



STATUTORY INSTRUMENTS.

S.I. No. 277 of 2020



COPYRIGHT AND RELATED RIGHTS (CERTIFICATION OF
LICENSING SCHEME FOR HIGHER EDUCATION INSTITUTIONS) (THE
IRISH COPYRIGHT LICENSING AGENCY LIMITED) ORDER 2020

S.I. No. 277 of 2020

COPYRIGHT AND RELATED RIGHTS (CERTIFICATION OF
LICENSING SCHEME FOR HIGHER EDUCATION INSTITUTIONS) (THE
IRISH COPYRIGHT LICENSING AGENCY LIMITED) ORDER 2020

I, LEO VARADKAR, Minister for Business, Enterprise and Innovation, in exercise of the powers conferred on me by section 173(2) of the Copyright and Related Rights Act 2000 (No. 28 of 2000), hereby order as follows:

1. This Order may be cited as the Copyright and Related Rights (Certification of Licensing Scheme for Higher Education Institutions) (The Irish Copyright Licensing Agency Limited) Order 2020.

2. In this Order, “Act” means the Copyright and Related Rights Act 2000 (No. 28 of 2000).

3. The licensing scheme specified in the Schedule to this Order is certified for the purposes of section 57C of the Act.

4. The certification under paragraph 3 above shall, for the purposes of section 57C of the Act, come into operation on the 25th day of September, 2020.

SCHEDULE

Licensing Scheme for Higher Education Institutions operated by the Irish Copyright Licensing Agency Limited

1. The Licensing Scheme operated by the Irish Copyright Licensing Agency Limited (ICLA) in respect of higher education institutions has been certified as a licensing scheme for the purposes of section 57C of the Act.

2. Interpretation

“Associated Still Images” means graphic or visual representations incorporated in a Work comprised mainly of literary text.

“Authorised Persons” means all staff and students of the Licensee and all individuals who although not employed by the Licensee are engaged by it to provide teaching, research or consultancy services, and in relation to the Licensee’s Intranet or Virtual Learning Environment (VLE), persons, including Distance Learners authorised by the Licensee to use the same using a secure code, but excluding participants in MOOCs or equivalent courses. The term also includes another Educational Establishment holding a current educational licence from ICLA.

“Copy” (used as a verb) means to reproduce, irrespective of the means employed. “Copy” (used as a noun) and “Copies” shall have a corresponding meaning.

“Communicate” (used as a verb) means to make available to another, irrespective of the means employed. “Communication” (used as a noun) and “Communications” shall have a corresponding meaning.

“Course of Study” means any whole course of study or any module or segment of a student’s studies which is regarded by the Licensee as a discrete and self-contained unit for the purposes of examination or assessment.

“Digital Copy” means an electronic copy of the whole, or part, of a Work.

“Distance Learner” means a student on a Course of Study designed to be studied away from the Premises.

“Education” means instruction, lectures, study, research, teaching or training carried out either in an Educational Establishment or given by persons acting under the authority of an Educational Establishment and includes all activities necessary or expedient or ancillary to such activities, including the display of Licensed Material, and ‘educational purposes’ shall be construed accordingly.

“Educational Establishment” means any university to which the Universities Act 1997 (as amended) applies; any relevant provider within the meaning of Section 2 of the Qualifications and Quality Assurance (Education and Training) Act 2012 (as amended); and any other establishment so designated by a Minister of the Government under all relevant legislation including section 55 of the Act.

“Excluded Works” means Works appearing on the List of Excluded Works published on the ICLA website www.icla.ie and updated from time to time.

“Extract” means a part of a Work which does not exceed the proportion of the entire Work specified in clause 4(b) herein.

“ICLA” means the Irish Copyright Licensing Agency Limited.

“Illustration for Education” means Copying and/or Communicating Extracts of Licensed Material for the specific purpose of supporting, enriching or complementing the delivery of Education.

“Digital Repository” means a database or other information library or archive established by an Educational Establishment to assemble and provide access to digital resources in a systematic and searchable manner.

“Licence Certificate” means the certificate issued to the Licensee by ICLA, confirming the grant of a Licence, and specifying the duration of the Licence and the amount of the Licence Fee.

“Licence Fee” means the fee specified in the Licence Certificate.

“Licensed Copy” means a copy of Licensed Material made pursuant to the terms of this Licence.

“Licensed Material” means Works in one of the following categories:

- (i) books, journals, magazines, newspapers and other serial publications available in print or digital form, including via the Internet, and Associated Still Images therein; and
- (ii) text and Associated Still Images of value for the educational purposes of the Licensee, found on websites, blogs and other platforms accessible via the Internet PROVIDED the Copying and Communication of the material is not prohibited by the terms and conditions of use of the website, blog or platform and the use by the Licensee does not involve breaching a technological protection measure (such as a paywall) or other copyright infringement.

“Licensee” means the Educational Establishment specified on the Licence Certificate in respect of which the Licence Fee has been paid.

“Licensee’s Intranet” means the internal computer network operated by the Licensee and accessible only by Authorised Persons using a secure code.

“MOOC” or “Massive Open Online Course” means a Course of Study made available to a very large number of students or with open access, via the Internet.

“Moral Rights” means the right of the creator of a Work to be identified as the author thereof and to protect the Work from distortion, mutilation or modification in a manner prejudicial to his or her reputation.

“Premises” means the place specified in the Licence Certificate at which the Licensee carries out its activities.

“Print Copy” means a reproduction of a Work or part thereof in hard copy on paper or other material.

“Sufficient Acknowledgement” of a Work means naming both the author and the title of the Work unless this is impossible, including for the reason that the Work was made available anonymously. In the case of material accessed via the Internet it also means specifying, where the information is available, the name and Internet address of the website, blog or platform at which the material was located and the date on which it was extracted.

“Teaching” means delivering Education.

“Virtual Learning Environment (VLE)” means a web-based platform used by the Licensee to provide digital study facilities, accessible only by Authorised Persons using a secure code.

“Work” means an individual published literary text or a visual or graphic representation protected by copyright. The term “Works” shall be construed accordingly.

3. Grant of Licence

Subject to these terms and conditions and upon issue of a Licence Certificate, ICLA grants the Licensee, exclusively for its Educational purposes, a Licence to Copy and Communicate Licensed Material to Authorised Persons, SUBJECT to the conditions specified in clause 4 below.

4. Conditions of Licence

The activities authorised by the Licence at clause 3 above are subject to the following conditions:

- (a) The Licence may only be exercised in relation to Works lawfully owned, held or accessed by the Licensee; this includes material lawfully accessed online but also the use of a work owned by the lecturer or tutor.
- (b) The Copying and Communication of any Work during any one Course of Study shall not exceed an Extract or Extracts amounting to more than ten per cent (10%) of the Work, save that:
 - (i) in the case of a book, a whole chapter may be Copied and Communicated;
 - (ii) in the case of an article in a journal or periodical, the whole article may be Copied and Communicated, but not more than one article in any one issue of the publication;
 - (iii) in the case of a short story or poem of not more than ten pages in length, the whole of the short story or poem may be Copied and Communicated;
 - (iv) in the case of an Associated Still Image, the whole image may be Copied and Communicated, provided that the number of the same taken from any one publication (whether online or offline) shall not exceed 10% of the entire number in such publication;

- (v) in the case of a Work not falling into any of the categories at (i) –(iv) above, or which is not divided into distinct sections, the Licensee shall ensure, as far as is reasonably practicable, that Copying and Communication are limited to Extracts that are equivalent to the limits set out above.
- (c) The Licensee shall not Copy or Communicate Licensed Material for a purpose or to an extent that prejudices the interests of the copyright owner. In particular the Licensee may not make Copies of complete Works, nor systematically copy parts of Works or of the same Works on different occasions or from different editions or places, so as to exceed the limits herein specified.
- (d) The Licensee shall not engage in any act amounting to re-publication of Licensed Material nor Communicate Licensed Material to persons not included in the definition of Authorised Persons. In particular, the Licensee shall not: post or permit the posting of Licensed Material on the Internet; provide Licensed Material for inclusion in open resources (such as electronic reserves, digital libraries or Institutional Repositories); or send Licensed Material by email or equivalent, directly or indirectly to anyone other than Authorised Persons.
- (e) All Copies and Communications of Licensed Material must carry a Sufficient Acknowledgement and copyright notice in a form approved by ICLA. This must be such that the Copy or Communication cannot be accessed and/or read without seeing the acknowledgement.
- (f) If the Licensee provides photocopying or scanning machines for use by Authorised Persons, a copyright notice in a form provided by ICLA must be placed on or adjacent to the machine so as to be clearly visible by the user of the machine.
- (g) The Licensee shall employ and maintain technical security measures sufficient to ensure that Licensed Material posted to the Licensee Intranet or Virtual Learning Environment (VLE), or otherwise Communicated to Authorised Persons in electronic form, is not exposed to an unwarranted risk of copyright infringement.
- (h) The Licensee may not sell, rent, or otherwise deal in Licensed Copies, save that Print Copies may be provided to Authorised Persons at a price set to recoup only the cost of production and not for profit.
- (i) The Licence does not cover the Copying or Communication of Excluded Works.
- (j) Licensed Copies may be supplied to Distance Learners wherever they are located and Distance Learners may make a copy of a Licensed Copy in order to view it at a more convenient time. The Licence does not otherwise cover activities outside the State.

- (k) The Licence does not authorise any amendment, alteration or manipulation of Licensed Material. Alterations may however be made for pedagogic purposes, for example by blanking out parts, annotating or translating an extract from a Work, on condition that the author's Moral Rights are respected, and it is made clear on the face of the Copy that the original Work has been so altered.
- (l) When an Extract from Licensed Material is Copied in whole or in part onto a digital device pursuant to the terms of this Licence, the Licensee shall ensure that the extract is a verbatim copy of the Licensed Material and includes the Sufficient Acknowledgement and notice referred to in subclause (e) above.
- (m) The Licensee may retain both Print and Digital Copies of Works hereby licensed for so long as the same are relevant to the teaching of a Course of Study PROVIDED HOWEVER:
 - (i) The Licensee shall not collect or store, or include the same in a Digital Repository or other information repository or resource.
 - (ii) When a Course of Study is completed and if it is not likely to be repeated in a future teaching session, Digital Copies made under this Licence must be removed from the Licensee's Intranet and, before that Course of Study is again taught, the Licensee must ensure that copies to be made available to Authorised Persons on that Course of Study comply with the conditions of this Licence, or a renewal thereof.
- (n) Digital Copies may be held in so far as is necessary for technical back-up purposes.
- (o) The Licensee may subcontract the making of Digital Copies to third parties provided that the Licensee takes all reasonable steps to ensure that any such third party operates appropriate management and security procedures so as to ensure compliance with the terms of the Licence. The Licensee shall keep records of all such subcontracts and the Digital Copies made thereunder and shall supply such records to ICLA on request.
- (p) For the avoidance of doubt, this Licence does not supersede any licences agreed between the Licensee and the publisher or distributor of Licensed Material.

5. Excluded Works

- (a) ICLA shall publish the list of Excluded Works on its website www.icla.ie. This shall be updated bi-annually and new additions shall be listed prominently. The Licensee shall check the list at the start of each academic year.
- (b) In the event that a Work has been Copied and/or Communicated before being published on the ICLA website as an Excluded

Work, it may remain in use by the Licensee under the terms of this Licence, for the remainder of the relevant academic year.

6. Duration

The duration of this Licence shall be the term specified in the Licence Certificate.

7. Licence Fee

The Licensee shall pay to ICLA the amount of the Licence Fee specified in the Licence Certificate.

The annual tariff, or fee, for a higher education license shall be:

- sum not exceeding €6.00 per student per annum (plus VAT).

This change shall be applicable from the date of coming into operation of the certification of the licensing scheme.

8. Usage Data

To enable ICLA to identify the authors and publishers whose Works have been Copied and Communicated for the purpose of distribution of Licence Fees, the Licensee shall comply with the record-keeping procedures approved from time to time by ICLA, and shall make such data available to ICLA upon request.

9. Additional Obligations of the Licensee to ICLA

The Licensee shall take all reasonable steps to ensure that every Authorised Person availing of this Licence complies with the terms and conditions herein contained, and in particular shall implement all Guidelines to clarify for such persons the terms of the Licence notified in writing from time to time by ICLA.

10. Third Party Obligations

The Licensee shall, in exercising the rights hereby granted, ensure compliance with all applicable laws, including those relating to Moral Rights, data protection, defamation, obscenity, privacy, confidence and all computer-related regulations.

11. Indemnities

- (a) Subject as provided below, in any case where the Licensee receives a claim that, when acting under the permission granted by the Licence, the Licensee has infringed the copyright of any person or body, ICLA shall indemnify the Licensee in respect of all reasonable costs, expenses and damages awarded against or incurred by the Licensee, including any ex gratia payment made with the prior written consent of ICLA, PROVIDED HOWEVER:
- (i) the indemnity shall only apply where the Licensee has complied with the Licence terms;
 - (ii) the indemnity shall only apply when the Licensee has given ICLA written notice of any claim within 21 working days of the claim being notified to the Licensee;
 - (iii) the Licensee shall ensure that no admission or offer of payment or indemnity shall be made or given on its own behalf or on behalf of ICLA without the prior written consent of ICLA; and
 - (iv) the indemnity shall apply only to Works in the ICLA Repertoire; for the avoidance of doubt it shall not apply to Excluded Works.
- (b) The Licensee shall indemnify ICLA against all costs, claims demands and expenses arising in consequence of breach of this Agreement by the Licensee, its servants, agents and Authorised Persons.

12. Termination of Licence

- (a) The Licence shall be for the term specified on the Licence Certificate and shall terminate automatically on the expiry thereof.
- (b) The Licence shall automatically terminate in the event that the Licensee shall cease to operate as an individual Educational Establishment.
- (c) ICLA shall be entitled to terminate the Licence in the event of a material breach by the Licensee of the terms hereof.
- (d) Termination shall be without prejudice to any antecedent rights of ICLA under the terms and conditions of the Licence.
- (e) In the event of termination, the Licensee shall cease to copy Licensed Material; shall destroy all Print Copies and delete from its computer systems all Digital Copies of Licensed Material made pursuant to the Licence and shall ensure that all Authorised Persons previously entitled to make or use copies under this agreement are notified of the termination of the Licence.

13. Renewal of Licence

This agreement may be renewed periodically by the issue of a new Licence Certificate to the Licensee.

14. Service of Notices

All notices required to be given under the Licence shall be given in writing and shall either be delivered by hand or be sent by prepaid registered post to the relevant party at the address given in the Licence Certificate. In the case of a notice sent by post, it shall be deemed to have been served on the second day following posting.

15. Assignment

The Licence is personal to the Licensee and may not be assigned to a third party without the prior written consent of ICLA.

16. Variation

No variation of the terms of the Licence shall be effective or binding unless it is reflected in a written agreement between the parties.

17. Dispute Resolution

A dispute concerning the ICLA licensing scheme as reflected in the Licence may be referred to the Controller of Intellectual Property for determination in accordance with the applicable section(s) of the Act. In the absence of such referral and in circumstances in which such referral is unavailable, a dispute between the parties shall be submitted at first instance to mediation under the Mediation Act 2017. In the event of an unsuccessful mediation, the parties may agree to submit the dispute to arbitration under the Arbitration Act 2010.

18. Governing Law

The Licence agreement shall be governed by the laws of Ireland and the parties submit to the exclusive jurisdiction of the Irish courts.



GIVEN under my Official Seal,
30 July, 2020.

LEO VARADKAR,
Minister for Business, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Section 57, 57A and 57B of the Copyright and Related Rights Act 2000 provides for copyright exceptions which allow the use of copyright protected material by educational establishments within strictly defined limits.

However, this section does not apply where there is a licensing scheme, certified by the Minister under Section 173 of the Act, in operation.

Section 173 provides for the certification of a licensing scheme for the purposes of section 57C where the Minister is satisfied that the licensing body in charge of the scheme is representative of a substantial number of rightsholders in the category of works to which the scheme is designed to apply, and the scheme sets out clearly the charges payable and the other terms and conditions on which licences are to be granted.

Through this Order, the Minister for Business, Enterprise and Innovation has certified the licensing scheme for higher education institutions operated by the Irish Copyright Licensing Agency Limited, with effect from 25 September, 2020.

The Schedule to the Order contains details of the licensing scheme.

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