

S.I. No. 514 of 2002

Copyright and Related Rights (Certification of Licensing Scheme for Reprographic Copying by Educational Establishments) (The Irish Copyright Licensing Agency Limited) Order 2002

I, Mary Harney, Minister for Enterprise, Trade and Employment, 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 Reprographic Copying by Educational Establishments) (The Irish Copyright Licensing Agency Limited) Order 2002.

2. In this Order:

“the Act” means the Copyright and Related Rights Act 2002 (No. 28 of 2000);

“the Minister” means the Minister for Enterprise, Trade and Employment;

“ICLA” means the Irish Copyright Licensing Agency Limited.

3. The licensing scheme specified in the Schedule to this Order is certified for the purposes of section 57 of the Act and shall apply to any educational establishment as defined in section 2(1) of the Act.

4. The certification under paragraph 3 above shall, for the purposes of section 57 of the Act, come into operation on the 13th day of January, 2003.

SCHEDULE

Licensing Scheme operated by the Irish Copyright Licensing Agency Limited in respect of educational establishments

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

2. ICLA grants licences to educational establishments for the reprographic copying of literary works.

3. The licence granted by ICLA permits reprographic copying of material solely for the educational purposes of the relevant establishment, and not for commercial gain, nor for any other purpose.

4. In this Scheme and in any licence issued by ICLA:

“licence” means the non-exclusive right on the premises and subject to the terms and conditions specified in this Schedule to make or receive (or permit the making or receiving of) single or multiple copies from books, journals and periodicals in which copyright subsists, published in countries, territories, states or areas details of which are circulated by the ICLA from time to time, other than books, journals and periodicals included in the list of excluded categories and excluded works. The copying licensed is any copying onto paper by means of a reprographic process, and includes any process which involves an intermediate stage which may be onto paper or other material. The licence does not permit the licensee to create database of copyright material or to incorporate copyright material in a database, or to produce non-identical copies of copyright material or to input into or store copyright material in any computer or other device, except for the sole purpose of making an identical paper copy immediately after such input.

“premises” means the premises named in the licence.

“excluded categories and excluded works” means those categories of work or those individual works included on a list of excluded categories and excluded works circulated from time to time by ICLA.

“Act” means the Copyright and Related Rights Act 2000 (No. 28 of 2000).

5. In the case of copying licensed by ICLA, the number of copies of any one item taken at any one time shall not exceed the number of students in a class plus two copies for each teacher and no copy shall exceed five percent or one chapter (whichever is the greater), except,

- (a) in the case of an article in a periodical publication, the whole article may be copied, but not more than one article in any one issue of the publication.
- (b) 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.

6. The annual tariff, or fee, for licences, applicable from the date of coming into operation of the certification of the licensing scheme shall be:

- (a) Primary schools-€2 per student per annum (plus VAT)
- (b) Post-primary schools-€2 per student per annum (plus VAT)
- (c) Third-level Institutions-€6 per student per annum (plus VAT)

(d) Other educational establishments designated from time to time by the Minister-a tariff or fee related to the above by type.

7. Subject to exemptions provided for by the Act, authorisation for copies made outside the terms of this licence including those on the list of “excluded categories and excluded works” must be obtained from the owner of the copyright in such works.

8. The licensee shall take steps to notify its staff, particularly those with responsibility for reprographic equipment at the premises, of the terms and conditions of the licence, and shall display or cause to be displayed adjacent to every copying machine at the premises, the user guidelines provided by ICLA.

9. The licensee shall comply with the record-keeping procedures approved from time to time by ICLA, and the licensee shall permit ICLA to attend at the premises by arrangement from time to time, including for the purpose of carrying out a periodic audit of copies made by the licensee.

10. Subject to (a), (b) and (c), 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:

(a) the indemnity shall only apply where the licensee has complied with the licence and has given ICLA written notice of any claim within 10 working days of the claim being notified to the licensee,

(b) 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

(c) the indemnity shall not apply to excluded categories or excluded works.

11. Where the licensee commits any material breach of any of its obligations under the licence and remains in such breach 14 days after receiving notice to remedy that breach, then ICLA may by notice to the licensee and without prejudice to any sums already paid or due to be paid under the licence and to any other rights of ICLA:

(a) terminate the licence, or

(b) withdraw the licence until ICLA shall be satisfied that that breach will not recur.

12. Where the licensee (being a company) becomes insolvent or goes into liquidation, or (being an individual) becomes bankrupt or enters into an arrangement with his or her creditors, or ceases to operate as an educational establishment, the licence shall terminate

forthwith without recourse to ICLA in respect of any prepayment of the licence fee or in any other respect.

13. The licence is personal to the licensee named in the licence and applies only in respect of the premises specified in the licence and may not be transferred or assigned to any third party or transferred to any other premises.

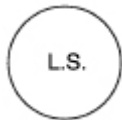
14. The terms and conditions of the licence are not subject to variation by oral representation and no variation shall be effective unless agreed in writing between the licensee and ICLA and annexed to the licence.

15. The licence shall be governed and construed in all respects in accordance with the law of Ireland, and any question or difference arising out of the licence shall be referred to the adjudication of the Controller of Patents, Designs and Trade Marks where the Controller is empowered under the Act to determine such question or difference, and otherwise to the exclusive jurisdiction of the Irish courts.

16. Notices to be served or given under the licence shall be in writing and sent by registered post to the last known address of the licensee or ICLA, as the case may be, and shall be deemed to have been served on the third working day following the date of posting.

GIVEN under my Official Seal

this 12th day of November, 2002



MARY HARNEY

Minister for Enterprise, Trade and Employment

EXPLANATORY NOTE

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

Section 57 of the Copyright and Related Rights Act 2000 provides for limited copyright exceptions, which allow free reprographic copying 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.

This Section provides for the certification of a licensing scheme for the purposes of Section 57 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 Enterprise, Trade and Employment has certified the licensing scheme operated by the Irish Copyright Licensing Agency Limited, with effect from 13 January, 2003.

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

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