Rightsholders

ECL offers users 'comprehensive blanket licences' guaranteeing the lawful right to copy and use all works protected by copyright, subject to any that have been opted-out, without the administration and cost involved in trying to locate individual copyright owners to seek prior permission. Conversely collective licensing helps rightsholders who cannot realistically seek to control hundreds and thousands of uses that may be made of their works.

An extension of collective licences to cover works of those rightsholders not already participating in collective licensing helps to build respect for copyright by making it clear to users that they need a licence to use a copyright

protected work and that they should pay a fee for it. It removes the need for wider exceptions to copyright and ensures that copying that would otherwise be done for free, whether under an exception (in the case of education, for example – see below) or illegally, is properly licensed. Importantly, it also respects the rights of creators and publishers to exclude their works.

CLA provides blanket collective licences to copy limited extracts from books, magazines and journals to the education, business and public sectors. It distributes the licensing revenues generated to all rightsholders whose works are shown to have been copied under its licences. An ECL authorisation will regularise the current CLA scheme.

ECL Application Process

CLA submitted its application to the UK Government on 6 October 2017. The Government is obliged to publish a notice setting out details of the application and must consider any comments provided in response to that notice. The notice must allow a period of at least 28 days during which comments may be provided. The UK Government has indicated that it intends to run an 8-week consultation process, via the Intellectual Property Office, commencing in December 2017. Further information will be available at www.gov.uk/government/organisations/intellectual-property-office

Concurrent with the Government's consultation process, CLA will place advertisements in the UK trade press in order to publicise to non-members its intention to introduce an ECL Scheme. We are also notifying CLA's CMO partners and key trade associations around the world in order to raise awareness amongst rightsholders so that they can decide whether or not they wish to opt out of the ECL scheme.

The Government must publish its decision on whether or not to grant the authorisation. CLA expects to hear whether the authorisation is granted or not by 31 March 2018.

Rightsholders Opting Out of ECL

The Regulations allow rightsholders to opt out some or all of their works from an ECL scheme. To do this, they must give notice to DACS, PICSEL, ALCS or CLA and identify themselves. They may give details of all of the works they want to opt out but are not obliged to do so; if they do not, CLA is only required to give to its licensees such details as it has received.

Rightsholders (including exclusive licensees) can opt out of an ECL scheme at any time, whether before or after CLA has been granted authorisation by the UK Government. If any of your members wish to opt out of CLA's ECL scheme they can do so by contacting DACS at optout@dacs.org.uk, PICSEL at ECL@picsel.org.uk or ALCS at Richard.Combes@alcs.co.uk. They can also opt out with CLA by sending an email to CLA at optout@cla.co.uk.

Rightsholders can choose to opt out of particular ECL licences or all of them. Equally they can choose to opt out some of their works only or all of their works. Ideally, they should always identify the opted out works to enable CLA to notify its licensees which works are excluded from a particular ECL licence. They must confirm that they are the rightsholder and/or have the rights to receive collective licensing revenues. Otherwise, they face the risk of a legal claim for damages if they opt out a work for which they do not have the authority since they may deprive the true copyright owner of a share of collective licensing revenues.

Further Information

If you would like more detail or have any questions, please contact:

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PICSEL: ECL@picsel.org.uk

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