



The Bar Council

Copyright Guidelines

Purpose:	To indicate when it may be necessary for members of the Bar to obtain a licence before copying written material which has been published in print or electronic form.
Overview:	Copyright - Statutorily Permitted Copying - Licensing schemes - Examples of Copying Generally Requiring a Licence
Scope of application:	All practising barristers
Issued by:	The Ethics Committee
First issued:	February 2014
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Status and effect:	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

A. Introduction

1. Section B contains a brief description of the law of copyright as it applies to copying written material which has been published in print or electronic form. Section C outlines some statutory exceptions to copyright infringement which may be relevant to members of the Bar. Section D covers the licensing schemes operated by the Copyright Licensing Agency Ltd (“the CLA”) and the Newspaper Licensing Agency Ltd (“the NLA”). Section E contains examples of the types of copying which generally require a licence.

2. These guidelines do not apply to musical or artistic works (including photographs¹), sound recordings, films or broadcasts; nor do they apply to databases except to the extent that they are protected by copyright. They are not intended to be taken as legal advice and any member of the Bar who is in doubt about his or her rights should seek specific advice on any particular problem.

B. Copyright

3. Copyright subsists in virtually all written works provided they are original in the sense that they comprise their authors' "own intellectual creation". The latter phrase derives from European case law.² Copyright generally lasts from the moment the work is recorded until 70 years after the end of the calendar year in which the author died.³ Works in which Crown copyright subsists have a different term of protection. In general, Crown copyright lasts for 125 years from the end of the calendar year in which the work was made (or, if the work was published commercially within 75 years from the end of the calendar year in which it was made, 50 years from the end of the calendar year in which it was first so published).⁴ Much Crown copyright material may be copied for commercial purposes without payment in accordance with the terms of a general licence called the Open Government Licence. The remainder of this Guidance does not cover Crown copyright material and reference should be made to the National Archives website.⁵

4. The copyright in a work may be infringed in a number of ways, including by copying (i) the whole of the work or (ii) any part of the work if that part contains "an element of the work which, as such, expresses the author's own intellectual creation".⁶ For these purposes, "copying" means reproducing in any material form, whether in hard copy or electronically.⁷

5. It follows that the copying of almost any written material which has been created in the last 125 years or so is likely to involve an infringement of copyright unless permitted by a statutory exception or licensed by the owner of the copyright.

¹ Note, however, that photographs are within the NLA's repertoire.

² Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* [2010] F.S.R. 20 at [37]; Case C-403/08 *Football Association Premier League Ltd v QC Leisure* [2012] All ER (EC) 629; [2012] FSR 1 at [97].

³ Copyright, Designs and Patents Act 1988 ("CDPA 1988"), s.12.

⁴ CDPA 1988, s.163.

⁵ A useful starting point is [Crown Copyright, An Overview for Government Departments](#) [Accessed 19th May 2020].

⁶ Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* [2010] F.S.R. 20 at [30]-[51]; applied in *SAS Institute Inc v World Programming Ltd* [2013] EWCA Civ 1482; [2014] R.P.C. 8 (CA) at [38] and [63], *England & Wales Cricket Board v Tixdaq* [2016] EWHC 575 (Ch) at [65], *Ogunkoya v Harding* [2017] EWHC 470 (IPEC); [2017] 3 WLUK 279 and *ABT Sales Ltd v Rich Energy Ltd* [2019] EWHC 1207 (IPEC) at [13]-[14].

⁷ CDPA 1988, s.17.

Infringement of copyright is a statutory tort and may in some circumstances amount to a criminal offence. Accordingly, members of the Bar should not copy such material unless satisfied that they are entitled to do so under one of the statutory exceptions identified below or have the licence of the copyright owner.

C. Statutorily Permitted Copying

6. CDPA 1988 contains a number of exceptions from copyright protection. Only a few of these are potentially relevant to the majority of barristers.

7. The primary exception of relevance is copying for the purposes of parliamentary or judicial proceedings or the proceedings of a Royal Commission or statutory inquiry.⁸ The definition of judicial proceedings⁹ includes proceedings before any court, tribunal or person having authority to decide anything affecting legal rights or liabilities. This exception accordingly permits the copying of any material required for use in court or in any tribunal before which members of the Bar are likely to appear. It has been held arguable that this exception applies to copying for the purposes of proceedings which are in contemplation at least if such proceedings are subsequently commenced,¹⁰ but the law is not settled. It should be noted, however, that where transcripts of proceedings before the courts are copied without the permission of the transcriber or of the court, then the court may refuse to receive the copies provided.

8. Copying by way of fair dealing for the purposes of criticism or review of a copyright work which has been made available to the public is permitted if accompanied by a sufficient acknowledgement identifying the work and its author (unless this would be impossible for reasons of practicality or otherwise).¹¹ The courts have held that “criticism” and “review” are broad terms and should be liberally interpreted. By statute, the criticism may either be of the work copied or of another work. From the authorities it is clear that the criticism may be of the underlying philosophy of the work as well as its style. Although each case depends on its own facts, we consider that this exception permits members of the Bar to copy extracts from a published work which is the subject of an advice or which has a bearing on the advice being given, provided (i) the work (or another work) is criticised or reviewed in the advice and (ii) it is necessary to copy the extracts for the purposes of such criticism or review.

⁸ CDPA 1988, ss.45, 46.

⁹ CDPA 1988, s.178.

¹⁰ *A v B* [2000] E.M.L.R. 1007.

¹¹ CDPA 1988, s.30; “sufficient acknowledgement” is defined in CDPA 1988, s. 178.

9. By amendment to CDPA 1988 made on 1st October 2014, copying by the use of a quotation from a copyright work (whether for the purposes of criticism or review or otherwise) is also permitted provided that (a) the work has been made available to the public, (b) the use of the quotation is fair dealing with the work, (c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and (d) the quotation is accompanied by a sufficient acknowledgement identifying the work and its author (unless this would be impossible for reasons of practicality or otherwise).¹²

10. It is also permissible to copy a copyright work by way of fair dealing for the purposes of research for a non-commercial purpose or for private study.¹³ However, it seems unlikely that these exceptions will apply to copying by members of the Bar in a professional context. As to “research for a non-commercial purpose”, the following statement from *Copinger and Skone James on Copyright*¹⁴ has been quoted with apparent approval by the court:

“Presumably any research which, at the time it is conducted, is contemplated or intended should be ultimately used for a purpose which has some commercial value will not be within the permitted act.”¹⁵

The definition of “private study” expressly excludes any study which is directly or indirectly for a commercial purpose.¹⁶

11. Finally, an exception which may be of assistance in a small number of cases is that it is not an infringement of copyright to reproduce the abstract of a scientific or technical paper which was originally published with the full paper.¹⁷

D. Licensing schemes

12. The CLA and the NLA (see Introduction) are companies set up by groups of publishers to license and collect royalties for the copying of copyright material published by their members. Both companies operate schemes under which a licence

¹² CDPA 1988, s.30(1ZA), as amended by Copyright and Rights in Performances (Quotations and Parody) Regulations 2014 (SI 2014 No.2356).

¹³ CDPA 1988 s.29. In the case of copying for the purposes of research for a non-commercial purpose, it must be accompanied by a sufficient acknowledgement identifying the work and its author (unless this would be impossible for reasons of practicality or otherwise).

¹⁴ The statement now appears at paragraph 9-37 of the 17th edition (2016) of *Copinger and Skone James on Copyright*.

¹⁵ *The Controller of Her Majesty’s Stationery Office, Ordnance Survey v Green Amps Limited* [2007] EWHC 2755 (Ch) at [23]. Permission to appeal was refused, see [2008] EWCA Civ 588.

¹⁶ CDPA 1988, s.178.

¹⁷ CDPA 1988 s.60.

may be obtained for certain types of copying of all the works in their respective “repertoires” in return for a fee.

13. For barristers’ chambers, the CLA grants a licence called the CLA Law Licence (“the CLA licence”) while the NLA applies the terms of its Business Licence (“the NLA licence”). Before relying on such licences careful reference should be made to their detailed terms, which can only be summarised here.

14. The CLA licence covers most (but not all) books, journals, magazines and other periodicals published in hard copy form in the UK or in certain other countries, as well as some publications published in digital form. The NLA licence covers articles, reports, advertisements and other items published in the hard copy or internet versions of all national newspapers, many regional and local newspapers and many foreign newspapers. More details of the works covered by the licences can be found on the CLA and NLA websites.¹⁸ Anyone unable to determine whether a work they wish to copy is covered by one of the licences should check with the scheme administrator.

15. Both licences permit copying and the internal circulation of copies in accordance with their terms. In addition, the CLA licence permits the distribution of copies to existing and prospective clients in limited circumstances while the NLA licence permits the supply of copies to clients on an occasional basis (see para. 21 below).

16. It is the Bar Council’s understanding that reproduction of publications covered by the CLA and NLA licences by way of retyping or resetting is outside the scope of these licences. Accordingly, if you are considering whether to embark on such copying and none of the statutory exceptions identified above applies, then you will need to obtain the necessary licence from the copyright owner.

E. Examples of Copying Generally Requiring a Licence

17. The examples given here are not exhaustive. They are intended only to identify copying of a kind likely to be carried out by members of the Bar which (subject to the permitted exceptions identified above) requires the licence of the copyright owner.

18. Copying of published material for general or specific distribution within a set of chambers requires a licence. This includes copying of law reports from newspapers or other sources. It also includes the copying and distribution of selected cuttings from newspapers which contain news and other items of interest or

¹⁸ www.cla.co.uk and www.nlamediaaccess.com respectively.

relevance to members of chambers. Such copying and distribution will be covered by a CLA or NLA licence (as the case may be) if (i) the material copied is within the CLA or NLA's repertoire (as to which see para. 14 above) and (ii) the copying is carried out in accordance with the terms of the licence.

19. Copying of published material for distribution with lecture notes or as part of a publication by individual barristers or members of chambers requires the licence of the copyright owner. Such copying is not covered by the CLA and NLA licences.

20. The copying and storing in electronic form of published material for display on a chambers website involves the making of copies¹⁹ and requires the licence of the copyright owner. The NLA offer a 'Corporate Website Republishing Licence' although reference should be made to the precise scope of the licence offered.

21. Copying and distribution of copies of published material (including law reports and extracts from textbooks otherwise than for the purposes of judicial proceedings or in accordance with some other exception) to clients and instructing solicitors requires a licence. In broad terms, the CLA licence permits the supply of single copies of works within the CLA repertoire to clients and specified other persons such as other professionals or witnesses where the supply is reasonably required in connection with the provision of advice. It also permits the supply of such single copies to existing and prospective clients with a view to soliciting new business provided such supply is on an ad hoc basis. In broad terms, the NLA licence permits the supply by a Professional Partnership of copies of material within the NLA repertoire to clients provided such copies are supplied on an "occasional" basis, a term that is defined as meaning "on an ad hoc basis and not for distribution to a pre-determined set of recipients". Before embarking on such activity careful reference should be made to precise terms of the licence in question.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).

¹⁹ See CDPA 1988, s.17(2).