Using copyright protected text-based resources in teaching and learning materials

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# Executive Summary

The purpose of this document is to provide guidance on how excerpts of text-based resources (books, journal articles, poems etc..), can legally be used in your teaching and learning materials. Below is a summary of key points that are found within this document.

* The Copyright Licence Agency’s (CLA) Higher Education Licence covers photocopying and scanning for course use.
* Providing images are taken from print sources covered by your establishments Copyright Licensing Agency ([CLA](https://www.cla.co.uk/)) licence, staff can then include them in teaching materials, which can be shared via a secure environment like Moodle to enrolled students. Remember to use the [CLA permissions tool](https://www.cla.co.uk/checkpermissions) , to make sure the book or journal is covered by the CLA licence and cite the source and the CLA licence if using the image.
* If the CLA licence does not cover the book or article you wish to make copies of then you could consider using the following UK copyright exceptions:
	+ If the usage is for non-commercial, teaching purposes, then [section 32](https://www.legislation.gov.uk/ukpga/1988/48/section/32) could be used to show limited excerpts from a book or journal, providing the use is considered “[fair](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing)” and acknowledgement is provided for the creator.
	+ Providing the material(s) have been made available to the public (and the use is considered “fair” and aligns to either, quotation, criticism or review ), then [section 30](https://www.legislation.gov.uk/ukpga/1988/48/section/30) could be used to potentially cover the use of extracts taken from a book or journal (acknowledgement to the creator must be provided).
* You can link to Open Access educational based resources or those that have a Creative Commons licence associated with them. In both cases it is advisable to provide attribution (acknowledgement) to the creator.
* Before using your own published literary/written work in teaching materials, it is recommended that you examine the contract you signed with the publisher, to make sure no terms and conditions are violated.
* Providing your educational establishment has a CLA licence, you can make a photocopy of an article for each enrolled student. If you intend to make a course pack, you could consider including multiple chapters in this way. However, its advised you speak to your institutions scanning/reading list service to request they scan the items for you, and also ask for advice, as the CLA may interpret the scanning of multiple chapters as a method of copying an entire textbook.

# Introduction

Literary works (books, journals, poems) and written works (databases, software, and computer programs) have copyright protection associated with them, lasting the authors lifetime + 70 years. Similarly, to audio-visual, or artistic (images, illustrations etc..) works, these types of works can be used in teaching materials or used as part of a learning activity. An example of this may be sharing a book chapter with a student for the purposes of critiquing or reviewing.

The following sections of this document will examine how extracts of literary work can be incorporated into your teaching and learning materials legally, without having to contact the copyright owner for permission.

**Before continuing onto the remainder of the document, please examine the key points below regarding its content:**

* None of the text and content within this document should be considered legal advice.
* The law surrounding the UK Copyright exceptions is open to interpretation, there is no binary ‘yes’ or ‘no’ answer as to how the exceptions can be applied.
* The text contained within this document should not been interpreted as instruction or dictation, but as guidance which you can choose to consider when you are creating your teaching and learning materials.

# Using text and Images under the Copyright Licencing Agency (CLA) licence

## What is the CLA licence?

The CLA licence covers photocopying and scanning of certain literary works (subject to licence terms) for course use. The [licence](https://www.cla.co.uk/higher-education-licence) allows you to copy and share up to 10% or, one chapter/article (whichever is greater), from a published book or journal. Providing your institution has a CLA licence, it would be best practice to make use of it before choosing to make use of a UK copyright exception(s), as some can be more limited in the amount that can be copied.

## Copying and sharing images taken from published books or journals covered by the CLA licence.

Providing the images are from print sources covered your institutions CLA licence, staff can copy and share images from a published book or journal within teaching materials, course packs. Images taken from these sources can made available to enrolled students in a face-to-face lecture environment or through a secure online [VLE](https://en.wikipedia.org/wiki/Virtual_learning_environment) platform like Moodle. These types of images are on occasion referred to as ‘[disembedded images](https://cla.co.uk/sites/default/files/CLA-HE-User-Guidelines.pdf)’ (page 15).

On the condition that the use is under the CLA Licence terms, then there is no requirement for educational establishments to report the copying of disembedded images.

You can determine if a book or journal is covered under the CLA licence by making use of the [CLA’s permissions tool](https://www.cla.co.uk/checkpermissions).

# Alternative solutions if literary work is not available under CLA licence.

## Section 30, Quotation, Criticism, Review

This exception covers a broad range of work, which includes the use of extracts from a book or a journal under this exception. However, if you intend to make use of this exception, then you must adhere to the following:

* The use must fall under either, quotation, criticism or review.
* The material is available to the public.
* The use of the material is considered “fair” (see section titled “Fair Dealing” for information)
* You only use the amount required to fulfil your intended purpose.
* You must provide sufficient acknowledgment (credit), to the creator of the image(s) when using their work (unless it is impossible for reasons of practicality)

## Section 32, Illustration for Instruction

This exception is relevant for the educational community, as it allows the use of all types of works (including images) providing the usage is for non-commercial teaching purposes.

* Attribution to the rights holder (creator) is provided (unless it is impossible for reasons of practicality)
* The use of the material is considered “fair” (see following section for information)
* The copied materials must be used to illustrate a teaching point about the subject being taught.

## Fair Dealing

**The above copyright exceptions are tied to the legal framework outlined below.**

Fair Dealing is a legal framework designed to allow the lawful use of copyright protected work without having to seek permission from the author under certain circumstances. Sufficient acknowledgement must be provided to the author when their work is used unless it is impossible to do so.

There is no legal definition of what Fair Dealing is, however the [CDPA](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing) does refer to some case law (a legal test) which does provide some factors that should be considered when trying to decide if a use is considered fair or not. A direct quote of these factors can be viewed below:

* *“does using the work affect the market for the original work? If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair*
* *is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually, only part of a work may be used”*

*N.B., unless it is impossible to do so, you must provide attribution (credit)*

## Linking to materials that are Openly Licenced.

There are a growing number of educational based resources being made available under Open Access (OA) or open licences being assigned to them. These types of materials, along with those that are available as Open Educational Resources (OER), are ideal for use in teaching materials if relevant. However, it would be advisable to provide attribution when making use of Open licenced work and determining if the creator has set specific criteria on how they should be cited.

You may also consider using articles that have a Creative Commons (CC) licence associated with them. The CC licences have varying levels or reuse, from CC-BY, which is the most “open” type, that would allow work to be used in an educational capacity. However, it is advisable to become familiar with CC licences, as they can have varying levels of reuse and conditions. You can find out this information, by visiting their [website](https://creativecommons.org/licenses/) and examining [the document](https://edshare.gla.ac.uk/id/document/6545) around Creative Commons licences and attribution.

# Using your own literary / written work in teaching materials

It may be reasonable to consider that due to you writing the published piece of work and your intended usage being for non-commercial teaching purposes that its ok to use it without any copyright risk. However, this may not be the case as there could be the possible risk of it being interpreted as “self-plagiarism” and or violating terms and conditions of the contract you signed with the publisher. It is therefore advisable to consider the following:

* Check the terms and conditions of the contract you signed with the publisher to determine if your intended usage would be permitted. If there are any clauses or working you are uncertain about, it would be advisable to contact your institutions legal team or practicing lawyer to seek clarification and advice, and/or;
* Examine how the published work has been made available, as book sections and journals articles may have a Creative Commons (CC) licence associated with them. Always check the conditions of the [CC licence](https://creativecommons.org/licenses/) associated with a price of work, as there are varying levels of reuse, and/or;
* If there is not a Creative Commons licence associated with the work, then it would be prudent to read the publishers copyright and self-archiving policies associated with work (example links below), and/or;
* Contact the publisher regarding your intended usage to determine if this acceptable and gain written permission (if required).
* If all other options are exhausted, then you could make a risk-based assessment to consider if the UK Copyright exceptions would be suitable to use (refer to pages 5 – 6, for information around this area)?

**Links to example publisher pages (books**)

* [Cambridge press](https://www.cambridge.org/core/services/open-access-policies/open-access-books/green-open-access-policy-for-books)
* [Routledge (Taylor and Frances)](https://www.routledge.com/our-products/open-access-books/taylor-francis-oa-books)
* [Springer Open](https://www.springer.com/gp/open-access/books)

**Link for Journals**

* [Sherpa Romeo](https://v2.sherpa.ac.uk/romeo/) (this online source aggregates and analyses publishers open access policies globally)

# Frequently asked Questions

## Is there anything that cannot be scanned under the CLA licence?

Some works that cannot be scanned under the CLA licence are:

* Printed Music (including words)
* Maps and charts
* Newspapers
* Workbooks, work cards and assignment sheets

Some types of material (books or journal articles) cannot be scanned under the CLA licence if the author or publisher specifically excluded them. For further information on works, artists and publishers that are excluded from the CLA licence, please visit this [web page](https://www.cla.co.uk/excluded/he-print). The [international territories page](https://www.cla.co.uk/international/territories) shows a list of non-UK publishers.

## Can I scan & then upload a scan from a lawfully acquired book that I own?

Before taking it upon yourself to scan a lawfully owned book, it would be advisable to check if your institution has a scanning service that would be willing to do this for you. They can ensure its both lawful and make sure all recording conditions are met.

## How much can be scanned under the CLA licence?

Under the current CLA licence, one chapter of a book, one article from a journal/magazine issue, and websites (or 10% of the total, whichever is greater). The CLA licence enables the distribution of multiple copies of excerpts from library resources to enrolled students on distinct courses and modules.

Only in exceptional circumstances, i.e., in response to the global pandemic, has the limits of licence been extended for a limited period.

As touched on earlier, it is suggested best practice to make use of the CLA licence (providing your institution has one), before making use of the UK copyright exceptions.

## Can I photocopy an article for each student of my class?

Yes, providing the students are enrolled, and your institution has a CLA licence, then this act is permissible. In principle you could put together into a course pack, but it would be advisable to seek advice if you plan on copying a significant number of chapters this way. This because the CLA may interpret this as a means of recreating an entire textbook, which isn’t permitted. It would be suggested best practice to seek out your institutions scanning/Reading List service to ask if they could copy/scan the materials for you.