



The communicator's guide to

# newspaper copyright law

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## What is copyright?

It is probably true that most people entering the public relations industry never think that copyright law will play a crucial role in their working lives, after all Patsy and Edina never mentioned it once in an episode of *Ab Fab*. But then again, not many PR professionals spend their lives quaffing Bollinger!

Yet from the moment that a PR professional launches a media relations campaign, the question of copyright arises. You will obviously want to see how many journalists followed the story, to analyse coverage from the first editions of the newspapers to the final, to read the immediate online reaction and to get a sense of how successful the campaign has been.

You'll want to see cuttings and online coverage, perhaps to demonstrate the value of the work and creativity, and often you'll ask your PR agency to provide these.

It seems a simple task, one that even a trainee could do. Just buy every edition of every newspaper, cut out the relevant articles and at the same time keep an eye on every update on each newspaper's website.

Or, instead, just hand the task over to a media monitoring agency whose clippings service will not miss that tiny mention in the *Ayrshire Post* that everybody laughed at when they saw it.

The PR agency is happy because the client is happy – there's no argument over fees; the client is happy because their boss is happy – his mother read his profile in *The Daily Mail* and showed her friends; the media monitoring agency is happy because they get paid for providing that service; and the trainee is happy, because they get fast-tracked onto more interesting tasks and ultimately end up running the agency.

It is what could be described as a win, win scenario, isn't it? But wait...the source of all this happiness is the newspapers and their websites. The journalists were the targets of the campaign and their analyses have been read and shared; surely the publishers, who pay their salaries, should be rewarded?

Publishers own both newspaper and online content. It is their intellectual property, their copyright. And it is protected. You can't go into WH Smith and photocopy a 15

minute recipe from Jamie Oliver's latest book, just as you can't tear out the cryptic crossword in the *Daily Telegraph* and bring it next door to the coffee shop.

We all cheered when James Dyson, inventor of the eponymous vacuum cleaner, successfully sued the long-established vacuum manufacturers who had stolen his intellectual property and launched rival machines when his was but a start up business. Or when an unknown fashion student gains recognition from a retailer for reproducing their designs without permission. Reproducing content from a newspaper without permission may appear trivial, but it is no different from the Goliath business stealing ideas from the start out Davids.

From the moment that the media monitoring agency sent the related articles to the PR agency, copyright laws could be infringed unless the PR agency has acquired a licence from the Newspaper Licensing Agency (NLA), which grants permission to copy from more than 1,400 newspapers. Similarly, if the client receiving the articles wants to circulate them further it also needs a licence - it simply cannot piggyback off its agency's licence.



## But I used to be able to print off newspaper website content without a NLA licence. Why did that change?

No one would deny that in the space of little more than a decade, the Internet has transformed the media landscape. Newspaper publishers saw an opportunity to develop a new platform to distribute their content and grow their readership. Such moves have been truly transformational for some publishers, bringing a new and more diverse audience and opening up an overseas readership. It has also helped to keep newspapers relevant for a new generation who do not read printed materials nor buy tabloids or broadsheets.

But, it is fair to say that, in the race to develop these platforms, most publishers struggled to find a viable commercial model. It is equally fair to say that the early online 'newspapers' were little more than a replication of some or all of that day's publication.

Today, that has changed. The public has a voracious appetite for news, and newspapers are now changing tack and breaking stories online rather than wait for the next day's editions. They are investing millions of pounds into

their online sites, offering readers the chance to comment and share news as never before.

Online readership, at more than 78 million visitors every month, according to NewsShare, now exceeds print readership. Publishers' online sites are only going to grow in functionality and content, and more money will be needed. Some publishers are addressing this need with the introduction of pay walls to ensure that readers pay for access.

But this rise in the volume of online content also prompted a rise in demand for online monitoring services. New aggregator organisations were created to cope with this demand. Long standing media monitoring agencies added online services to their portfolio. Initially nobody seemed to think about the publishing organisations that were creating this content and investing millions to satisfy demand.

Newspaper website content is protected by copyright in the same way as print content. In its most basic form,

this means that any commercial organisation that wishes to reproduce an article will require a licence or direct permission from the relevant publisher.

Newspaper publishers asked the NLA to introduce a Web End User Licence to generate appropriate copyright revenue as reward for their investment. The licence was initially expected to come into force on 1 January 2010, but was delayed by a legal challenge that has now been resolved.

## But isn't the content the same in the print and online version?

That is a common misconception. Publishers are investing millions into creating unique online content and many articles, such as columns and features, are reserved simply for the print versions.

A survey of both print and online content of ten national titles, which the NLA conducted in September 2011, found that 56 per cent of print articles do not appear online.

The survey considered coverage of 24 specific subjects and found that, out of 591 articles, just 154 appeared in both print and online. Indeed, 243 articles were specific to the web while 194 articles appeared in the newspapers but were not reproduced online.

The survey (which was the latest in a series) found that there has been a large increase in the number of web only articles, particularly when it came to Guardian.co.uk, Telegraph.co.uk, DailyMail.co.uk and, to a lesser extent, FT.com.

A similar survey of seven regional newspapers between 27 August and 9 September 2012 found that, out of 1,039 articles, just 120 appeared in both print and online. It found that 680 articles were unique to the web and 293 articles appeared in print but not online.

## What is the NLA?

The Newspaper Licensing Agency is a not-for-profit organisation that was formed in 1996 by the UK's newspaper industry to make it easier for media monitoring agencies, PR agencies and in-house communications teams to reproduce articles with permission.

Prior to that date, any organisation that wished to reproduce articles was legally obliged to seek prior permission from the publisher and possibly pay a fee that would vary according to the publisher.

This was a time consuming, fiddly process and there was no industry wide pricing model. Many organisations simply did not bother to seek permission and publishers were the losers.

The UK's newspaper industry invests millions of pounds every week to produce content that is as creative and interesting as it is possible to be. Despite recent controversies exposed by the Leveson Inquiry, our newspaper industry is viewed as the one of the finest in the world. It exposes corruption and wrongdoing, reports from the frontlines of conflicts overseas and keeps readers up-to-date with music, culture and celebrity gossip.

Such content does not come cheaply. And at a time when advertising budgets are being squeezed, publishers are coming under increasing pressure. While the PR industry grew 13 per cent between 2010 and 2011, the newspaper industry declined by 26 per cent – just over a quarter of its size – between 2005 and 2010.

The high quality newspaper industry that we enjoy in the UK could not exist without copyright income. Today the NLA represents 22 national newspaper titles, 1,400 regional titles and more than 1,100 newspaper websites.



By acting collectively on behalf of the industry, the NLA can deliver value for money access to newspaper content. More than 200,000 organisations rely on the NLA's annual licences, database access and ClipSearch pay per use service to share information.

Over the past 15 years, the NLA has distributed more than £150 million in royalties to the publishers that it represents. These funds have been poured back into newspapers, allowing them to maintain the standards of journalism that we have come to expect. In a typical year, NLA income pays for 800 journalists' salaries.

## What is the value of a NLA licence?

A licence from the NLA gives organisations access to and permission to share content from 22 national newspaper titles, 1,400 regional titles and more than 1,100 newspaper websites.

But more than that, the licence provides:

- Cover for copying articles to clients
- Confidence that you are meeting your obligations under copyright law
- Protection against copyright infringement
- Assurance that copyright owners are receiving payment for their work
- Cover for past copying
- Indemnity against costs of infringement from copying a published work

## What about the *Financial Times*?

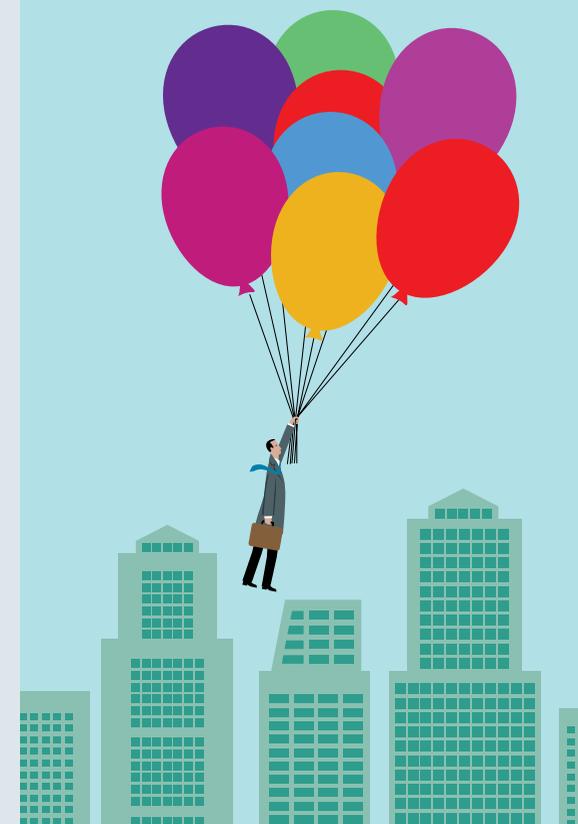
On 1 July 2010, the *Financial Times* introduced a new corporate licensing system and partially withdrew from the NLA.

Companies who receive electronic access to both the FT newspaper and FT.com web content via a third party, such as a media monitoring organisation, require an FT Corporate Licence. This is available directly from the publisher.

Without the licence, it is possible to view up to eight articles per month for free (subject to change by the *Financial Times*) if registered on FT.com.

But the mandate for photocopying *Financial Times*' articles remains with the NLA. Any organisation that either receives or distributes photocopies of *Financial Times*' articles will require a NLA licence.

For more information visit [www.ft.com/corporate](http://www.ft.com/corporate)



## NLA by numbers

The NLA represents 22 national newspaper titles, 1,400 regional titles and more than 1,100 newspaper websites

Over 200,000 organisations rely on its annual licences, database access and ClipSearch pay-per-use service to share information

80 per cent of all fee income generated by the NLA is paid straight back to the newspapers

£175 million in licence fees has been paid to newspapers and £20 million has been invested by the NLA in a cutting edge media database

More than 800 journalists' roles have been supported by NLA licence fees

## Making newspapers available to all

The News Library Service gives 2,000 schools free online access to newspaper content, educating young people on current affairs and providing valuable information for student projects

The Journalism Diversity Fund was launched in 2005 to help students from diverse backgrounds enter journalism. Since then, the NLA has donated £780,000, providing bursaries for just over 100 aspiring journalists

## Is every licence the same?

The simple answer is no. Every PR agency or client organisation will use cuttings in different ways, meaning that both the licence and the fee will differ. Just because PR agency A has ten employees and five clients, it does not mean that it will require an identical licence to its sister agency B that also employs ten people and services five clients. Four of PR agency B's clients, for example, might get their cuttings directly from a specialist agency and never ask it to provide that service while three of PR agency A's clients might like to receive their cuttings via a web portal.

But any PR agency that provides a press clippings service to its clients will need to hold a NLA licence. The type of licence will depend on the nature and type of copying that it does. Some clients may require hard (or paper) copies while others prefer soft (or electronic) copies; different rules apply.

If a PR agency provides press cuttings to clients in hard copy format, they will need to hold a NLA paper licence. If the client then photocopies these articles then they will also require a NLA paper licence in their own right.

A PR agency will not require a NLA paper licence if all its clients receive their hard copies directly from a press cuttings agency and if it NEVER photocopies articles for internal purposes. The moment a PR agency carries out any internal copying of newspaper articles, whether to conduct market intelligence or keep up to date with clients' competitor news, it requires a NLA paper licence for itself.

Some PR agencies only scan newspaper articles on behalf of their clients and email them as a PDF attachment. If these agencies have a NLA Public Relations Consultancy Licence which gives them the right to supply to clients, then this is permitted without the need for a client to have an additional licence. But if the client prints just one copy of the article, then they will require a NLA paper licence. If it is a paperless office and the client chooses to forward the PDF to their colleagues, they will require a NLA digital licence. But if the client simply views the article on the screen to which they were sent, no licence is required.

The NLA also now offers Web End User Licences for organisations receiving content, including links and text extracts, from newspaper websites from their 'paid for' media monitoring service. But the type of tariff varies to reflect different levels of appetite for online content. Some organisations may only require online cuttings a handful of times every year and, would be best advised to opt for a

variable fee. This is calculated by estimating the number of links received in a year multiplied by the fee per link.

For organisations generating greater volumes of online coverage, a fixed fee is more appropriate. There is a fee of £100 per annum, for an organisation with a single user of the service and up to five employees, but fees then scale up in accordance with the number of staff accessing the service and the total number of employees. In 2012, an organisation with ten users of the service and 15,000 employees would pay £1,177.

## Hang on a minute, that doesn't sound like a fixed fee then!

It is fixed in that, no matter how many cuttings of online articles there are about that organisation in one year, it will never pay more than £1,177. Some major organisations have rarely been out of the news this year! If they had had to pay for each individual online link, the cost would be exorbitant. Perhaps ceiling is a better term than fixed?

## I saw something about additional costs for search functionality?

Some media monitoring agencies offer clients the ability to search online, and an additional fee is charged for that service. For a small organisation with a single user of the service and up to five employees, the additional charge would be £15 but for an organisation with ten users of the service and 15,000 employees, the cost is £176 in 2012.

## Why is the NLA backdating charges for Web End User Licences?

The NLA announced plans to introduce Web End User Licences to take effect from 1 January 2010. These plans were challenged by news aggregator Meltwater and the Public Relations Consultants Association (PRCA) in the Copyright Tribunal. While the legality of the licence was under dispute, the NLA suspended plans for its introduction. Without going over old ground, and reigniting any simmering flames, both the High Court and the Copyright Tribunal ruled in favour of the NLA, arguing that Copyright Law did apply to online content and that publishers were entitled to introduce licensing. Now that the situation has been resolved, the NLA is seeking payment for the licence fees that should have been levied from 1 January 2010. This will mean that the first payment should be the most that an organisation is ever asked to pay.

My organisation receives cuttings from our media monitoring agency. We already pay their fees, surely this includes costs for copyright?

Your media monitoring agency will charge you for service costs and a copyright fee for the first copy of any article. They are obliged to inform the NLA about each client to whom they send cuttings, either online or print, or online links. If one person receives these, reads them online and never prints anything out or forwards them to a colleague, then no NLA licence is required. But this does seem rather an unlikely scenario.

It is better to think about the NLA licence as a safeguard that provides additional flexibility and cover against copyright breaches than a financial penalty.



## How do I know if I need a licence?

The NLA website contains a series of simple questions that, by answering either yes or no, will determine whether an organisation requires a licence.

These include:

- 1) Does your organisations monitor newspapers (even if infrequently) for articles relating to your business, industry, competition etc?
- 2) Does your organisation circulate newspaper articles to a defined audience on a regular basis, either electronically or in hard copy, such as a monthly press pack to a senior management team?
- 3) Does your organisation receive press cuttings from a media monitoring agency or public relations agency?

If you answer 'yes' to at least one of the questions, then the likelihood is that you will need a licence from the NLA.



I am a client of a PR agency – can't they just send cuttings without me buying a licence?

Yes, if the agency has specifically informed the NLA that they wish to cover you on their licence. A PR agency's NLA licence allows them to supply cuttings or links to a pre-agreed number of recipients. They are obliged to provide the NLA with details of those clients to whom they provide cuttings. If they send cuttings or links to additional recipients then they are in breach of their copyright agreement, and put themselves at risk of a financial penalty. If you receive cuttings or links from your PR agency and circulate or reproduce these without the relevant NLA licence, then you are in breach of copyright law and also put yourself at risk of a financial penalty that is likely to exceed the original licence fee!

My agency is very small, and I am rarely asked by a client for cuttings. Should I consider taking out a NLA licence?

The short answer is yes. But there seems to be a myth in the marketplace that a NLA licence is a huge financial penalty. The reality is that this is a payment to publishers for their copyright, for which they are legally entitled to charge. But nobody is trying to put anybody out of business with hefty bills; the publishers certainly don't want to do that. NLA tariffs reflect the value of the intellectual property to an organisation copying newspaper content. Obviously, a smaller agency will derive less value than a multinational PR agency with major companies among their client base. Licence fees take into account these factors. They start from as little as £160 per annum, which (without special vouchers or offers) is cheaper than buying one broadsheet newspaper every day of the year.

I saw a confusing table regarding licence fees. How do they work?

Licences are scaled according to the number of people who work within the organisation and the number of people who receive cuttings or links. Fees will also depend on whether an organisation is also taking out a Web End User Licence to allow them to receive content from newspapers' websites via their media monitoring agency. In many respects, a NLA licence is bespoke to meet an organisation's unique requirements. It is always best to contact the NLA to discuss your needs to ensure that you purchase the most appropriate and cost effective licence.



One of our former colleagues has set up a one-man shop. Can't we just help him out by sending them across cuttings? He is working on a shoestring.

We appreciate that times are tough, especially for start up PR agencies, but the NLA's pricing does take into account

the size of an organisation. The short answer is that the one-man shop will need a NLA licence if they distribute cuttings to clients.

Think about this in terms of a television licence...you and your flatmate each have televisions in your rooms, and share one licence splitting the annual cost. But your flatmate moves out, taking their television with them. Your former flatmate has no rights over the pre-existing licence – even if there were some months before it expired – and to prevent being charged a hefty fine will need to buy their own one.

My mother always forwards stories about dogs on the Internet. Does she need a licence?

The Internet is built for sharing. People will always send links to interesting stories to their friends or post these links on social networking sites. Publishers think this is great for newspapers. After all, their reporters tweet links about their breaking stories to generate interest for online and print newspapers. Your mum doesn't need a licence to send a story about Jasper, the French poodle who saved its 20 stone owner from drowning, to her friends. But if she runs a canine parlour, and is sending articles to promote her business, then she would need one!

My client often posts links to interesting articles on the company website and staff intranet. Does that require a licence?

It is normally acceptable for companies to post links (excluding headlines and text extracts) on websites and intranets without a licence. But if just one employee printed that article from the intranet or website then a licence would be required as a copy has been created.

What if I regularly want to post a full article or text extract on a corporate website?

The NLA has introduced a new licence (Corporate Website Republishing Licence) that gives companies the right to post newspaper articles on their corporate websites and Facebook pages. The licence gives gives permission to scan and reproduce articles on corporate websites or to quote comments or headlines and starts at £150 for one article, increasing in accordance with the number of articles posted and company size.



My client has an over-zealous executive assistant who photocopied a negative story about a competitor without being asked, and distributed it to board members. Will they be fined?

Mistakes happen. There isn't a special alarm secreted within photocopiers that rings at the NLA when somebody copies articles from newspapers or websites. We are not trying to penalise one-off mistakes. But the reality is that the client would require a NLA licence once an article has been copied and distributed. The NLA's role is to ensure that publishers receive adequate compensation both for their effort, and for the investment required to produce content that people want to share, and that companies that **systematically** copy and/or distribute their content should pay a licence fee in recognition of its value.



## What about Google and Yahoo! News Alerts?

Some publishers make their website content available to both Google and Yahoo! Some, such as News International, owners of *The Times*, *Sunday Times* and *The Sun*, have stopped doing so in order to preserve the value of their copyright.

Google and Yahoo! have direct relationships with publishers.

As a result, it is still possible to access online content for free through these news services. But companies who source content directly using these alerts services and **systematically** distribute the relevant links, either internally or externally, will require either permission from the publishers or a NLA licence if they do not already have one.

But these services are not perfect. They are free and, unlike paid-for monitoring services, do not offer the ability to define searches rigorously. This means they can generate irrelevant content that has to be filtered quite carefully. Similarly, they are unlikely to be as comprehensive or as targeted as that generated by eClips Web and filtered by a media monitoring company.

Using Google News Alerts for the NLA acronym generates articles about the National Landlords Association, National Library of Australia and the National Liberation Army.

If you or your client has a relatively common name, just imagine the time (and cost) involved to ensure that their cuttings do not include a renegade article.

## What about the *Metro* and *Evening Standard*? Why should I pay for a NLA licence to reproduce articles within free newspapers?

It does appear a conundrum. You take one copy from the man handing out the *Evening Standard* for your commute home. You read it, pass it on to your spouse or leave it on the train for other passengers to enjoy. That is what it is there for. No money has passed hands.

But say you know that there is an interesting article about your client on page six that 200 people within your agency would love to see. You haven't got a NLA print licence to reproduce articles, so you send your assistant to the *Evening Standard* distributor and ask for 200 copies. He's a bit rude – he's got other customers to serve – and it does feel rather unfair taking 200 copies of a free newspaper...a bit like that awkward guest who got drunk at the free bar at your wedding!

The fact is that there is value in that content. Some publishers have developed an advertising-led business model that allows them to offer newspapers for free. But they still own that content. It is still their copyright.

Still, Google and Yahoo! News Alerts are free – in the current economic environment, we are all watching our pennies.

We understand the temptation to use free email alerts to monitor coverage of your clients or their competitors, but the NLA has produced robust research to demonstrate that these services are not foolproof.

The NLA constructed a random sample of 500 articles from eClips Web, between 3 and 9 October 2011, comprising 100 articles each for the *Daily Telegraph*, *Guardian*, *Daily Mail*, *Daily Mirror* and *The Independent*. The NLA then searched manually by headline in Google News (UK) to find each article and, to be fair, we allowed for slight variations in wording, form and punctuation. Five articles were missing from the searches of both *The Telegraph* and *Daily Mirror*, three were missing from *Daily Mail* and one was missing from *The Independent*. But a whopping nine per cent were missing from *The Guardian* search.

So what, you may say, but some of the missing articles related to stories about major brands, which could just be your clients. On 20 October 2011, seven articles about BAA's proposed sale of one of its Scottish airports appeared on eClips Web. Just one of these appeared in the Google News (UK) search.

The problem is that it is not easy to identify which stories will be missed by the free news services. In the October 2011 study, Google News (UK) omitted just 4.6 per cent of the 500 articles sampled. In June 2011, it omitted 11 per cent and in July it missed 26 per cent – or one in four articles within the sample search. More damaging perhaps is the limit on emails themselves – only ten articles are delivered each day, meaning that if your brand mention in *The Daily Telegraph* is ranked 11 in the Google results, you will never receive it in your alert. An omission like that could lead to a rather difficult conversation with a client. Why take the risk?

There were a lot of online comments following an article about my client. Do I need a licence to print them off?

This is user generated content and its copyright is not owned by the publishers. Also it is generally accepted that online comments, blogs or social networking feeds, on Facebook or Twitter, are written with a view that they will be shared. Most blogs, for example, include shareable links. These are not subject to NLA licences. Similarly, journalists' Twitter feeds are not subject to NLA licences; in these instances, the journalists own their copyright, not their publishers, although they may be subject to internal social media guidelines. You can retweet a journalist's tweet to all your followers, even if it carries a link to an online article, without giving any thought to the NLA or copyright. Publishers welcome new visitors to their sites and social media is providing a vibrant source. But difficulties arise if you were to print the article to which the journalist's tweet links and distribute it to your colleagues. Copyright would be infringed if you did not have a NLA licence.





Our thanks to the PR industry for its continued respect for copyright and support for journalism.



**newspaper licensing agency**

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