

Understanding the value of the CLA Licence to UK higher education

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1. Executive Summary

This report presents findings of research conducted in late 2018 to understand the value of the Copyright Licensing Agency (CLA)'s HE Licence. This Licence permits higher education institutions to copy material (both from print and digital originals) for use in teaching and learning, and the research was undertaken to inform future negotiations between the CLA and the Universities UK Copyright Negotiation and Advisory Committee (CNAC). The research also sought to explore the value of secondary copying more broadly, at a time when higher education institutions are increasingly preferring to purchase primary digital resources. The term 'value' is used in the broadest sense to mean the benefits this licence provides to the higher education sector as well as the 'value for money' it offers.

Key Findings

The findings will be of interest to library directors, library acquisitions managers and copyright and licensing specialists in higher education institutions. The findings of most significance to these groups of staff are listed below followed by 17 recommendations:

UK Law and the International Comparison

- Changes made to UK copyright law in 2014 following the Hargreaves review have not shifted perceptions of the value of the CLA Licence, which is still used to provide students with access to copies of course readings.
- A comparison of the Licence with other countries' educational copying regimes exposes tensions in global copyright between private and public interests. There are cultural, economic and legal reasons why regimes differ and although the UK exceptions-backed licensing model has critics, it is generally supported by institutions who often bear the costs centrally, rather than from library budgets.

What is being scanned?

- The volume of scanning under the Licence may be beginning to decrease, although this needs to be tracked on an ongoing basis to determine trends.
- The Licence is currently mainly used by the sector as a way of providing students with copies of digitised extracts, largely from books. Many of these are either not currently available in electronic format, or are only available on overly restrictive licensing terms.
- The Licence has limited relevance when providing access to journal articles, which are largely available through subscriptions or increasingly under open access models.
- The sharing provision under the Licence (this allows licensed institutions to share scanned content) is largely unused, either for practical reasons or because there is little overlap in demand for titles.
- Even though there is minimal overlap in titles being scanned, a number of frequently scanned titles are being used under the Licence by multiple HEIs because they are not available in electronic format.

Comparison of Institutions' use of the Licence

- Patterns of scanning suggest that a small number of institutions make extensive use of the Licence. 51% of all scans are undertaken by the top 20 institutions. Those 20 institutions have 22% of all FTES reported in 2016/17 and are in the main larger well-funded Russell Group universities.
- The patterns of scanning suggest a large number of institutions make a limited use of the CLA Licence, with 133 institutions reporting less than 500 scans per year in 2017-18.

- There is no clear link between institutions' use of the Licence and their overall spend on information provision.

Impact of Open Access

- Open access has yet to impact significantly on the way the CLA Licence is used in institutions despite this research finding that 38% of journal content copied under the CLA Licence for teaching is also openly available. This may be because institutions face challenges identifying legitimate open access material with clear reuse terms that can be used for teaching.
- 60% of sample titles scanned were written by UK academics which is relevant when considering national policy on open access monographs and textbooks.

Conclusions and Recommendations

The study revealed that the CLA Licence is used inconsistently across the sector, with a relatively small number of institutions making intensive use of the digital copying provisions. As a result, the Licence delivers the greatest level of value (in terms of scanning volume at least) to only a small number of HEIs. Data from 2016-17 suggests that the volume of scanning may be starting to decline. However, it is important to monitor use of the Licence to provide HEIs with further evidence when developing strategies and negotiating licensed access to content with publishers and the CLA.

The CLA Licence largely facilitates digital access to print books for use in teaching, which institutions would often rather purchase as e-books, but are unable to do so because either the content or appropriate licences are unavailable. It is clear from interviews with acquisitions librarians that a number of e-book business models are not working for HEIs. The CLA Licence has therefore shifted in its purpose as a mechanism to remunerate authors and publishers for photocopying of print books, to a way of providing students with access to books in digital form where primary e-book licences are restrictive or unaffordable. To this extent, the CLA Licence provides HEIs with a valuable proposition, but one that may be at odds with many publishers' desire to sell access to digital content under primary licences. It is recognised however that some publishers would prefer to sell access to licensed content directly to students rather than to University libraries on their students' behalf. The CLA Licence therefore acts as a consistent and reliable way for HEIs to get access to digital content where the primary market doesn't provide them with what they need.

Another tension inherent in the provision of teaching resources under the Licence is the amount of content written by academics employed by UK institutions and the policy shift towards open access publishing. The open access publishing movement initially focused on journal publishing where authors rarely receive royalty payments for their work. However, national policy has been looking at open access as a suitable model for monographs for some time, and the open text book movement is gaining momentum around the world. Institutions may find it useful to consider the incentives provided to their academic staff to create monographs and textbooks which are subsequently used in teaching.

The current publishing system requires authors to assign copyright to publishers who create products that are subsequently purchased mainly by HE institutions. In addition to this, HEIs pay both licensing fees to CLA and the administration costs associated with the operation of CLA-licensed scanning services. In return for authoring content and assigning copyright to publishers the majority of academic authors receive relatively small royalty payments. As national and international open access policy develops, it may be possible for HE institutions to consider whether funds currently assigned to reprographic licensing fees could instead directly fund academic staff to create

open access content. The evidence in this report could help make the economic case for transitioning from reliance on a secondary licensing regime originally devised for print publishing towards the open digital publication and sharing of educational content, without the expectation that academic authors should do more for less.

In order to address the challenges and opportunities raised by this research the following recommendations are provided. They are arranged into different categories according to the relevant audience.

Recommendations for institutions / library directors

R1. Library directors are urged to review and monitor the use their institution makes of the CLA Licence to consider how this might compare with the sector as a whole and with similar institutions to their own. We recommend that:

- a. Institutions should review how the CLA Licence supports their approach to supporting teaching and learning in their overall approach to purchasing content.
- b. Institutions making high use of the Licence should consider whether there are alternative routes to sourcing content, such as use of primary licensed or open access content.
- c. Those institutions making low use of the Licence should consider the reasons why this is the case, and consider whether it would be beneficial to promote greater use of the Licence where it is not possible to source content any other way.

R2. Acquisitions librarians may benefit from closer working relationships with research support teams who generally have a good understanding of open access to explore the opportunities for using openly licensed content in teaching.

R3. Institutions should consider whether they could fund UK academics to create openly licensed teaching content, which may provide costs savings as well as more equitable and inclusive resources.

Recommendations for SCONUL, RLUK and Jisc Collections

R4. SCONUL should investigate the feasibility of collecting the annual institutional CLA usage data on behalf of the community to avoid the need to obtain this data and permission for public analysis of the data from the CLA.

R5. The SCONUL Statistics Steering group should explore how to encourage member institutions to provide data for the optional questions on information provision which will enable more robust analysis of information resource expenditure to take place.

R6. SCONUL / RLUK / Jisc Collections should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and working with CNAC should provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access

R7. SCONUL / RLUK should liaise with CNAC and other relevant organisations such as LACA to provide guidance to HEIs around where they may rely on post-Hargreaves exceptions to support learning and teaching.

R8. SCONUL / RLUK / Jisc Collections should explore open textbook and other open access models as a solution to deficiencies in resourcing which primary or CLA licensing are unable to resolve. This should involve the following activities:

- a) SCONUL / RLUK should continue to provide guidance to HEIs about the identification and use of open access content to support teaching activity, and liaise with organisations such as the British Library to explore use of open access discovery tools.
- b) SCONUL / RLUK / Jisc Collections should undertake further research with UK-based authors of highly re-used textbooks currently being digitised under the CLA Licence, to consider exploring whether open publishing models might better support the sector.

R9. Jisc Collections should explore with publishers the lack of availability of high demand titles used in teaching in HE based on the data provided in this study in order to create effective licensing models.

R10. Jisc Collections should examine publisher infrastructure so that there is greater standardisation of access to subscription content to minimise duplication of effort for institutions who are copying digital to digital content under the CLA licence because of unsuitable primary access models.

Recommendations for CNAC

R11. The study establishes a baseline from which to monitor and track copying volumes and the nature of content copied under the CLA Licence going forward which CNAC should continue to monitor on an ongoing basis.

R12. Following the introduction of the DCS and the changes to CLA's distribution methodology, for reliability and robustness of data, 2016-17 should be considered to be a 'fresh start' when it comes to reviewing the data that is collected on scanning across the sector.

R13. Further research is recommended to explore whether there are disciplinary differences in use of the Licence.

R14. Working with SCONUL and RLUK, CNAC should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access.

Recommendations for CLA

R15. CLA should develop a search facility as part of DCS that allows institutions to identify existing digitised content, at least for admin users. This would facilitate use of the sharing provision under the CLA Licence where both licensees own the primary source or copyright fee paid copy, and minimise scanning duplication for HEIs.

R16. CLA should encourage publishers not to opt out works from the CLA repertoire, given that the licence limit of 10% on copying and ownership requirements make it unlikely in practice that the availability and use of the CLA licence will affect primary sales.

R17. CLA should continue to work with CNAC on research to understand the role of the CLA Licence in the higher education sector as the needs of the sector change and scholarly communication evolves.

2. Introduction

This research sought to understand the value of the Copyright Licensing Agency's Higher Education Licence (CLA HE Licence), which allows universities to make copies either in print or digital format, from published books and journals in higher education institutions for teaching purposes. It was hoped that an improved understanding of UK universities' use of the CLA HE Licence would support the negotiation of a sustainable and fair model that rewards creators, authors and intermediaries such as publishers, while providing the sector with the content they need to underpin their teaching and research.

2.1 Coverage and main features of the licence

The CLA HE Licence covers the photocopying, scanning and digital to digital copying of extracts from published content for use in teaching. It is purchased annually by every UK higher education institution at a cost in 2018-19 of £7.37 (+VAT) per Full Time Equivalent Student (FTEs). The repertoire is extensive, covering all UK publishers, apart from those who opt-out and many overseas and international publishers. The majority of higher education institutions use the Licence to copy extracts from books (up to 10% or a single chapter), or a journal article and make them available to students from a Virtual Learning Environment or from a Reading List System. The Licence also covers photocopies made for teaching purposes (so a lecturer can provide a copy of a reading within the limits of the Licence to each student on their course). It also covers paper course packs. Since the digital component was added to the Licence in 2006 universities have been required to report every scan or digital copy used in teaching to the CLA. 85 universities now use a free tool provided by CLA called the Digital Content Store (DCS) to streamline their reporting. No reporting is required for paper to paper copying. Further details about the Licence can be found on the CLA website and in the User Guidelines.¹

2.2. Cost of the Licence to the sector

The current annual cost of the CLA Licence to the HE sector is over £15.5 million per annum², and primary subscriptions for journal and database access are costing the sector in excess of £192 million per year³. Gold open access article processing charges (APCs) are now an additional cost to the sector at a conservative estimate of £14 million per annum. UUK have estimated that administration of the CLA HE Licence costs institutions the same amount as the Licence itself, in terms of staffing costs⁴. Similarly, institutions have found administration of Gold APCs to be very costly⁵, and these costs are largely met from library budgets.

¹ <https://www.cla.co.uk/sites/default/files/HE-User-Guidelines.pdf>

² CLA. (2017) Annual Transparency Report 2016-17. Available from: <https://cla.co.uk/sites/default/files/ATR-2017.pdf>

³ This data comes from the SCONUL Return in 2013-14 which was the last year the total spend on electronic resources was a mandatory field. In 2016-17 77 of 168 UK institutions completed this field and the total spend was £142 million, so it is likely that in fact the spend on e-resources is now significantly higher.

⁴ The figure was included in the UUK submission to the IPO consultation on copyright as part of the Hargreaves Review.

⁵ Johnson, R., Pinfield, S., & Fosci, M. (2016). Business Process Costs of Implementing "Gold" and "Green" Open Access in Institutional and National Contexts. *Journal of the Association for Information Science and Technology*, 67(9), 2283–2295. <https://onlinelibrary.wiley.com/doi/full/10.1002/asi.23446>

The research aimed to enable institutions and libraries to make best use of limited content acquisition and copyright licensing budgets in light of increasing costs, by enabling library directors to:

- Understand the value of primary licences and their relationship with the CLA Licence (which covers secondary copying) and identify any examples of where the sector might be paying twice for the same content.
- Review the investment they are putting into resourcing scanning services and the administration associated with the CLA Licence.
- Review the cost savings and benefits that the introduction of the Digital Content Store (DCS) may have brought the sector, as claimed by CLA when it was introduced in 2016. (The DCS is now used by approximately 60 HEIs to manage the CLA Licence returns)
- Understand where libraries may be paying to scan content which is already available on open access, and why libraries feel unable to rely on openly accessible copies.
- Provide library directors with evidence that may give them the opportunity to negotiate better primary licences for electronic resources that cover common activities required in research, teaching and learning.

The research also aimed to improve the sector's understanding of the interaction between copyright licences and exceptions in higher education. It was thought this would strengthen the hand of universities when negotiating copyright licences to provide the greatest level of access to electronic resources in light of growing availability of content in digital format and also on open access. This evidence may be useful not just to the UUK/GuildHE CNAC to inform CLA Licence negotiations, but also to other bodies such as Jisc, SCONUL and RLUK to ensure the sector is getting value for money in licensing of electronic resources in a way that meets the evolving needs of the HE sector.

3. Aims and Objectives

The research was undertaken as four separate work packages which corresponded to four themes, all of which had associated research questions:

Theme 1 - Legal analysis: To clarify the legal landscape in which the CLA Licence and the activities of HE licensees operate. (Work Package 1)

- RQ1 What uses are being made of licensing solutions where exceptions such as Section 32 CDPA⁶ *Illustration for Instruction* might apply?
- RQ2 What interpretations are HE institutions making of UK law and does this have implications for negotiation of the CLA Licence?

Theme 2 - Use of the CLA Licence by higher education institutions: measuring the volume and nature of photocopying, scanning and provision of born digital copies. (Work Package 2)

- RQ3 What scanning patterns can be observed in the universities, including those with the most established scanning services? Is the number of scans still increasing? At what rate?
- RQ4 How much content is being re-used by multiple institutions / how much duplication of effort is being undertaken through scanning?

⁶ Copyright, Designs and Patents Act 1988

Theme 3 - Availability of digital content under licence: comparing the use of the CLA HE Licence with alternative available e-resources, including open access. (Work Package 3)

- RQ5 What type of content is being scanned (book chapters vs journal articles)? What titles are commonly being scanned from publishers that are not available in electronic format?
- RQ6 How much content scanned under the CLA Licence is also available through primary subscriptions? Do those subscriptions offer suitable re-use terms? What projections are available on the shift to e-books in the academic market, and their take-up in HE?
- RQ7 What percentage of scanned content is written by UK academics and could be on open access / is on open access? Are open access copies available under suitable re-use licences?
- RQ8 Why is content being scanned rather than purchased? Are cost and format an issue? Are there other issues such as institutional inertia or policy?

Theme 4 - International comparison: how the UK's position as defined above compare to what is happening elsewhere and how might that inform the position the CNAC should take?

- RQ9 How does the UK mix of primary and secondary licensing, bespoke permissions and statutory exceptions compare with other countries and what are the trends?

4. Methodology

4.1 Legal Analysis (Theme 1)

The legal analysis is based on a Master's dissertation⁷ conducted in 2018 which considered the ways in which UK universities have interpreted Section 32 of the Copyright Designs and Patents Act. Section 32 was updated in 2014 to provide a fair dealing defence for use of copyright works for the sole purpose of illustration for instruction. The dissertation involved a legal analysis of the educational copyright exceptions, consideration of institutional policies, and interviews with ten copyright specialists in five categories of UK university: ancient, civic, plate glass, post-92 and arts-based.

The interview data was analysed using grounded theory to build a model of the ways that institutions and individuals working within them interpret the law. This focused on three key themes of 'interpretation', 'practice' and 'responsibility'. This analysis enabled consideration of the effectiveness of the updated legal provisions, challenges for institutions in working within the current copyright regime and recommendations for improving copyright literacy within the higher education sector.

4.2 Use of CLA Licence and availability of licensed content (Themes 2 and 3)

4.2.1 Analysis of CLA data

The CLA supplied un-anonymised datasets for 2016-17 and 2017-18 which contained details of reported scanning, use of digital originals and photocopying volumes by licensees in the higher education sector. It should be noted that only one-third of licensees are required to provide a full report in any given year, with the remaining two-thirds only required to report previously unreported scans. This situation is complicated to an extent by customers using the CLA's Digital Content Store (DCS) which automatically reports all scans. This generates some uncertainty around

⁷ Morrison, C (2018) *Illustration for Instruction and the UK Higher Education Sector: Perceptions of risk and sources of authority*. Unpublished Master's dissertation. King's College London.

the representativeness of the dataset. The dataset of reported items is used by the CLA to derive a second dataset for the distribution of royalties to rightsholders. For the research, the distribution dataset was used to assess the volume of scanning over time (Theme 2). The dataset of reported items was used to look at the types of content scanned (Theme 3). This was supplemented with additional bibliographic data for a random stratified sample. Further details of the nature of this dataset are included in Appendix A

4.2.2 Interviews

The interviews used a case study methodology, using a purposeful sample of ten higher education institutions, to understand the decision-making processes that inform both the purchasing of printed and electronic resources to support teaching and the use of the CLA Licence.

Institutions were selected based on the overall spend on information provision and the use of the CLA Licence. The CLA dataset and the SCONUL Statistical Return⁸ was used to help select the cases. The sample included:

- Four institutions who reported high use of the CLA Licence and had a high spend overall on resource provision.
- Five institutions who reported low use of the CLA Licence and had a lower overall spend on resource provision
- One institution who reported high spend on resource provision and low use of the CLA Licence.

Data was collected by telephone and interviews and follow up correspondence by email to ensure the data collection exercise had been accurate.

A second data collection exercise took place at the National Acquisitions Group (NAG) forum in November 2018, with a larger group of institutions who were asked a subset of the interview questions to triangulate with the data collected in the case studies. During the workshop the delegates were asked a series of questions and notes were written up by a nominated participant on each table. Some of the question responses were also collected via a polling system used at the forum.

4.3 International comparison (Theme 4)

The countries were selected as part of the international comparison following a review of literature in the area of copyright exceptions and licensing, including relevant journal articles, legislation, and websites, as well as international research reports conducted by WIPO, Communia and IFLA which examined and compared various exceptions and/or licensing models in different jurisdictions. The literature and sources consulted appear in Appendix F.

Following the review of the literature, countries were selected for a variety of reasons: Some offered differing licensing models and/or exceptions compared to the UK; others had recently gone through (or were undergoing) copyright reform, and some had produced instructive case law in this area. Others were selected for pragmatic reasons – i.e. the team had made contact with copyright practitioners within those countries who could provide useful insights on how copyright works within educational licensing in their particular jurisdiction.

⁸ SCONUL (2019) SCONUL Statistical Return: Statement of Purpose. Available from: <https://www.sconul.ac.uk/page/sconul-statistical-return-statement-of-purpose>

2. Summary of Findings

5.1 Theme 1: Legal Analysis

5.1.1 Overview and legislative context

The Master's research is relevant to this study because the CLA Licence operates against the backdrop of the legislation. There have been no in-depth studies into the interpretation of the Copyright, Designs and Patents Act (CDPA) in UK universities since 2014, when the legislation was amended. The CLA Licence is closely linked to the educational provisions within the CDPA permitted acts. Prior to the 1988 Act there was less clarity regarding the legality of making copies in HE institutions leading to a number of legal challenges from publishers.⁹ However, the 1988 Act installed a regime of exception-backed licensing schemes in order to enable remuneration for, rather than the prohibition of, educational copying. This model was subsequently reconsidered by the Government following the Hargreaves Review of Intellectual Property and Growth in 2011. The law was reformed in 2014 following enactment of a number of statutory instruments which were intended to provide teachers, libraries and educational establishments with greater flexibility. Table 1¹⁰ shows a summary of the new exceptions which are most relevant to the provision of teaching materials in higher education institutions:

Table 1: Summary of post-Hargreaves copyright exceptions relevant to provision of teaching materials

Copyright Exception	Brief description	Limitation and caveats
Section 29: Research and private study	Allows individuals to make fair dealing copies, such as limited extracts of copyright works for <u>non-commercial</u> research or private study. <u>No contractual override.</u>	Subject to Fair Dealing. Cannot be used for sharing material on a VLE with students. Individuals must make their own copies. Cannot be used to circulate copies to students.
Section 30: Quotation (criticism and review)	Allows 'fair dealing' usage of quotations for any purposes including 'criticism and review'. <u>No contractual override.</u>	Subject to Fair Dealing. Works must have been made publicly available (i.e. this does not cover unpublished material).
Section 31A & 31B: Accessible copies for disabled users	Allows copying to provide equal access to copyright works for users with any type of physical or mental disability. On either an individual	Covers all types of copyright work. Doesn't address use of Digital Rights Management (DRM) technologies or

⁹ Piccioto, S (2002). Copyright Licensing: The Case of Higher Education Photocopying in the United Kingdom *European Intellectual Property Review* 24(9), 438-447 440

¹⁰ Table reproduced from Secker, J and Morrison C (2017) *Copyright and E-Learning* 2nd Edition (Facet) with amendments

	(S.31A) or institutional (S31.B) basis. <u>No contractual override.</u>	Technical Protection Measures (TPMs).
Section 32: Illustration for Instruction	Allows limited, <u>non-commercial</u> 'fair dealing' use of copyright material for the purposes of teaching. <u>No contractual override.</u>	Subject to Fair Dealing. Covers all copyright works including sound recordings, films and broadcasts.
Section 34: Performing or playing a work for educational purposes	Performing, playing or showing work in course of activities of educational establishment.	Members of the public cannot be admitted. Does not permit copying of the work.
Section 35: Recording of broadcasts	Allows recording of free-to-air broadcasts by or on behalf of educational establishments for non-commercial purposes. Only applies where no licensing scheme (i.e. ERA) available.	ERA Licensing scheme takes precedence. Non-commercial educational use. Allows off-premises access only via Secure Network.
Section 36: Educational copying of copyright works	Allows copying and use of copies of extracts from copyright works for multiple users. However, <u>only applies where no licensing scheme (i.e. CLA) available.</u>	Cannot exceed more than 5% of a work in a year per institution. CLA Licensing scheme takes precedence if the work is in CLA's licensed repertoire. Includes incorporated works (e.g. illustrations).

As can be seen from the table, Section 36 is the key provision which relates to the CLA Licence. This enables institutions to make copies of extracts from books and journals, but not if there is a licence available. This maintains the principle adopted in the 1988 Act of exception-backed licensing schemes for educational copying. However, Section 36 also includes a provision which prevents a licence (such as the CLA HE Licence) from limiting the amount that might be copied to less than 5%.

Although the purpose of the Master's research was to understand the nature of Section 32 – illustration for instruction – a number of interviewees mentioned the relationship between perceptions of all educational exceptions and the existence of the CLA HE Licence. Interviewees also discussed the relationship between exceptions and other licences, such as primary e-resource licences. The following Section considers the research questions in turn.

5.1.2 Interpretations of copyright exceptions

The interviewees were all representatives of institutions which held a CLA Licence. Many interviewees described the way in which the CLA Licence was embedded in institutional workflows and a number spoke about the importance given to ensuring compliance with it. Some interviewees felt very strongly that the existence of Section 36 and the CLA Licence meant that it would never be fair to rely on Section 32 to provide material to students for self-directed reading. However, other interviewees made the point that activities now permitted under Section 32 could well overlap with activities permitted under the Licence.

The Government however stated in its response to the consultation on copyright reform that the amended Section 32 would not apply to ‘classroom reprography’ because such uses could not be deemed fair in light of the licences available.¹¹ Similarly, the availability of Section 32 was not seen by interviewees as negating the need for primary e-resource licences. However, some did mention the fact that this Section could not be overridden by contract and therefore the defence could apply even if a contradictory licence existed.

In summary, the updated Section 32 provides institutions with greater flexibility to use copyright material whether under licence or not. However, there is no evidence that the new provisions have led to a perception that available licences are no longer required.

When considering use of copyright content for teaching, Section 32 sits amongst a ‘thicket’ of other potentially applicable exceptions, which complicates the relationship between licences and exceptions. A number of interviewees described the process of considering each available exception in turn and applying them to a given scenario. Since 2014, institutions felt that they had been given greater flexibility within the law and were taking advantage of it where they could.

The key concept which was explored at length in the dissertation was the extent to which copying of educational content could be deemed as ‘fair’. Fair dealing is a concept in UK law, used in the legislation but not defined by it. It is therefore necessary to look at case law in order to build up a picture of which activities might be fair. The findings indicated that determining fairness was strongly influenced by the individual context but not captured by a formal process. It was also described as something that could be “murky” and “nebulous”.

Most interviewees focussed on the quantity or proportion of a work which was being copied rather than other factors which the courts have considered such as the use made of the work and whether or not the use could have been achieved by different means.

The majority of interviewees felt it was fair to incorporate images and quotations from books into PowerPoint slides which would then be made available to students on a VLE without requiring a licence. However, when providing extracts from published books and journals, higher education institutions do not feel that statutory fair dealing exceptions extend to the systematic copying of those extracts as standalone teaching materials. This supports the current CLA Licence provision where reporting of disembedded images from books is not required.

5.2 Theme 2 – Use of the CLA Licence by Higher Education Institutions

In 2016 it was agreed that the CLA dataset would be supplied to CNAC annually under a Data Sharing Protocol to assist in licence negotiations and to help understand the use of the licence by the HE

¹¹ Intellectual Property Office (2012) *Modernising Copyright: A modern, robust and flexible framework*, 41

sector. The data has been analysed in order to establish any broad trends, to understand the nature of the content being scanned and varying levels of use of the Licence by different institutions.

5.2.1 High level comparison of total of scanning, copying of digital originals and photocopying

Table 2 shows the overall balance between scanning, digital copying and photocopying as supplied to the CLA by higher education in the years 2016-17 and 2017-18. The data shows that scanning from print has the greatest volume and makes up 92.5% of all copies according to the distribution data. Digital copying (where digital to digital copies are used in teaching) and photocopies are a far lower proportion of the total. Meanwhile Table 3 shows that there has been a 4% decline in scanning from print since 2016-2017, a 23% decline in digital copying and a 14% rise in photocopying. However overall volume of copying has declined by 4%.

Table 2: Volume of scanning, digital copying and photocopying in higher education 2016-2018

	2016-17	Percentage	2017-18	Percentage
Total scanning distributed	423,510	92.5%	408678	92.5%
Total digital copying distributed	19,393	4.0%	14958	3.5%
Total photocopying distributed	15,549	3.5%	17750	4.0%
Overall volume of copying	458,452		441386	

Table 3: High level comparison of total of scanning, digital originals and photocopying

	2016-17	2017-18	Change	Percentage
Total scanning distributed	423,510	408,678	-14832	-4%
Total digital copying distributed	19,393	14,958	-4435	-23%
Total photocopying distributed	15,549	17,750	2201	14%
Overall volume of copying	458,452	441,386	-17066	-4%

The data presented in Table 4 indicates that scanning decreased between 2016-17 by 4%. Similarly, if we compare the mean and median number of scans per institution we see that these decreased respectively by 12% and 17%. This suggests that across the sector as a whole scanning may be starting to decline.

Table 4: Distribution data average and median number of scans

	2016-17	2017-18	Percentage change
Total scanning distribution	423,510	408678	-4%
Mean number of scans	1786.96	1577.91	-12%
Median number of scans	564	468	-17%

5.2.2 The nature of scanning and use of digital originals

From the sample data that was examined as part of theme 3 (which was a subset of the total number of scans where it was possible to verify the ISN data) the split between journal and book titles that were copied by universities was established. This calculation was based on the 2016-2017 reported data. However, it was interesting to note that of the 169,900 scanning records, the vast majority 148,249 (87%) were books and only a minority, 21,651 (13%) were journals.

However, of the 13,103 digital copying records, the same proportions were observed but in reverse. Namely, 11,238 were journals (86%) and 1865 (14%) were books. Taken together, 18% of the digital content made available during 2016-17 was from journals and 82% from books. What this suggests is that the Licence is primarily used to facilitate access to books, rather than journal articles, which are typically available through primary subscriptions.

5.2.3 The source of the scanning (from stock, from CFP copy, under sharing provision)

Table 5 shows the source of the copy used for scanning using the distribution data. Institutions are permitted under the Licence to scan from the following sources: From a hardcopy original they own, from a digital original they own / have licensed access to, from a copyright-fee paid (CFP) copy (typically ordered from the British Library under the E-HESS scheme) and from another HEI under a sharing provision. Occasionally the source of the copy is recorded as unknown.

Table 5: Source of scanning

Scanning source	Distribution data			
	2016-17		2017-18	
From another HEI under sharing provision	2452	1%	8128	2%
From copyright fee paid copy	31163	7%	28610	7%
From Digital Original Owned By Institution	10593	3%	478	0.1%
From Hardcopy Original Owned By Institution	370033	87%	370176	90.6%
Not Known	9269	2%	1286	0.3%
Grand Total	423510		408678	

Using the 2016-17 and 2017-18 data allows a comparison between the source of the scanned material. As the table shows, the vast majority of HEIs are scanning extracts from a hardcopy original that they hold in their collection. In 2016-17 this was 87% and in 2017-18 this was 91% of all scans in the reported data set.

5.2.4 Scanning patterns in universities

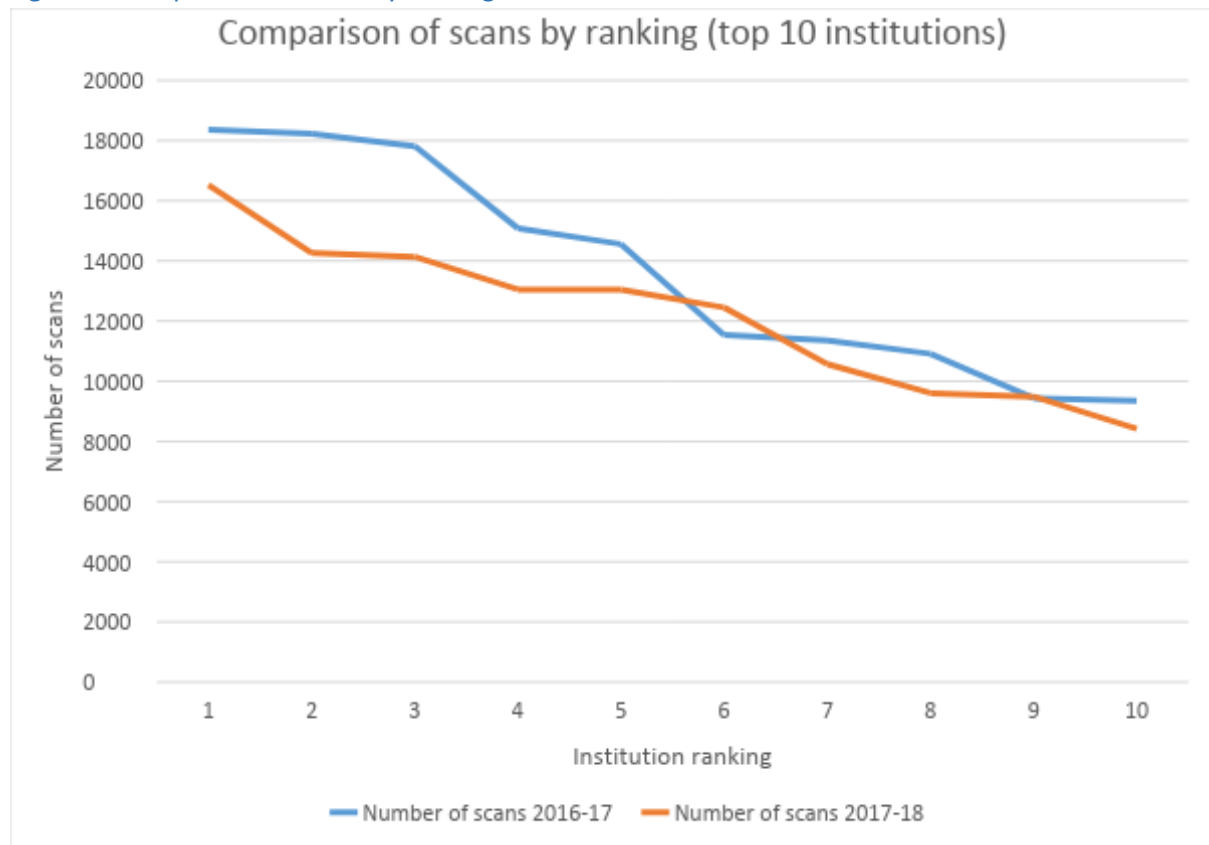
The third research question sought to establish if the number of scans from print originals at the top end of the spectrum was still increasing. This proved to be challenging to investigate, given the changes in data reporting, which may mean that not all institutions were reporting full returns in a given year. Therefore, using the CLA distribution dataset seemed to provide a more accurate figure to enable institutions to be compared year on year. Table 6 presents the top 10 institutions in 2016-17 according to the number of scans made – they have been anonymised. The 2016-17 data was then compared to the scans those 10 institutions recorded in 2017-2018.

According to the data presented in Table 6 and Figure 1, eight out of the top ten institutions show a decline in scanning between the years 2016-17 and 2017-18. In two institutions this decline equated to over 40% fewer scans.

Table 6: Top ten institutional scanning 2016-17 compared to 2017-18 (distribution data)

Institution Ranking (2016-17)	2016-17	2017-18	Percentage change	FTEs (2016-17)	Scan per FTE (2016-17)
1	18359	16522	-10%	26286	0.7
2	18223	14136	-22%	9135	2.0
3	17816	10575	-41%	19047	0.9
4	15085	12452	-17%	13712	1.1
5	14560	13051	-10%	23557	0.6
6	11538	13039	13%	31416	0.4
7	11350	6319	-44%	22115	0.5
8	10914	6938	-36%	20349	0.5
9	9435	9608	2%	14997	0.6
10	9357	5851	-37%	7514	1.2
Total	136637	108491	-21%		

Figure 1: Comparison of scans by ranking 2016-2018

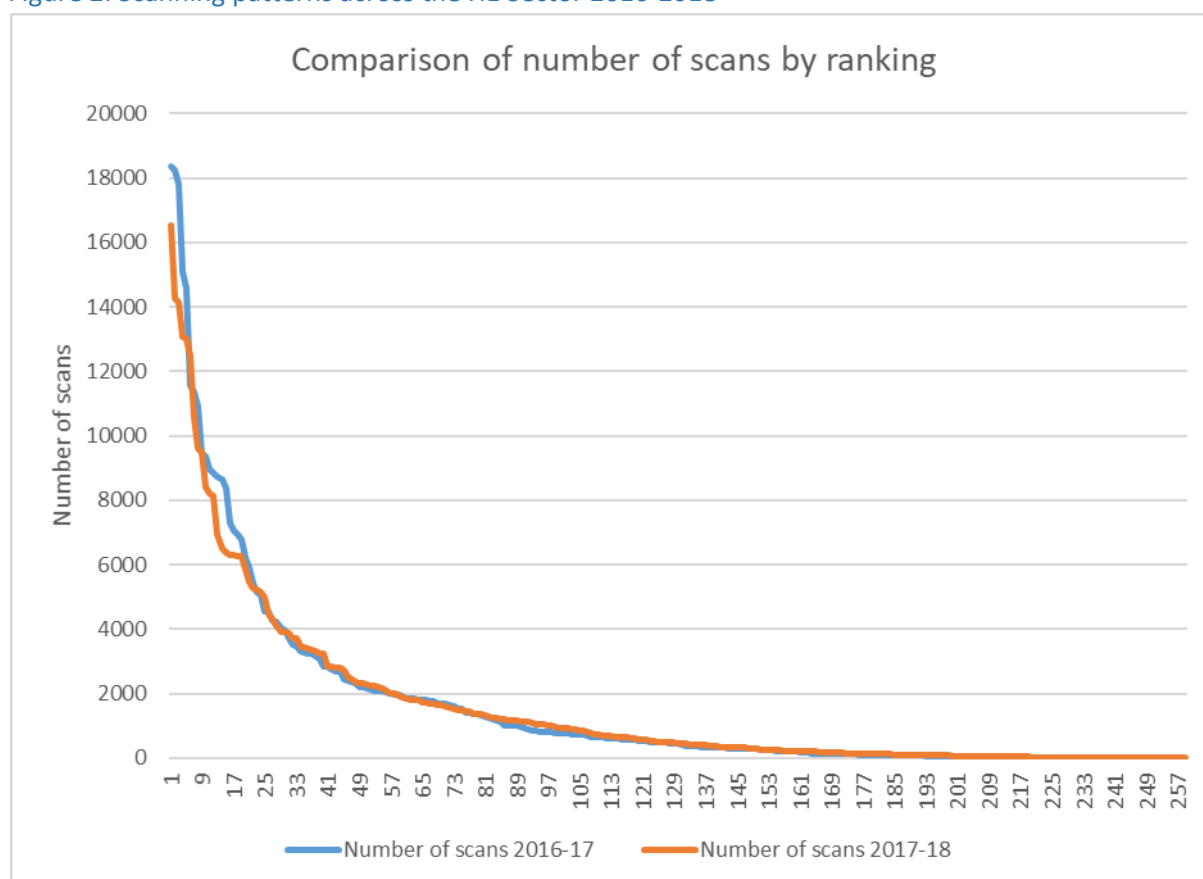


The total number of scans undertaken in the top 10 institutions in 2016/17 was 136,637. This constitutes 32% of the total scans across the entire sector.

Analysis on the top 20 highest scanning institution in 2016/17 showed that they carried out 51% of all scanning. These 20 institutions accounted for just 22% of all reported FTES. See Appendix B for further information.

Further analysis of the trends across the sector reflect the high number of scans by a small number of institutions and a 'long tail' of institutions making fairly modest or limited use of the Licence. This data is presented in Figure 2.

Figure 2: Scanning patterns across the HE Sector 2016-2018



5.4.5 Re-use of content across the sector

The research used two different measures to examine if content was being re-used by different institutions under the CLA Licence: firstly, data on the source of scanning, and secondly, the proportion of duplicate unique identifiers (ISBN and ISSNs) appearing in the data.

CLA Licence data on scanning source

The Licence has provision for scans to be shared by institutions, provided they both purchased an original. This saves time and effort of scanning the same items, however until the creation of the Digital Content Store (DCS) by CLA there was no practical way of institutions discovering which institutions might have scanned the same content. The CLA have always had a clause in the Licence that prevents institutions creating a searchable catalogue of scanned readings. Therefore while possible, the ability to search for an extract in the DCS is relatively limited.

The research investigated whether the sharing provision, facilitated by the introduction of the DCS has any significant impact on the patterns of use. Table 5 shows scanning from another HEI under the sharing provision is a small percentage of the overall number of scans at 2% in 2017-18. However, a closer examination of this data suggests that there are a number of key titles (see section 5.3.3) scanned by a large number of universities and that there could be some efficiency and savings for the sector if institutions were able to make better use of the sharing provision under the Licence, while acknowledging this is currently only possible for institutions using the DCS.

Opportunities for sharing scanned content

Of the 148,249 print ISBNs, 904 print ISBNs (0.6%) were scanned 10 or more times. In addition to these, the top 5 eISBNs were re-used 9 or more times. In total this came to 909 ISBNs. Of the 21,651 print ISSNs, 439 (2%) had been scanned 10 or more times. Unfortunately, DOIs were not provided so it was not possible to ascertain duplicate journal article titles. The sample data suggests that the reason for the sharing provision being relatively under-used in the Licence is likely to be because there is relatively minimal overlap in the titles that different institutions wish to copy.

5.3 Theme 3 – Availability of digital content under licence

Research relating to theme 3 used a mixed methodology of CLA dataset analysis, comparison with bibliographic data sources and collection of qualitative data through ten institutional case studies and a workshop.

The CLA reported dataset, rather than distribution dataset, was used in this instance to derive a sample of records where the ISN data was available and consequently the bibliographic details of the items could be established. The reasons for this decision are explained in Appendix A.

5.3.1 Type of content used under the CLA Licence

As noted in 5.2.2, of the 169,900 records in the scanning sample, 148,249 (87%) were books and 21,651 (13%) were journals. However, of the 13,103 digital copying records, the same proportions were observed but in reverse. Namely, 11,238 were journals (86%) and 1865 (14%) were books. Taken together, 18% of the digital content made available during 2016-17 was from journals and 82% from books.

Of course, the volume of journal items copied under the CLA HE Licence should not necessarily be seen as a reflection of the low levels of journal content being used to support HE courses of study. It is likely that higher proportions of journal content are used but under the terms of the original e-journal licence through linking to primary licensed resources at article level, a hypothesis tested through interviews with HE institutions and reported in Section 5.3.7

5.3.2 Availability of content in electronic format

Figures 3 and 4 show the distribution of ISSNs and ISBNs by frequency of occurrence on the scanning reported spreadsheet. As might be expected they follow a heavily right-skewed distribution with a few titles getting a high volume of usage and a long tail of items scanned only once. The median number of re-uses of both ISBNs and ISSNs was two.

Figure 3. ISBNs by frequency of occurrence on the scanning reported spreadsheet

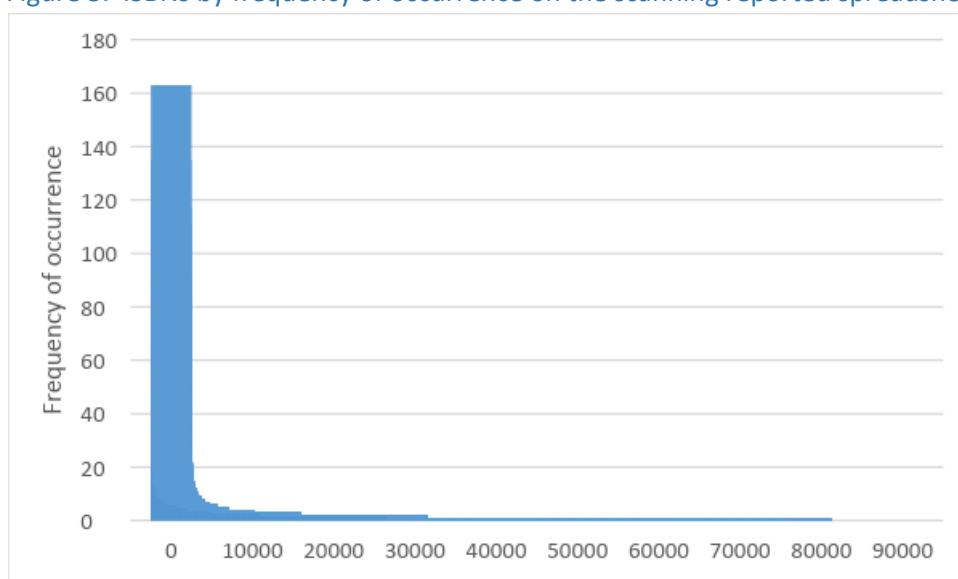
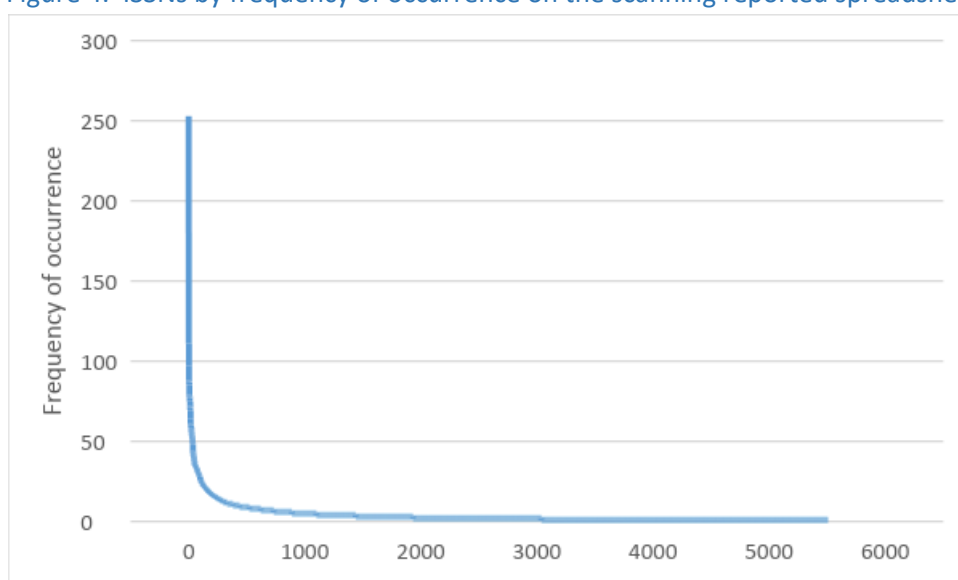


Figure 4. ISSNs by frequency of occurrence on the scanning reported spreadsheet



5.3.3 Most frequently scanned books

Table 7 lists the top ten books by volume of scanning along with an indication as to whether the author was employed by a HEI either in the UK or overseas at the time of publication. It can be seen that the majority were written in the last 20 years, predominantly by academics authors and many are handbooks, anthologies and core texts.

Table 7: Top 10 ISBNs by volume of scanning

Count of ISN	Title	Publisher	Year	Author	Author nationality
163	Music Materials for Primary Schools: The Blue Pack 4th ed	Leicestershire Music Publications	2001	Anon	Unknown

135	Management Accounting for Business	Cengage	2016	Colin Drury	UK
117	The Oxford Handbook of Criminology 5th ed	OUP	2012	Mike Maguire, Rod Morgan, Robert Reiner (Editors)	UK
111	Orientalism	Penguin	2003	Edward W. Said	Non-UK
94	Art in Theory 1900-2000: An Anthology of Changing Ideas	Wiley Blackwell	2002	Charles Harrison, Paul Wood (Editors)	UK
89	Exploring Strategy Text & Cases	Pearson	2014	Gerry Johnson, et al	UK
84	The Study Skills Handbook 4th ed	Palgrave	2014	Stella Cottrell	UK
81	Textbook of Veterinary Anatomy 4th ed	Saunders	2009	Keith M Dyce	UK
78	Critical Thinking Skills: Developing Effective Analysis and Argument 2nd ed	Palgrave	2011	Stella Cottrell	UK
77	Discipline and Punish: The Birth of the Prison	Penguin	1991	Michel Foucault, Alan Sheridan (Translator)	UK and non-UK (translation)

To try to understand whether there were any patterns amongst the most frequently used books and journals in courses of study, some analysis was performed on the top 35 ISBNs and ISSNs.

The top 35 ISBNs only represent 33 titles as two were listed twice by virtue of being different editions (with different ISBNs) of the same title. The top 35 ISBNs were, between them, re-used on 2,100 courses of study and published by twenty different publishers. Of the 20 publishers, seven were listed more than once and these are illustrated in figure 5 below.

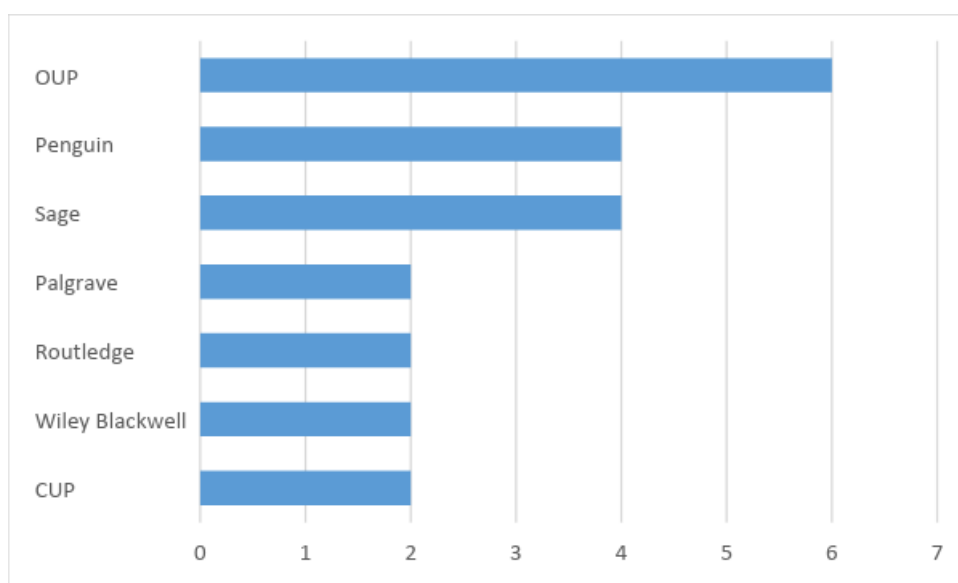


Figure 5. Most frequently occurring publishers of top 35 most re-used ISBNs

Of the 35 titles, 32 were written by an academic (employed by a university) (91%). Twenty-one (60%) were UK academics. This is interesting in light of the proposed requirement for all monographs being submitted to the next Research Excellence Framework to be openly available¹². It also suggests that open textbooks might provide a valuable and cost effective route to sourcing content for teaching purposes if the funding and rewards were explored with UK academic authors.

5.3.4 Digital availability of most frequently scanned ISBNs (books)

To ascertain the availability of alternative digital editions of ISBNs scanned under the CLA Licence, the ProQuest ebook platform was searched for electronic copies of the 904 ISBNs that had been scanned ten or more times by HEIs. It is recognised that there are a range of ebook suppliers available to HE libraries, and that there will be both overlap and differences amongst their levels of coverage. Where there is overlap, they may offer the same title under different access models and costs¹³. Analysis by Jisc Collections revealed that ProQuest was the largest supplier of ebook titles to UK HE libraries by spend¹⁴. ProQuest was therefore chosen as the supplier by which to test alternative electronic availability of the books scanned under the CLA Licence, whilst recognising that other titles may have been available from other suppliers. Of the 904, 902 were recognised by the ProQuest database, and 94 (10%) were identified as ISBNs with an electronic alternative. This chimes with other estimates that only around 10% of current academic titles are available as ebooks¹⁵.

¹² Research England. [ND] "Open access research". <https://re.ukri.org/research/open-access-research/>

¹³ Giblin, R. (2018). Available...at what cost? Investigating international library e-lending ecosystems'. Retrieved from <http://elendingproject.org/>

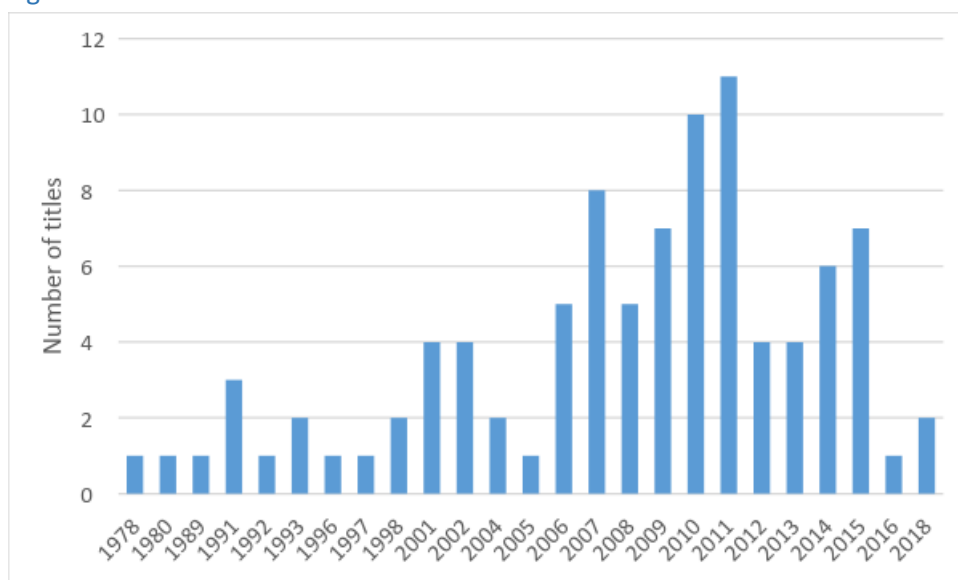
¹⁴ Under the Southern Universities Purchasing Consortium: <https://www.supc.ac.uk/>

¹⁵ Fisher, Richard. (2017) **Getting Books to Readers: Why is the Supply Chain so Complex?** Presentation. Researcher to Reader Conference. London. 20-21 February 2017

5.3.4.i Description of available ebooks

The 94 titles were published by 32 different publishers, the top three of which were Palgrave Macmillan (31 titles), Routledge (14) and Sage (5). The range of publication dates is displayed in figure 6. It can be seen that the modal publication date was 2011. The median publication date was 2008-9.

Figure 6. Publication dates of available ebooks



5.3.4.ii Access models of available ebooks

Ebook titles in the ProQuest database are available under four different purchasing and access models. The following descriptions of the different models are adapted from the ProQuest Help File.

- **Non-Linear (NL) access model**

Under this model, titles can be lent to any number of patrons concurrently. The number of days used for each loan instance is subtracted from the total number of annual loan days set for the title - usually 325. For example, if four patrons each trigger a ten-day loan for the same title, 40 days are deducted from the title's 325 loan days. The combined number of loan days cannot exceed the annual loan days in a year. Loan days renew on the anniversary of purchase. The library is able to control patron access to titles with expired loan days.

- **1-user (1U) access model**

One person can access the ebook at a time. Librarians are provided with options to extend or disable access to owned 1-user titles that see high usage or can disable full book download for all 1-user titles, reserving them for online use to provide access to more patrons. Chapter Download is always available, even if full Download has been disabled by the library.

- **3-user (3U) access model**

The 3-user access model restricts access to three concurrent users. A user is a patron accessing the title in the Online Reader or with an active download of the title. Access to 3-user titles can be managed with options similar to those under the 1-user model. If a library owns multiple copies of a 3-user title, the number of concurrent users is multiplied accordingly. For example, if the library owns two copies of a 3-user title, six patrons can access the title concurrently.

- **Unlimited (UA) access model**

This access model is for titles that are available on an unlimited access basis. Any number of patrons can borrow Unlimited titles concurrently for any number of days per year, up to 365 days. The pricing of this model reflects the unlimited access of the model.

Figure 7 shows the proportion of titles available under the various models.

Figure 7. Proportion of most frequently requested ebook titles available under different pricing models.

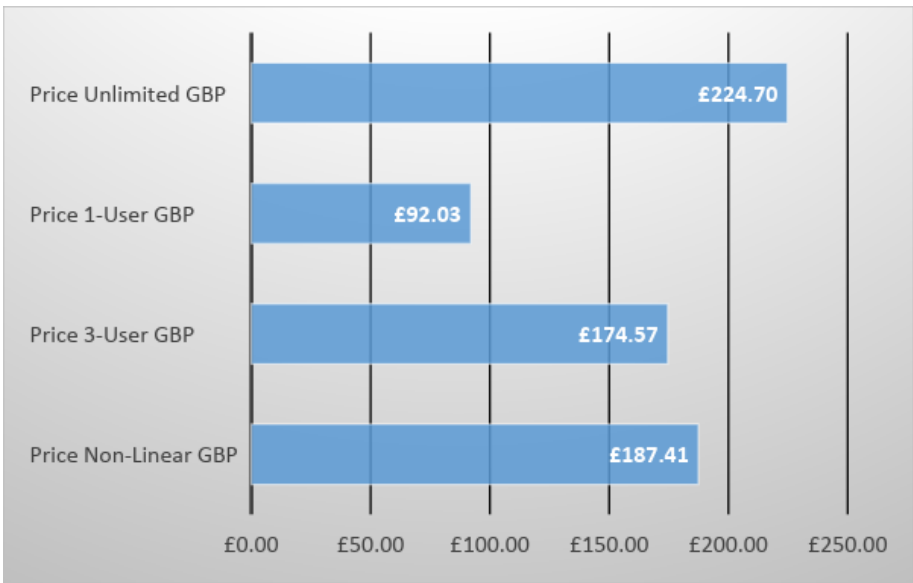


It can be seen that all the titles were available on a 1-user model, and 57% on a 3-user model. Only half were available on the slightly more liberal non-linear model, and 43% on the model that might be considered the most helpful to libraries seeking to provide concurrent access to large volumes of students on a particular course of study, the price unlimited model.

5.3.4.iii Cost of available ebooks

The different ebook models were subject to different prices. Figure 8 shows the mean price of a book under the various access models.

Figure 8. Mean price of ebooks (most frequently requested) under various different access models.



It can be seen that the mean price increased in relation to the permissiveness of the access model. The most permissive unlimited model (£224.70) was almost two-and-a-half times more expensive than the most restrictive 1-user model (£92.03).

5.3.4.iv Most frequently requested ISSNs (serials)

Table 8 lists the top ten most frequently occurring ISSNs in the scanning reported spreadsheet along with the online subscription cost as given in the Ulrichs Global Serials Directory¹⁶. The journal's self-archiving policy, as indicated by the Sherpa RoMEO database is also given. A journal allowing its authors to self-archive their pre-print immediately on publication is classified as a 'Yellow' journal; those allowing self-archiving of their post-print is classified 'Blue'; both is 'Green' and those allowing neither is 'White'.

Table 8. Top ten ISSNs by volume of scanning

Count of ISSN	Title	Publisher	Online annual subscription fee (to UK institutions) ¹⁷	Sherpa ROME0 (as at August 2018)
253	Nursing Standard	RCNI	GBP827.84	Blue
111	Nursing Times	Metropolis Intl	GBP14	White
97	Lloyd's Maritime and Commercial Law Quarterly	Informa	USD1617	White
88	Nature	Nature Publishing	GBP3518	Yellow
87	History	Wiley	GBP613	Yellow
85	Sight & Sound	BFI	GBP45	Ungraded
79	The Law Quarterly Review	Sweet & Maxwell	GBP474	White
78	Human Systems	Leeds Family Therapy and Research Centre	Unknown	Ungraded
78	British Dental Journal	Nature Publishing	GBP1258	Yellow
77	Proceedings of the Prehistoric Society	CUP	GBP125	Green

It is interesting to note the range of prices to these journals (£14 through to £3,518) and the fact that half of them are either ungraded or RoMEO White according to the SHERPA/RoMEO database of publisher open access policies¹⁸. This data indicates that half of the top ten ISSNs are unavailable as open access content. Of course, without knowing the actual items copied from these ISSNs it is impossible to know whether there was an online version of the journal at the time the item was published, what the subscription fee would have been and what the publisher's self-archiving policy

¹⁶ Ulrichsweb Global Serials Directory. <http://ulrichsweb.serialssolutions.com/login>

¹⁷ The price is from Ulrichs and the fee quoted in 2018. The reality is that institutions may not be paying this amount if they negotiate the title via a deal with a publisher or aggregator.

¹⁸ SHERPA/RoMEO Database of publisher open access policies. <http://www.sherpa.ac.uk/romeo/search.php>

would have been at that time. These issues are explored further using identifiable journal articles in **Section 5.3.5**.

Journal articles from the top 35 ISSN titles were between them made available on 2,545 courses of study. The 35 journal titles were published by 26 publishers, six of which published more than one top 35 title. These are illustrated in Figure 9 below.

Figure 9 Most frequently occurring publishers of top 35 most re-used ISSN titles

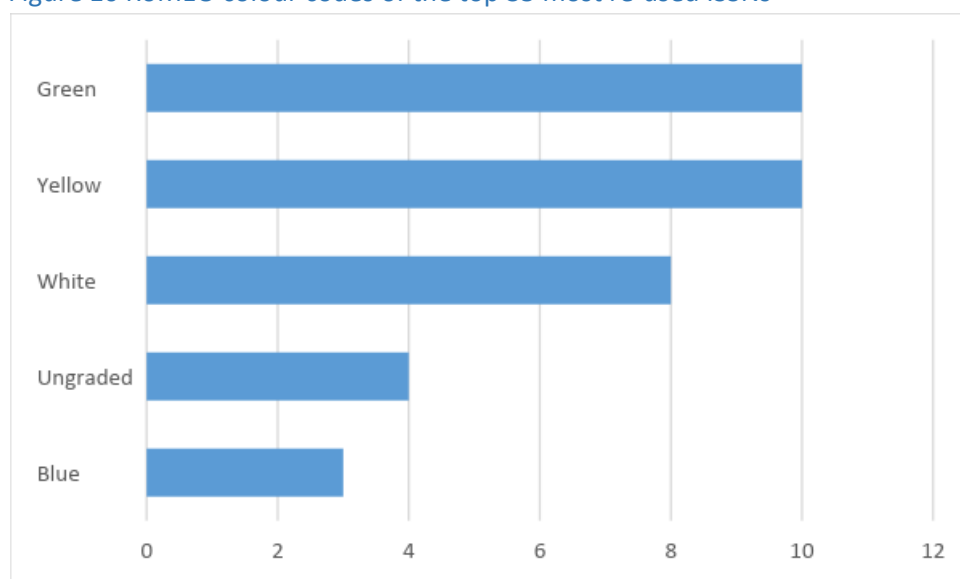


It is interesting to observe that four publishers (Wiley-Blackwell, Routledge, Sage and Oxford University Press) appear in the top seven of both the ISBN list (Figure 5) and ISSN list (Figure 9). Of particular note in the ISSN list was the presence of the Royal College of Nursing's publishing arm, the RCNi. It was notable how frequently nursing titles appeared in the list (six of the 35 titles were nursing titles and it likely that other titles supported nursing courses also).

5.3.4.v Digital availability of most frequently scanned ISSN titles

In every case, bar one, an electronic version of the top 35 journal titles was currently available, however, this would not always have been the case historically. Thus, where an older journal article was required (see below for more information on the age range of the re-used journal articles) it would always be necessary to scan from a print original. The cost of current electronic subscriptions to the titles ranged from £40 (Sight & Sound) through to £3518 (Science). Of the six titles with annual subscriptions greater than £1000, four were US titles. Of the six nursing titles, three only offered subscriptions to individuals which may explain why institutions had to rely on scanning under the CLA Licence provisions in order to make e-versions available to cohorts of students.

Figure 10 RoMEO colour codes of the top 35 most re-used ISSN



Of course, if the authors had made copies of their papers available on open access under suitable licensing conditions, there would not be a need to scan the papers under the CLA Licence. To understand the current self-archiving (Green Open Access) policies of the most re-used journal titles, their RoMEO colour codes were checked on the SHERPA-RoMEO database.¹⁹ Figure 10 illustrates the findings. Of course, many of the scanned journal articles would have been written prior to the advent of open access, and publisher policies may not apply retrospectively. However, it was interesting to observe that 23 of the 35 (66%) currently allowed self-archiving in some form, even though in ten cases (28%) only self-archiving of the preprint was permitted. This would suggest that in many cases it may have been, or still be, possible to make content required for teaching available on open access. Interestingly, the Open Access Button service (described below) prompts authors to post requested content online subject to publisher policies. It is not clear what their success rates are but it may well be worth universities attempting a request. Returning to the six nursing titles, it was notable that four of the six had either a white or ungraded self-archiving policy.

5.3.5 Availability of content through primary subscriptions

To form a better assessment of the general availability of items scanned under the CLA Licence, a random stratified sample was taken. To achieve a confidence level of 95% at a confidence level of ± 5 , a sample of 250 journals and 378 books were needed from the scanning reported sheet and 130 journals and 5 books were needed from the digital reported spreadsheet (see Table 9). These were identified using the RAND function in Excel.

	Books	Journals	Total
Print to digital (scanned)	148,249 (378)	21,651 (250)	169,900
Digital to digital (digitally copied)	1,865 (5)	11,238 (130)	13,103
Total	150,114 (383)	32,889 (380)	183,003

¹⁹ Sherpa Romeo; Publisher copyright policies & self-archiving. Available at: <http://www.sherpa.ac.uk/romeo/index.php>

Table 9. Identifiable ISNs (required sample size using book and journal items as separate populations)

Unfortunately, only nineteen of the 59 institutions (32%) provided author information in their submission to the CLA, meaning that 17,034 of the 21,651 scanning reported records (78%), and 7,650 of the 11,238 digital reported records (68%) with an associated ISSN did not contain any author information. Those records without author information only had journal name and page numbers which was not enough to locate the full-text and ascertain its availability. The sample therefore had to be taken from the 4,617 Scanning Reported records and 3,588 Digital Reported records, containing author information. This is clearly something of a limitation of the research and it is worth exploring with institutions how onerous it might be to provide full bibliographic data to the UUK CNAC community to enable continued monitoring.

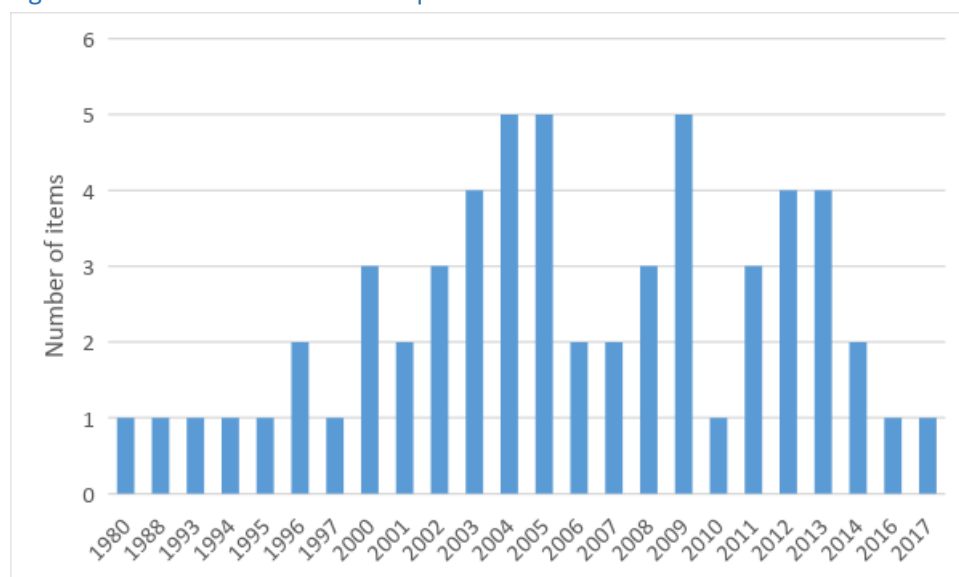
5.3.5.i Availability of digital alternatives for books (eBooks)

Of the 383 ISBNs in the sample (see Table 9), 378 were scanned from print and five were digital copies. Of the 378 print ISBNs, 58 (15%) were available as ebooks according to the ProQuest database. Only two of the five eISBNs were available on the ProQuest database. One of these was a 2008 item from Palgrave Macmillan available on a 1-user licence only. The other was a 2014 item from Pluto Press available on all four access models. As the digital sample was so small, for the purposes of this study the print ISBNs were the focus of the analysis.

5.3.5.ii Description of available ebooks

Figure 11 displays the range of publication dates of the ISBNs available as ebooks. It can be seen that the range is similar to that found amongst the most frequently requested books, i.e., from around 1980 to the present day. However, the median date of this random sample is slightly earlier at 2005. The top three publishers of the available titles were Routledge (17), Taylor & Francis (4) and Palgrave Macmillan (3).

Figure 11. Publication dates of requested ISBNs



5.3.5.iii Access models of available ebooks

Figure 12 shows the proportion of ebooks available under the different access models. It is immediately apparent that more of these titles are available under a wider range of models than the most frequently requested items. However, the ranking of availability under the different models

was the same with all titles available under the most restrictive 1-user licence, and the fewest titles (78%) available under the unlimited access model.

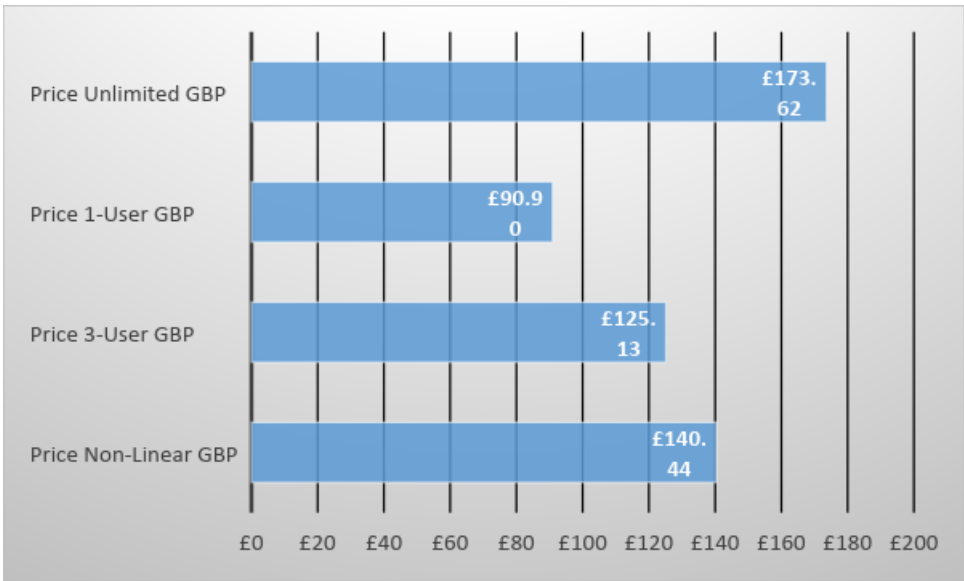
Figure 12. Proportion of sample ebook titles available under different pricing models.



5.3.5.iv Cost of available ebooks

The different ebook models were subject to different prices. Figure 13 shows the mean price of a book under the various access models.

Figure 13 Mean price of sample ebooks under various different access models.



It can once again be seen that the mean price of an ebook varied according to the restrictiveness of the access model. The mean price of a book under the unlimited access model (£173.62) was 1.9 times higher than a book under a 1-user licence.

5.3.5.v Availability of digital alternatives for journal articles

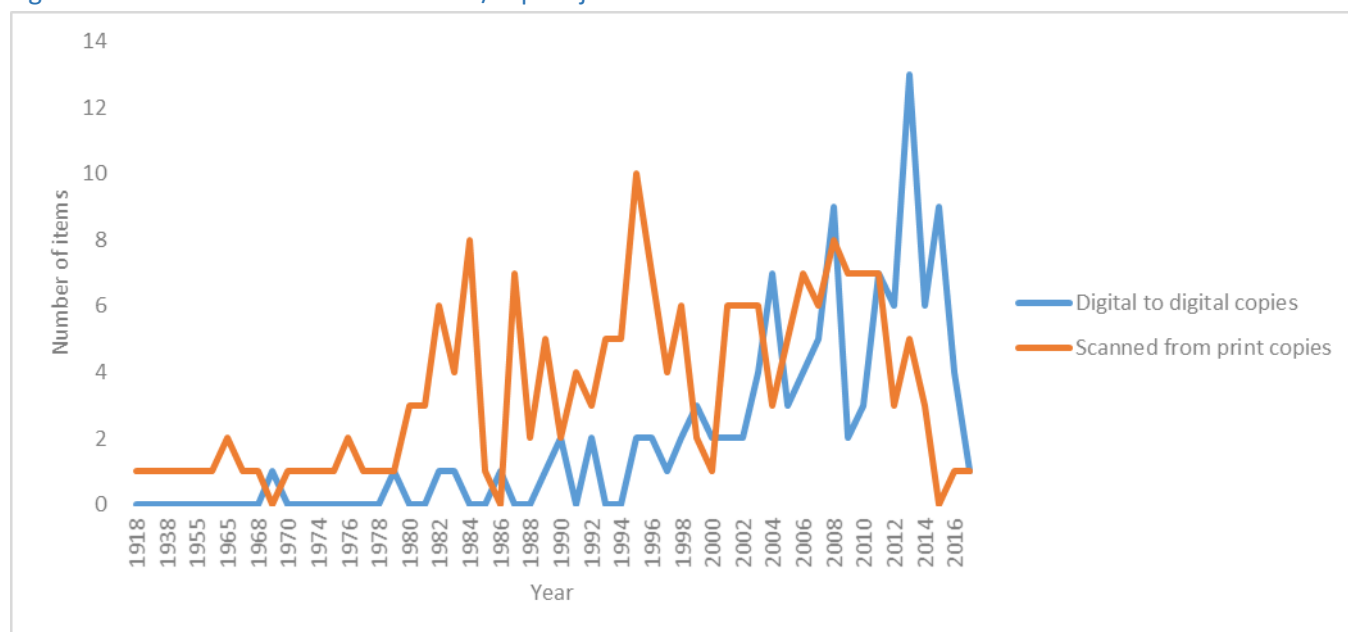
As outlined in Table 9, a sample of 250 scanned and 130 digital journal items were selected for analysis. Of the 250 scanned items, bibliographic data could only be ascertained for 196 (78%) of them based on the author, journal, and page numbers provided. For a further eight of the scanned items, only the bibliographic reference could be found and no other availability data, leaving 188

usable records. Of the 130 digital items, bibliographic data was found for 108 (83%) of them. This reduced the confidence interval of our data from +/-5 to +/-6 at the 95% confidence level.

5.3.5.vi Description of scanned journal article sample

The publication dates of digitally copied items ranged from 1969-2017 with the average (mean) year of an item from the digital sample being 2006. By contrast, the publication dates of scanned items ranged from 1933-2016, with the mean age being 1995. Figure 14 provides a graphic representation of the age of material either copied from a digital original or scanned from a print original.

Figure 14. Publication dates of scanned/copied journal articles

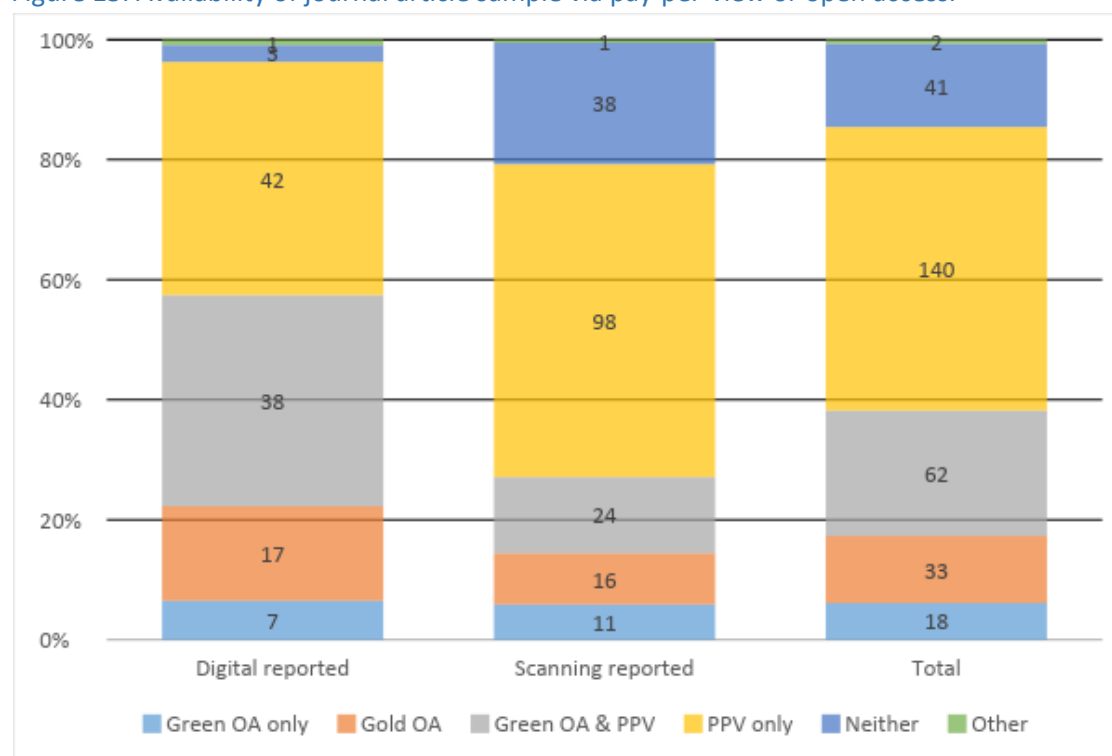


5.3.5.vii Availability of journal items through alternative means (pay-per-view or open access)

To try and ascertain the digital availability of the sample, searches were made to identify either a pay-per-view or open access version of the article. It was decided not to seek out journal subscription availability and cost because it was unlikely that a university would take out a subscription simply to gain access to one journal article.

Of the 296 journal items (188 scanned and 108 digital), 140 (47%) were available on pay per view only and 41 (14%) were not apparently available online at all (see figure 15). The remaining 113 (38%) were available on open access in some form, including 62 (21%) which were available both on pay-per-view and some form of green open access. The 'green' open access copies could have been available either legally or illegally and are discussed further below. Eleven per cent (33 items) were available on Gold open access. Thus, it would appear that the majority of journal material being copied under the Licence was also available in some other electronic form, which would suggest that the Licence is being used not due to poor availability, but either through convenience, cost or usability.

Figure 15. Availability of journal article sample via pay-per-view or open access.



5.3.5.viii Cost of pay per view

Of the 205 items available on a pay-per-view basis, fees were easily accessible (i.e. without the need to log in or provide complex re-use information) for 182 of them (89%). The fees ranged from the negligible GBP4 through to a more considerable GBP45. The majority cost around GDP30. This data would suggest that it is not the cost of the content that prevents a library from utilising pay-per-view copies, but the licences associated with them. This is because typically pay-per-view licenses are not used to acquire content needed for teaching purposes, which require multiple use access. This issue was explored further in the case studies and reported in Section 5.3.7.

5.3.5.ix Licence information on pay-per-view items

Of the 205 pay-per-view items, only 124 had re-use licence information attached (61%). Of this 124, 97 (77%) were published by just five publishers as listed in Table 10.

Table 10. Top publishers of pay-per-view articles offering clear re-use information

Publisher	Count of Publisher
Wiley	30
Taylor & Francis	26
Sage	24
Elsevier	13
RCNi	4

The dominant re-use licences or T&C information attached to Wiley, Taylor & Francis²⁰, Sage²¹, Elsevier and the RCNi²² are either very brief statements preventing anything other than personal use

²⁰ <https://www.tandfonline.com/terms-and-conditions>

²¹ <http://journals.sagepub.com/page/policies/terms-of-use>

²² <https://rcni.com/terms-and-conditions>

or very lengthy agreements in which either it is uncertain how a paper may be subsequently reused, or redistribution is clearly prevented:

"You will have 24 hours to access this article online. During that 24 hours, you can print the article or download it as a PDF. You cannot redistribute the article in any way without written permission from the journal. By clicking "Checkout" you are agreeing to the SAGE privacy policy." (Sage short statement)

"Your Subscription is personal to you and you may not share with, nor give, licence or transfer to, any other person any of your rights or entitlements under this Agreement (including to access and/or use RCNi Materials under your user account using your password and/or user code)." (RCNi Terms & Conditions)

Some publishers provide a link to copyright clearing houses such as Copyright Clearance Center's RightsLink whereby end-users can supply information about how they propose to use a journal article with a view to getting a 'Quick Price'. As an example, the quick price to use the article detailed in Figure 16 in an electronic course pack for 50 students for one year was £174.97. The case studies reported in Section 5.3.7 suggest that few institutions choose to purchase journal articles in this way, and it is an example of where the CLA Licence provides value.


Figure 16. Example RightsLink option for a 1980 paper from Elsevier



The screenshot displays the RightsLink interface. At the top, there is a header with the Copyright Clearance Center logo, the RightsLink logo, and navigation buttons for Home, Create Account, Help, and an email icon. Below the header, on the left, is a thumbnail image of the journal cover for 'TOXICOLOGY'. To the right of the image, the article details are listed: Title: Mechanism of methylmercury cytotoxicity: By biochemical and morphological experiments using cultured cells; Author: Nobumasa Imura, Kyoko Miura, Masae Inokawa, Susumu Nakada; Publication: Toxicology; Publisher: Elsevier; Date: 1980. Below these details, it states 'Copyright © 1980 Published by Elsevier Ireland Ltd.'. On the right side of the interface, there is a 'LOGIN' button and a text box that reads: 'If you're a copyright.com user, you can login to RightsLink using your copyright.com credentials. Already a RightsLink user or want to learn more?'.

Welcome to RightsLink

Elsevier has partnered with Copyright Clearance Center's RightsLink service to offer a variety of options for reusing Elsevier content. Select the "I would like to ..." drop-down menu to view the many reuse options available to you.

I would like to... 

To request permission for a type of use not listed, please contact [Elsevier](#) Global Rights Department.

Are you the [author](#) of this Elsevier journal article?

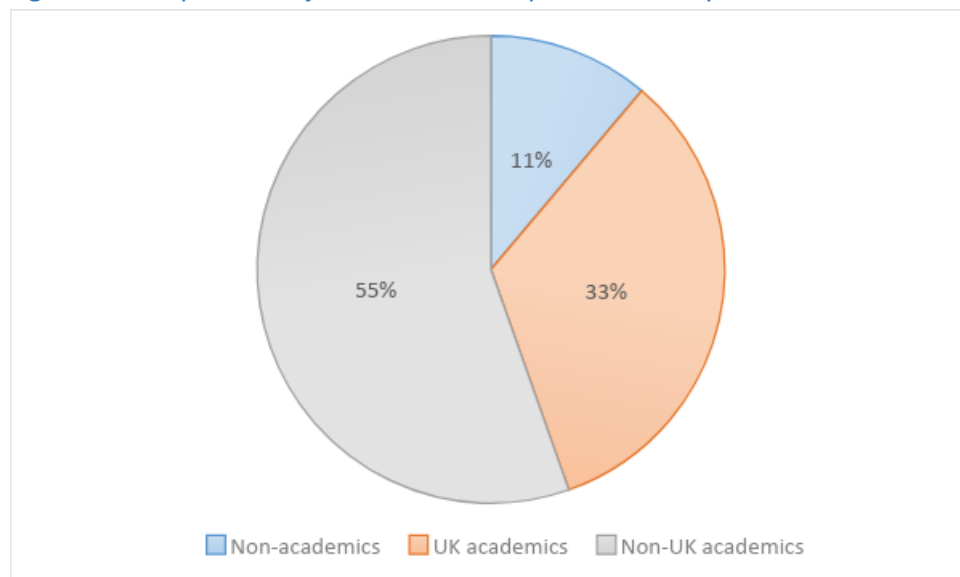
Copyright © 2018 [Copyright Clearance Center, Inc.](#) All Rights Reserved. [Privacy statement.](#) [Terms and Conditions.](#)
Comments? We would like to hear from you. E-mail us at customer@copyright.com

5.3.6 Percentage of scanned content written by UK academics

5.3.6.i Authorship of scanned/digitally copied content

By checking institutional affiliation information on the selected journal articles, it was possible to determine that 263 of the 296 items (89%) were written by authors working in academic institutions at the time of publication (see Figure 17). Of the 296, 99 (34%) were written by UK academics and 164 (55%) by non-UK academics.

Figure 17. Proportion of journal article sample authored by academics



5.3.6.ii Open access availability of content.

As outlined in Figure 15, 38% of the sample (113 items) were available on open access. To ascertain whether an item was on open access, three freely available tools were used: Google Scholar²³, the Open Access Button (OAB)²⁴ and the Unpaywall²⁵ plug in.

The OAB was launched in 2013, supported by SPARC (the Scholarly Publishing and Academic Resources Coalition founded by the American Research Librarians (ARL) group). It is a website and app which searches thousands of open access sources such as repositories and publisher websites, for open access versions of articles. Articles may be identified by a unique ID such as a DOI or PubMed ID, or even a citation or URL. If an open access version is not found, an option is given for the requester to submit an email request to the author of the article – although the requester may have to supply the email address of the author if OAB is not able to identify it.

Unpaywall was launched in 2016 by ImpactStory founders, Heather Piwowar and Jason Priem²⁶, although its underpinning technology, oaDOI, was developed much earlier. It consists of a database of over 20 million freely available scholarly articles and a browser plugin that uses the oaDOI technology to identify if an open access version is available of the article currently displaying in the user's web browser. Neither Unpaywall nor OAB index content available in Academic Social Networking sites such as Academia.edu and ResearchGate. Figure 20 shows the location of the

²³ Google Scholar. <http://scholar.google.com>

²⁴ Open Access Button. <https://openaccessbutton.org/>

²⁵ Unpaywall. <https://unpaywall.org/products/extension>

²⁶ Else, H. (2018). How Unpaywall is transforming open science - The rise and rise of Unpaywall. *Nature*, 560(7718), 290–291. <https://doi.org/10.1038/d41586-018-05968-3>

sample content that both these sites find, which is either in Institutional Repositories (15 articles), on publisher sites, through Gold Open Access (13 articles) or on PubMed Central (6 articles).

Of the 113 items, OAB correctly identified 34 items (29%), although there were a further 17 cases where it wrongly identified an item as being available on open access when it was not. In such cases, it either took you to an Institutional Repository metadata record wrongly assessing that it contained full-text; to the wrong paper; to a foreign language abstract of the paper; or to a publisher or aggregator site where the full-text was behind a paywall. Unpaywall correctly found 32 items (28%), but with only one false positive. Open Access Button found 4 items not found by Unpaywall, and Unpaywall found 6 items not found by OAB.

Google Scholar found open access copies of the 79 items not found by either Unpaywall or OAB. In many cases Scholar found more than one alternative version of the same item. (see Figure 18). In fact, for 25 of the 79 items, two or more copies could be found. It might be expected that, due to the mission of Unpaywall and Open Access button to seek out only legal OA copies, that those found only by Google Scholar were not legally available. Whilst this might be true in some cases (see Figure 19), with 23 copies found on ResearchGate and seventeen on Academia.edu, it was not always the case. Indeed, of the 79 copies found only by Google Scholar, 18 were available on Gold open access and nine on Institutional Repositories.

Figure 18. Number of alternative OA versions found on Google Scholar

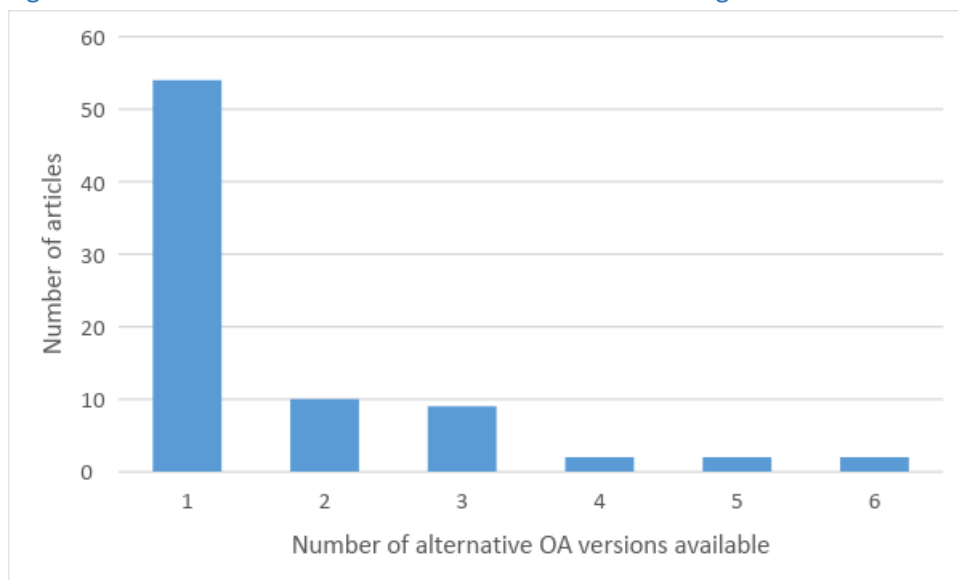


Figure 19. Location of all Open Access copies found by Google Scholar

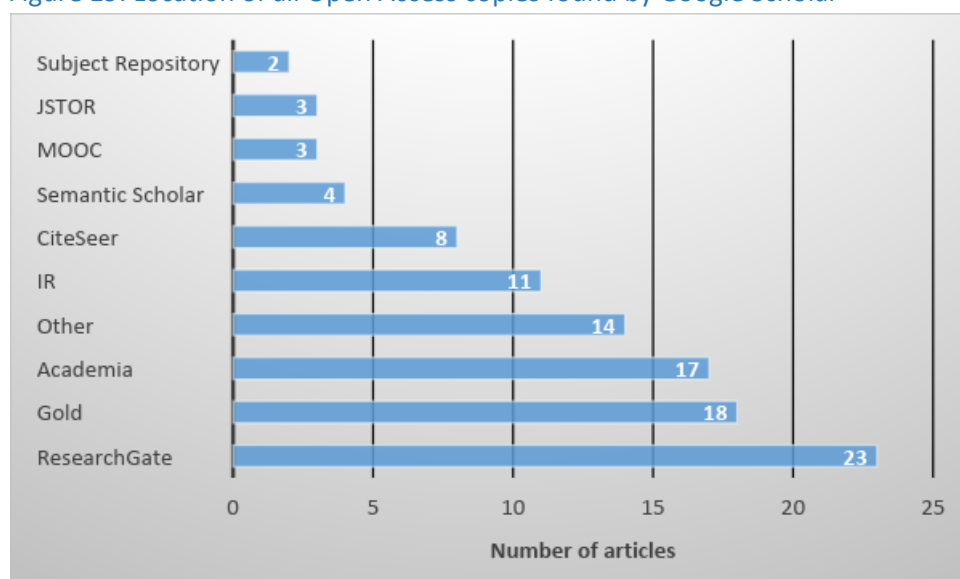
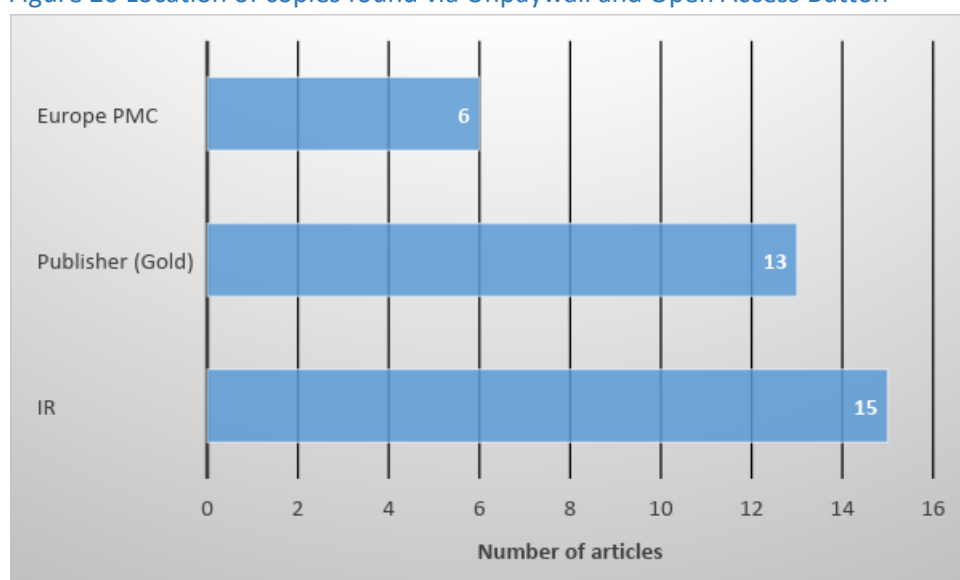


Figure 20 Location of copies found via Unpaywall and Open Access Button



5.3.6.iii Licences for OA material

Of the 113 items available on OA, only 22 (19%) had an associated licence. This was a much lower proportion than the pay-per-view copies (61%). Of this 20, thirteen were Gold OA items with associated publisher terms and conditions. When analysed, only ten of the 22 OA items with a licence gave clear unequivocal permission for HE libraries to make the content available in an electronic course pack. Of the remaining twelve items, with four it was likely that the content could be used (the publisher agreement stated that most Gold items were available under a CC BY licence, but the actual licence was not attached to the paper); with another four it was unclear (it was likely that the copies were illegal, although the licence was permissive), and with the final four it was clear that the content could not be used in this way. This suggests that even when OA versions of journal articles are available, the licence may be unclear and lead universities to be reluctant to rely on them for teaching purposes. This was explored in greater detail in the case studies and reported in Section 5.3.7.

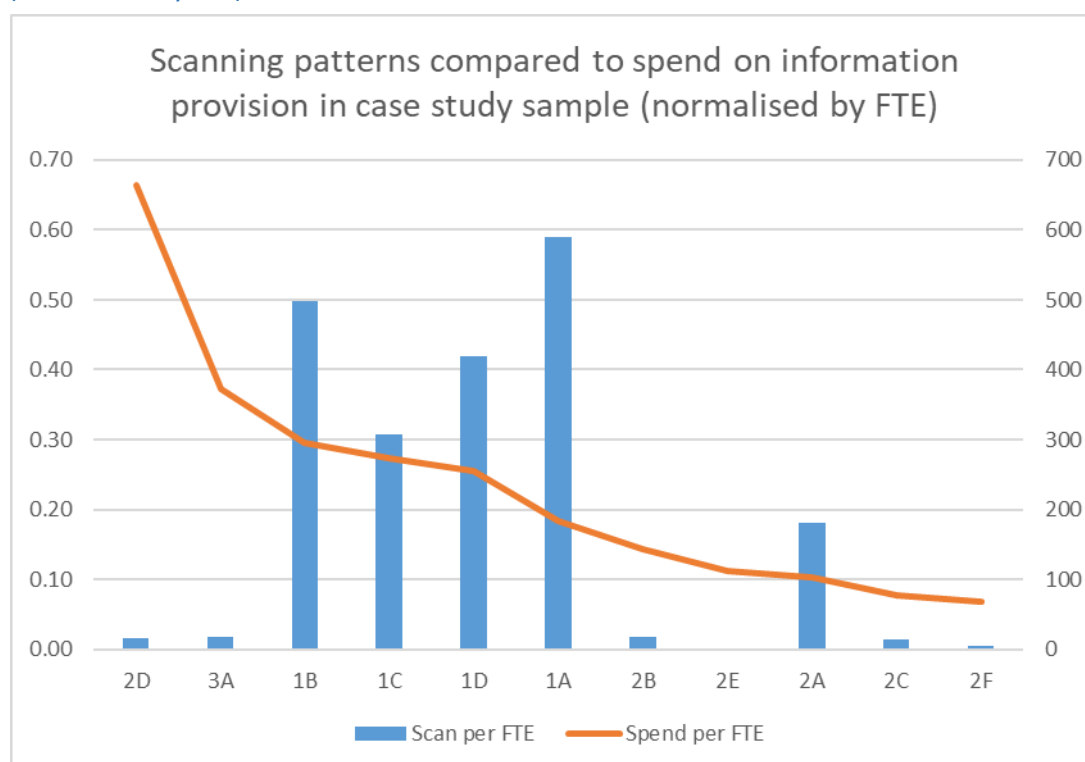
5.3.7 Reasons for using the CLA Licence rather than primary subscriptions

The eighth research question explored why content was being scanned rather than purchased through a primary subscription and whether factors such as format, cost or licensing models were factors. This could not be answered from the CLA data and it required understanding decisions institutions make which relate to their acquisitions policies and procedures. Therefore, qualitative data was collected from a sample of higher education institutions through ten case studies. Telephone and face to face interviews were undertaken with acquisitions staff and those who managed the CLA Licence scanning services at ten universities. While the interviews were not recorded or transcribed, notes were written up by the interviewer for each case study. It also provided an opportunity to ask institutions a number of related questions about their use of the CLA Licence and whether they relied on open access licensed content for teaching purposes. An overview of the responses by institution is provided in Appendix C and the questions used in the interviews and workshop are presented in Appendix D and E.

5.3.7.i *Factual information to inform the case studies*

Figure 21 shows patterns of scanning, cross-referenced with spend on information provision by the ten case study institutions. The data has been normalised to show how these figures compare to the Full Time Equivalent (FTE) students. There appears to be a mixed picture with no correlation between the number of scans and overall spend on information provision. However, further analysis of data from across the sector is needed to see if there are patterns appearing across the whole population given the purposeful nature of the sample used in the case studies.

Figure 21: Scanning patterns compared to spend on information provision in case study sample (normalised by FTE)



5.3.7.ii Scanning services

Of the ten institutions, nine had what they described as a centralised scanning service that was operated by the library. One institution did not, and scanning was undertaken within departments by academics or administrative staff who reported this to the library.

5.3.7.iii Reporting tools being used

Predominantly, institutions were using the CLA's free reporting tool, the Digital Content Store, which was launched in 2015 to simplify the reporting procedure. According to CLA supplied data, across the higher education sector as a whole, 83 institutions were using this tool as of November 2018 and 19 institutions were using the automated reporting tool Talis Aspire Digitised Content.

Table 10. Reporting tools used by case study HEIs

Talis Aspire Digitised Content	1
CLA Reporting spreadsheet	3
Digital Content Store (DCS)	6

5.3.7.iv Reading list systems

Six institutions were using a reading list system and four were not. Of those who used a system three used Talis Aspire, two used Leganto by ExLibris and one used an in-house reading list (see Table 11):

Table 11. Reading lists systems used by case study HEIs.

Talis Aspire	3
--------------	---

Leganto by ExLibris	2
In-house reading list	1

5.3.7.v Paper course packs

None of the institutions interviewed produced paper course packs.

5.3.7.vi Summary findings from the interviews

Despite the obvious differences in institutional spend on information provision and numbers of scans reported under the CLA Licence, there was a surprising level of consistency across the case studies in some key areas related to how decisions were made to use the CLA Licence and its relationship to university acquisition policies. Appendix C shows the individual responses to each question, however across the board the following points were made:

- Many institutions reported having both formal and informal acquisitions processes for content required for teaching purposes relying on library staff liaising with academic staff over the specific needs of their courses.
- Reading list systems had been implemented in more than half of the institutions and the institutions who used them believed they streamlined acquisition and were in general, seen as a good way of supporting teaching and learning in the institution.
- Few institutions have a truly 'e-first' policy and many recognised that while they usually try to purchase electronic content for teaching purposes, there were often caveats and discussions that needed to take place internally. For example, there were some concerns about accessibility and reports that students did not generally like e-books.
- Many institutions reported issues with the available e-resource licences and models – content was often not available in the format that they wished to purchase it or with a suitable licensing model to supply readings to large student cohorts. This finding supports the evidence reported in Section 5.3.5, that suggested licence models for some e-resources might not be suitable for teaching materials.
- There was a sense the CLA Licence often being used as a 'back-stop' in institutions as a way of providing access to readings for large cohorts when it couldn't be purchased in electronic format. The reasons were often related to a lack of suitable licence or model of access for the text or no electronic version being available.

In relation to the CLA Licence the following findings were observed:

- Scanning patterns and trends were very mixed – levels of scanning appeared to be declining in some institutions and increasing in others. However, most institutions felt the trend was that as more content was made available in electronic format less would need to be scanned.
- A number of institutions recognised that the CLA Licence was potentially saving them money, because it avoided them needing to purchase multiple copies of readings, when just one extract from the content was needed.
- CLA audits have led to changes in processes and policies in some institutions with several institutions reporting that their checks on title availability were now more robust. CLA audits had helped some institutions streamline the acquisition process, as well as ensure they complied with the Licence terms and conditions.

- Most institutions are reasonably confident they are able to report most teaching-related scanning. However concerns remained about 'rogue' (unreported or non-compliant) scans uploaded into the VLE in many institutions.
- Interviewees found it very difficult to judge the value for money provided by the CLA Licence. Many libraries did not pay for it from their budget or view it as a cost that could be avoided.
- Open access content was rarely being used for providing content needed for teaching, but most people felt that it would be helpful to get further data on the availability of open access content for teaching purposes, including guidance about how to search for it and re-use terms.

5.3.7.vii Summary Findings from the Workshop

To provide a greater sample of responses from across the sector, over 60 people took part in a workshop held in November 2018 from approximately 50 different universities. The delegates came from a cross Section of the higher education sector and worked on tables in small groups to answer a sub-set of the questions (see Appendix E) related to acquisitions policies and the CLA Licence.

1) How do you ensure you purchase information resources needed for teaching and learning purposes?

A wide range of formal and informal methods were described by the delegates for ensuring content was purchased for teaching purposes including: the use of reading list systems, book suggestion forms, and liaison or subject librarians working with academic staff to obtain lists. Quite a number of institutions now use Patron Driven Acquisition (PDA), user data and analytics to monitor use of turn-aways²⁷ for purchasing decisions, and some monitor high demand books. Decision making in many institutions needed to be evidence and data driven to justify a business case for new subscriptions or titles. Some used qualitative feedback from the NSS and student recommendations.

2) Are the licences, models and platforms suitable for teaching purposes?

In general the answer to this question was a fairly clear-cut 'no' from most delegates for a variety of reasons, including: ebooks being too expensive, not offering suitable licences for large courses, not being DRM-free, confusing licence terms, being unsuitable in terms of the licence or format for distance learners or those outside the UK, and being unable to buy the exact titles they wanted due to the content being bundled. Delegates reported problems with acquiring accessible copies and frustration with content being offered only through single user licences. The proliferation of publisher platforms was also seen as a problem because ideally institutions want to limit the number of platforms they present to users.

3) What role does the CLA Licence play when sourcing content for teaching and learning purposes?

Both reactive and proactive use of the CLA Licence was noted in different institutions. Some were actively suggesting digitisation of core chapters based on reading list data. Others were relying on academics to recommend readings for digitisation. Some institutions felt the Licence was a backup when an ebook wasn't available; others said they could save money if they scanned a Copyright Fee

²⁷ This is where users try to access an e-book but the maximum number of 'check-outs' has been reached, thus leading to the user being 'turned away' from being able to borrow it.

Paid copy rather than purchased an ebook. For some the CLA Licence sat outside the acquisitions policy while for others it was an integral part of how they supported teaching and learning.

4) Have you observed any changing patterns in relation to your use of the CLA Licence?

As with the interviews, some institutions were clear that their use of the CLA Licence had increased in recent years and they felt that the increase from 5 to 10% limit made the Licence more useful. Others said they had decreased their use in the Licence as more content was available as ebooks. In common with the case studies, the workshop respondents suggested there was a mixed pattern of use in different institutions.

5) Do you anticipate any changes in your use of the CLA Licence in coming years?

Some felt usage could increase as the CLA Licence might save them money on acquisitions. Others felt it might decrease or they just didn't know. As a straw poll the tables were asked to state if it would go up, down, stay the same or they didn't know. The findings were as follows with fractionally more thinking it might go up:

Table 12. Workshop attendees views as to whether use of the CLA Licence would increase or decrease in future.

Increase	Decrease	Same	Don't Know
12 (38%)	7 (22%)	3 (9%)	10 (31%)

6) Is there anything that might lead to any changes in how content is sourced for teaching purposes ?

A range of responses were offered to this question. Budget constraints were clearly an issue that would affect what could be purchased as was the available staff time and the impact of automating some acquisitions processes, which meant decisions could be made by library assistants. Other factors included where tutors or students needed content in accessible formats and linked to this the increase in DRM-free ebook options (in general Digital Rights Management was not popular with students as it limited what they could do with ebook content). Some institutions were in the early stages of or yet to implement a reading list system so envisaged this would change how they sourced content for teaching. If a supplier changed their licensing models so it became more complex this might affect purchasing decisions. And finally in some institutions their partnerships with overseas institutions would impact on how they wanted to purchase content. Finally, one institution thought that the Teaching Excellence Framework might have an impact.

7) Do you routinely check for open access versions of readings?

Table 13. Workshop participants response as to whether they routinely checked for open access versions of readings.

Response	Number of respondents
Always	1
Sometimes	6
Occasionally	6
Never	4

8) Do you have a sense that the CLA Licence represents good value for money for your institution?

In common with the interviews, the workshop participants overwhelmingly did not know if the CLA Licence provided them with good value for money. Only three institutions stated they felt it did. This finding is perhaps unsurprising given that the workshop was attended by acquisitions librarians, and many said the CLA Licence was not paid from their own budget, but came from a central administration budget.

Table 14. Workshop participants response as to whether they thought the CLA Licence offered good value for money.

Response	Number of respondents
Yes:	3
No:	2
Don't know	19

5.4 Theme 4 – International comparison

5.4.1 Context

Use of copyright material in educational settings has long involved a consideration of both licences as well as exceptions, such as those falling under the doctrine of fair dealing and fair use. Fair dealing and fair use have been a part of international copyright jurisprudence for centuries. The Berne Convention established minimum standards of copyright protection for creators, with the 1967 Stockholm revision – edited and implemented in Paris 1971 – introducing the exclusive right of reproduction, alongside with the three-step test for introducing exceptions to copyright into national laws: ‘...in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.’

Copyright exceptions have evolved at a national level, with case law greatly shaping our understanding of how they apply in educational settings. In many contexts, exceptions tend to be narrowly interpreted. Licensing is another way in which educational establishments can make use of material. This can be via primary licences, which are usually transactional in nature and offered directly between rightsholder and user. Secondary licences are a form of collective licensing, usually offered by an intermediary organisation such as a Collective Management Organisation (CMO). Finally, Extended Collective Licensing (ECL) is a scheme that is growing in popularity. ECL arrangements are collective copyright and related rights solutions underpinned by national laws. ECL agreements by law apply to all rights holders in a class, whether or not they are members of the collecting society, by establishing terms of licences with users or classes of users. This is particularly useful for mass uses of works where the volume would make individual negotiations unworkable.

Exceptions and licences can complement each other - but there are many tensions, too. This section of the report looks at educational exceptions and licences at a national level. It examines the UK’s educational copyright licensing situation with that of other jurisdictions, contrasting how primary and secondary licences currently work alongside statutory educational exceptions in comparable countries.

5.4.2 Legislative environment

Copyright material used in education in the UK is covered by a mix of primary and secondary licensing, bespoke permissions and statutory exceptions (see 5.1). The UK uses the common law doctrine of fair dealing in relation to certain exceptions to copyright – many of which are transposed from a list of optional exceptions provided by Article 5 of Directive 2001/29/EC. Prior to the Hargreaves Report of 2011, fair dealing was limited to a very small number of exceptions, namely for the purposes of research or private study; criticism, review or quotation; reporting current events. The exceptions were drafted in a particularly narrow way in the 1988 Act following the Whitford Committee report.

In 2014, a number of education exceptions were widened. Section 32, Illustration for instruction, is not subject to contractual override. Section 36 covers copying extracts of works by educational establishments, and this is subject to a licensing scheme being in place which authorises the acts. If a work is excluded from the licensing scheme, then it is permitted to copy 5% of that work, per institution, per year. Therefore, many UK universities use the CLA Licence as their primary method for providing digital extracts of books for classroom purposes, backed up by Section 36 if it applies. Additionally, the CLA have clear that they intend to apply for ECL, for introduction in either 2019 or 2020, which will undoubtedly impact on the value of their licence.

Canada has a fair dealing regime with similarities to the UK. Their notion of fair dealing is more fully defined, following case law from 2004 which set out six factors to take into account to determine the fairness of the dealing:

1. The purpose of the dealing
2. The character of the dealing
3. The amount of the dealing
4. The nature of the work
5. Available alternatives to the dealing
6. The effect of the dealing on the work.

Additionally, Canada has been the focus of a number of important court cases relating to exceptions and licences for classroom copying. Until recently, the Supreme Court had interpreted fair dealing liberally, stressing a need for balance between copyright and user rights. Not all universities have an Access Copyright licence for providing access to digital extracts on courses. However, a 2017 case between Access Copyright and York University resulted in a more substantive victory for Access Copyright. However, the case is heading to the Court of Appeal in March 2019, and Canada's Parliament is currently reviewing the functioning of the Copyright Act.

In contrast, US educational establishments rely significantly on fair use, which can stand alone as a defence to use. The following four factors, codified in [Section 107 of the US Copyright Act](#), are used to ascertain whether a use is fair:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.

2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work

The first factor clearly applies to educational use, although the other factors also need to be taken into account by educational establishments. The application of the fair use exception is standard best practice within education in the USA. There are other exceptions contained within the US Copyright Act which can be applied to educational use, however they are usually narrowly defined around specific uses and activities. The Copyright Clearance Center (CCC) licenses the use of text-based works, either for digital use or for photocopying, on either a repertory (i.e. blanket) or transactional basis. So, although it does employ a collective licensing model, it is essentially voluntary and does not have Extended Collective Licensing (ECL). This means it provides a relatively small repertoire, only covering around 25% of works. Australia is currently reviewing its Copyright Act, looking at issues such as, whether there is now a requirement for more flexible exceptions, such as 'fair use', in order to bring it up-to-date with the digital world.

5.4.3 Types of CMO and licence

Our research found that of the seven countries examined all had a CMO providing some form of blanket licence for Higher Education (HE). However, secondary licensing models, as well as the costs, extent limits and the coverage of the relevant licences differed significantly, when compared to the UK regime.

For example, in the US the Copyright Clearance Center (CCC) licenses works on a transactional, as well as a repertory basis. Whilst in Scandinavian countries such as Sweden and Finland, HE licences follow statutory Extended Collective Licensing (ECL) laws. Australia also has a statutory licence set out in the Copyright Act 1968 (s 113P) administered by the Copyright Agency. Whilst the relevant CMO in Italy - SIAE (Società Italiana Autori ed Editori) - administers a blanket HE licence, where agreements depend on the type of university as well as the numbers of students.

In Canada, many universities have now opted out of licensing arrangements with the relevant CMO (Access Copyright), instead relying on a combination of transactional licences with publishers, open access resources, fair dealing exceptions, Open Education Resources (OERs), and consortium-based site licensing directly with publishers. Finally the Indian Copyright Act delivers a wide-ranging legal framework for CMOs, with Section 33(3) of the Act providing a legal mandate to register collective administration societies. The Indian Reprographic Rights Organisation (IRRO) are the collective society that administers a blanket licence for reprographic copying of literary works.

Costs

In the UK, the current cost of the CLA's HE Licence is £7.34 (+ VAT) per FTE (under the 2016-2019 agreement). It was difficult to find exact costs per FTE for many of the countries examined as part of this research in order to properly make a comparison with the costs of the CLA Licence. However, the CLA price appears to be relatively low when compared to similar licences from countries such as Australia where the cost is \$35.64 AUS per FTE (approximately £20 GBP) and Sweden where the cost is approximately €21 per FTE (approximately £18).

Extent limits

The UK's CLA HE Licence permits the copying of 10% of a covered work, or one chapter of a book or one article per journal issue, whichever is greater. The CLA also provides a Second Extract

Permissions Service (SEPS), which is separate to the main licence. This allows an organisation to request an additional extract, i.e. another 10% or an additional book chapter or journal article. Rights holders must opt in to this, and the pricing is variable and charged per page, per student, with an additional flat service fee of £4 per transaction.

The Australian licence has similar extent limits to the UK licence, allowing the copying of no more than 10% of a book/journal's pages or 1 chapter/article if it's longer than 10% of the pages. However, the Australian licence differs from the UK licence in that there is no need for the university to own the work in order to make a copy, and the scope includes all and any published works.

Countries such as Finland and Sweden, who have ECL, employ different models. In Sweden the BONUS licence utilises the 15/15 rule, meaning that students and staff can only copy up to 15% of a single publication, or 15 pages, whichever is the lower. For example, of a book comprising 100 pages, users can copy up to 15 pages. However, if a user needs to photocopy/scan one chapter/article which comprises one or a few pages more than those mentioned in the limitation above, staff and students can copy and share three additional pages, at most 18 pages from the same original. Teachers can also make reproductions of whole works (a whole book even) for their own use. However, they may not copy and save the book in digital form. In Finland, staff and students may photocopy 20 pages or 50% per publication, and scan 20 pages or 20% per publication.

Canada provides another type of model where 'Access Copyright' offers two types of licence, 'Choice' and 'Premium' with varying extent limits attached to each. Under the 'Choice' licence instructors, staff and students can copy up to 20% of a covered title for handouts and email attachments, and up to 25% for pay-per-use copying, including for course packs and digital uploads. The 'Premium' licence permits faculty, staff and students to copy up to 20% of individual titles in Access Copyright's repertoire of published works. The 'Premium' licence also offers pay-per-use copying from 20% to 25% of a repertoire title.

In Italy photocopies of copyright protected works existing in academic libraries can be made for personal use only and within the limit of 15% of each book or periodical magazine issue, advertising pages accepted. If the works in the same library are rare and outside publishing catalogues, it is possible to overcome the 15% limit and to photocopy works wholly. Whilst the Indian blanket licence had the most restrictive extent limits, stating that a licensee can only make copies for the number of students on a course of study as a course pack only, and not copy more than 15% or 1 chapter of any publication per year.

Activities covered

The details of educational activities covered by the blanket licences in each jurisdiction only differed slightly when compared to the UK. For example, in Canada, the two licensing offers available from Access Copyright cover, on one hand, very basic day to-day copying distributed by handout or email as part of the 'Choice' licence. Whilst the 'Premium' licence, is more comparable with the UK's CLA equivalent as it also covers the uploading of material to a secure network or VLE (Virtual Learning Environment), as well as the creation of print and digital course collections (i.e: course packs). The Australian HE licence is also comparable with the UK model, where teachers are permitted to copy and share text, images and print music (from any format) without permission from the rightsholder, providing they use is for educational purposes, and they work for an educational institution that is covered by payment arrangements with the Copyright Agency.

There are also some similarities with Extended Collective Licensing based models in countries such as Sweden and Finland. For example, the Swedish BONUS licence allows teachers and students to

copy and share copyright protected material from books, teaching materials, newspapers, digital publications, and websites. Teachers and students can copy works both digitally and in analogue, for educational purposes, by downloading, printing out, scanning, photocopying, reproducing for teaching slide presentations e.g. PowerPoint. Distance learning provision is also covered and material can be shared via the HEI's closed network (VLE). However, audio and moving images are not covered.

5.4.4 Case law, disputes and tensions within certain territories

This Section highlights instrumental cases that have shaped our collective understanding of the applicability of fair dealing/use exceptions.

In the UK, frustrations with the cumbersome administration and high costs of collective licensing in order to provide photocopied extracts of works to university students resulted in a case before the Copyright Tribunal in 2002; accordingly, the Copyright Licensing Agency was ordered to amend certain restrictions on course pack copying and restructure costs so that they were based on number of students rather than 'notional number of pages or price per page.' The Copyright Licensing Agency moved with technological changes, and now offers equivalent blanket coverage for digital course packs, albeit with much tighter restrictions over access.

In the US, the ongoing (since 2008) *Cambridge University Press et al. v. Patton et al* case has led to US educational establishments relying significantly on the fair use' exception for electronic extracts of work for educational use.

Canada has fair dealing exceptions in its laws which bear similarity to UK exceptions. A 2004 case regarding reprographic copying for researchers provided some clarity on the applications of the fair dealing. These principles were applied later to a case on provision of digital course packs: *York University v Access Canada*. In 2017, the federal court ruled that 'statutory defences such as "fair dealing" and exceptions for obtaining permission for reproduction... are nevertheless exceptions to an otherwise mandatory scheme.' The lack of limits on amounts copied, and the potential effects of the dealing on the market, were two decisive factors.

Expert legal commentators pointed out that the case diverted from thirteen years of Supreme Court jurisprudence. The case is being heard at the Court of Appeal in March 2019, and the Canadian Association of University Teachers (CAUT) are interveners in the case.

It is interesting to compare this with an Indian case which ran for five years between 2012 and 2017. Three academic publishers – Oxford University Press, Cambridge University Press, and Taylor & Francis – sued the University of Delhi for providing a reprographic copying service for photocopied course packs via the Rameshwari Photocopy Service, based at the university. These course packs consisted of photocopied extracts of textbooks, which were then distributed to students for a nominal fee. The Indian Copyright Act 1957 allows 'the reproduction of any work... by a teacher or a pupil in the course of instruction.' This Section contains a fair dealing clause at 52(1)(a) but the High Court decided that this was confined and so not exportable to 52(1)(i) - therefore the percentage used or the amount of times copied was irrelevant, so long as it was to achieve the purpose of instruction. Additionally, there was no onus on the university to take out a licence to cover the copying.

5.4.5 Extended collective licensing

Extended Collective Licensing (ECL) is a form of collective rights management enabling freely negotiated copyright licensing contracts for the exclusive rights granted by copyright. Allowing the mass use of copyright material without the need to negotiate directly with rights holders, the ECL

framework provides qualifying CMOs with the right to authorise a license not just on behalf of members but also on behalf of non-member rightsholders, who can then receive remuneration as if they were a full member of the CMO. This enables CMOs to offer a wider repertoire of works in the licences they offer.

Scandinavian/Nordic countries were the first to establish ECL laws in the 1960s. For example, in Sweden the ECL-provisions in the Swedish Copyright Act, Article 42 c allow Higher Education Institutions (HEIs) to negotiate contracts with representative organisations rather than with each individual author or publisher. In Sweden the ECL-system is binding, and the licence with BONUS Copyright Access, which is negotiated centrally by the Association of Swedish Higher Education, can only be terminated by the government. Like Sweden, Finland also uses ECL rules to govern educational copying. Kopiosto is the collective organisation that administers licences for use of copyright works in education.

One disadvantage of the ECL model is that with increased access to digital content, the copying/distribution of printed material, covered by ECL, has declined as teachers take advantage of using a growing number of e-resources. This has led HEIs to question whether the ECL model represent value for money, particularly in institutions which specialise in science related subjects where digital resources are more often utilised, rather than printed material. This is particularly relevant where the cost of the licence is based on the number of students and not the volume of copies made, which is the case in Sweden under the BONUS licence.

In the UK, the Government introduced ECL into copyright law in 2013 as part of the Enterprise and Regulatory Reform Act. Unlike some Scandinavian countries, non-member rights holders are given the right to opt out from any ECLs offered. As previously mentioned, the CLA will likely apply for ECL in 2019/20, which will undoubtedly impact on the value of their licence.

6. Discussion

Drawing together the four strands of this research project provides a broad basis on which to better understand the value of the CLA HE Licence. This discussion considers the findings of the nine research questions and draws together the salient points.

6.1 Theme 1: Legal Analysis

This Section addressed the following research questions:

- RQ1 What uses are being made of licensing solutions where exceptions such as Section 32 CDPA²⁸ *Illustration for Instruction* might apply?
- RQ2 What interpretations are HE institutions making of UK law and does this have implications for negotiation of the CLA Licence?

Despite the widening of certain exceptions to the UK CDPA that were undertaken in 2014, the amendments do not appear to have shifted perceptions of the value of the CLA Licence to the HE sector. In summary, the updates specifically to Section 32 provides institutions with greater flexibility to use copyright material whether under licence or not. However, there is no evidence that the new provisions have led to a perception that available licences are no longer required.

²⁸ Copyright, Designs and Patents Act 1988

6.2 Theme 2: Use of CLA Licence by Higher Education Institutions

This Section addressed the following research questions:

- RQ3 What scanning patterns can be observed in the universities, including those with the most established scanning services? Is the number of scans still increasing? At what rate?
- RQ4 How much content is being re-used by multiple institutions / how much duplication of effort is being undertaken through scanning?

The CLA dataset suggests that the value of the CLA Licence may have peaked as growth in scanning volumes according to the 2017-2018 data appears to be declining, however the data acts as a baseline for ongoing analysis. More important however is the fact that 32% of all scanning is carried out by 10 institutions. While the institutions are presented anonymously, it is worth noting that the group are primarily large research-led / Russell Group universities. This finding is significant as it suggests that a small minority of more well-funded institutions are making extensive use of the licence and the remainder use it far less. The median number of scans indicates there is a 'long tail' of HEIs that make minimal use of the CLA Licence despite the fact that the licence is offered only as a blanket licence and does not take usage into account. Clearly the low usage says something about the value that it offers the majority of higher education institutions.

Copying under the CLA Licence is focused on scanning from print books, not digital copying, not photocopying and not scanning or copying of journals. Additionally, there is little sharing of content between institutions taking place (1%) currently and there seems to be little scope for cost savings in this area (only 0.6% of titles are scanned 10 times or more across the sector). However, as discussed in the recommendations there still may be scope for encouraging sharing between institutions through changes to the DCS and other platforms.

There are a set of titles that are in high demand by the sector, but are not currently available in electronic format, meaning multiple institutions have copied extracts from them under the CLA Licence.

6.3 Theme 3: Availability of digital content under the CLA Licence

This Section addressed the following research questions:

- RQ5 What type of content is being scanned (book chapters vs journal articles)? What titles are commonly being scanned from publishers that are not available in electronic format?
- RQ6 How much content scanned under the CLA Licence is also available through primary subscriptions? Do those subscriptions offer suitable re-use terms? What projections are available on the shift to e-books in the academic market, and their take-up in HE?
- RQ7 What percentage of scanned content is written by UK academics and could be on open access / is on open access? Are open access copies available under suitable re-use licences?
- RQ8 Why is content being scanned rather than purchased? Are cost and format an issue? Are there other issues such as institutional inertia or policy?

This part of the research collected and analysed a considerable amount of data from CLA and from interviews and case studies with institutions. The findings suggest that usage of the CLA Licence is closely linked to the availability and usability of ebooks. When titles are not available as ebooks, institutions will use the CLA Licence as a back-stop.

In addition, where ebooks are available the primary licence terms often prevent them being used for providing access to multiple users and the CLA Licence is used in these instances.

Open access availability has not yet had an impact on the use of the CLA Licence, mainly due to its early focus on journal articles which are also available through journal subscriptions. However if we assume that 20% of content scanned under the CLA Licence is journal articles, and 40% of those journal articles are available on open access, this suggests that 8% of content scanned under the CLA Licence is available through another route. This figure is likely to increase in the future as OA monographs become more widespread.

Nevertheless, it is currently difficult to identify legitimate OA content for teaching use which leads people to rely on the CLA Licence where they might not need to. Institutions should consider engaging with their academic communities around issues related to copyright assignment, which currently prevents much of this content being re-used for teaching. This change could have implications for the future value of the Licence given that an estimate of 60% of books, and one-third of journal articles, are written by UK academics (employees of institutions).

There are disciplinary differences (e.g. nursing) in availability of titles, which could be explored with professional associations and institutions.

6.4 Theme 4: International comparison

This section addresses the following research question:

- RQ9 How does the UK mix of primary and secondary licensing, bespoke permissions and statutory exceptions compare with other countries and what are the trends?

Comparison with other countries exposes tensions in global copyright regime between private and public interests. There are cultural, economic and legal reasons why regimes differ; however, the findings suggest that in countries with broader copyright exceptions, the value of secondary licensing schemes is limited. Both Canada and Australia are examples of countries that have experienced recent tensions between the university sector and academic publishers associated with attempts to broaden copyright exceptions.

In the UK, licence-backed exceptions mean that primary and secondary licensing fees have remained a significant cost to the education sector, despite educational exceptions being widened in 2014. While these exceptions do not undermine the value of the CLA Licence, alongside other factors, they add to the weight of evidence that the Licence provides declining value for money for the HE sector. The introduction of ECL into the UK, which is likely to happen in 2019 or 2020 also will impact significantly on the situation and means that ongoing research is needed.

Copyright law is never static, and reviews of applicability of exceptions to educational use are ongoing in several countries. Canada's review of the Copyright Act puts fair dealing under particular scrutiny - namely whether or not the Access licence is mandatory, and what exactly constitutes fair dealing. The UK IPO are undertaking a review of the 2014 changes to copyright law. The UK had previously considered introducing fair use, most recently during the Hargreaves Review - however, the resulting report argued that adopting fair use would bring 'legal uncertainty because of its roots in American case law'. However, fair use has been adopted by other jurisdictions such as Israel, and is currently being considered in Australia as part of wider copyright reform as they review their Copyright Act, looking at issues such as whether there is now a requirement for more flexible exceptions in order to bring it up-to-date with the digital world.

The ongoing challenge remains for librarians to interpret and navigate the maze of licences and exceptions, deliver value for money to their institutions, and decrease legal risk whilst lowering barriers to innovative practice, insofar as it is possible.

7. Conclusion and Recommendations

In conclusion, this study reveals that the CLA Licence is used inconsistently across the sector, with a relatively small number of institutions making intensive use of the digital copying provisions. As a result, the Licence delivers the greatest level of value (in terms of scanning volume at least) to only a small number of HEIs. Data from 2016-17 suggests that the volume of scanning may be starting to decline. However, it is important to monitor use of the Licence to provide HEIs with further evidence when developing strategies and negotiating licensed access to content with publishers and the CLA.

The CLA Licence largely facilitates digital access to print books for use in teaching, which institutions would often rather purchase as e-books, but are unable to do so because either the content or appropriate licences are unavailable. It is clear from interviews with acquisitions librarians that a number of e-book business models are not working for HEIs. The CLA Licence has therefore shifted in its purpose as a mechanism to remunerate authors and publishers for photocopying of print books, to a way of providing students with access to books in digital form where primary e-book licences are restrictive or unaffordable. To this extent, the CLA Licence provides HEIs with a valuable proposition, but one that may be at odds with many publishers' desire to sell access to digital content under primary licences. It is recognised however that some publishers would prefer to sell access to licensed content directly to students rather than to University libraries on their students' behalf. The CLA Licence therefore acts as a consistent and reliable way for HEIs to get access to digital content where the primary market doesn't provide them with what they need.

Another tension inherent in the provision of teaching resources under the Licence is the amount of content written by academics employed by UK institutions and the policy shift towards open access publishing. The open access publishing movement initially focused on journal publishing where authors rarely receive royalty payments for their work. However, national policy has been looking at open access as a suitable model for monographs for some time, and the open text book movement is gaining momentum around the world. Institutions may find it useful to consider the incentives provided to their academic staff to create monographs and textbooks which are subsequently used in teaching.

The current publishing system requires authors to assign copyright to publishers who create products that are subsequently purchased mainly by HE institutions. In addition to this, HEIs pay both licensing fees to CLA and the administration costs associated with the operation of CLA-licensed scanning services. In return for authoring content and assigning copyright to publishers the majority of academic authors receive relatively small royalty payments. As national and international open access policy develops, it may be possible for HE institutions to consider whether funds currently assigned to reprographic licensing fees could instead directly fund academic staff to create open access content. The evidence in this report could help make the economic case for transitioning from reliance on a secondary licensing regime originally devised for print publishing towards the open digital publication and sharing of educational content, without the expectation that academic authors should do more for less.

In order to address the challenges and opportunities raised by this research the following recommendations are provided. They are arranged into different categories according to the relevant audience.

7.1 Recommendations for institutions / library directors

R1. Library directors are urged to review and monitor the use their institution makes of the CLA Licence to consider how this might compare with the sector as a whole and with similar institutions to their own. We recommend that:

- d. Institutions should review how the CLA Licence supports their approach to supporting teaching and learning in their overall approach to purchasing content.
- e. Institutions making high use of the Licence should consider whether there are alternative routes to sourcing content, such as use of primary licensed or open access content.
- f. Those institutions making low use of the Licence should consider the reasons why this is the case, and consider whether it would be beneficial to promote greater use of the Licence where it is not possible to source content any other way.

R2. Acquisitions librarians may benefit from closer working relationships with research support teams who generally have a good understanding of open access to explore the opportunities for using openly licensed content in teaching.

R3. Institutions should consider whether they could fund UK academics to create openly licensed teaching content, which may provide costs savings as well as more equitable and inclusive resources.

7.2 Recommendations for SCONUL, RLUK and Jisc Collections

R4. SCONUL should investigate the feasibility of collecting the annual institutional CLA usage data on behalf of the community to avoid the need to obtain this data and permission for public analysis of the data from the CLA.

R5. The SCONUL Statistics Steering group should explore how to encourage member institutions to provide data for the optional questions on information provision which will enable more robust analysis of information resource expenditure to take place.

R6. SCONUL / RLUK / Jisc Collections should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and working with CNAC should provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access

R7. SCONUL / RLUK should liaise with CNAC and other relevant organisations such as LACA to provide guidance to HEIs around where they may rely on post-Hargreaves exceptions to support learning and teaching.

R8. SCONUL / RLUK / Jisc Collections should explore open textbook and other open access models as a solution to deficiencies in resourcing which primary or CLA licensing are unable to resolve. This should involve the following activities:

- c) SCONUL / RLUK should continue to provide guidance to HEIs about the identification and use of open access content to support teaching activity, and liaise with organisations such as the British Library to explore use of open access discovery tools.

- d) SCONUL / RLUK / Jisc Collections should undertake further research with UK-based authors of highly re-used textbooks currently being digitised under the CLA Licence, to consider exploring whether open publishing models might better support the sector.

R9. Jisc Collections should explore with publishers the lack of availability of high demand titles used in teaching in HE based on the data provided in this study in order to create effective licensing models.

R10. Jisc Collections should examine publisher infrastructure so that there is greater standardisation of access to subscription content to minimise duplication of effort for institutions who are copying digital to digital content under the CLA licence because of unsuitable primary access models.

7.3 Recommendations for CNAC

R11. The study establishes a baseline from which to monitor and track copying volumes and the nature of content copied under the CLA Licence going forward which CNAC should continue to monitor on an ongoing basis.

R12. Following the introduction of the DCS and the changes to CLA's distribution methodology, for reliability and robustness of data, 2016-17 should be considered to be a 'fresh start' when it comes to reviewing the data that is collected on scanning across the sector.

R13. Further research is recommended to explore whether there are disciplinary differences in use of the Licence.

R14. Working with SCONUL and RLUK, CNAC should continue to monitor trends in the HE library sector and wider scholarly publishing landscape and provide guidance to the sector about the relationship of the CLA Licence to primary subscriptions and developments in open access.

7.4 Recommendations for CLA

R15. CLA should develop a search facility as part of DCS that allows institutions to identify existing digitised content, at least for admin users. This would facilitate use of the sharing provision under the CLA Licence where both licensees own the primary source or copyright fee paid copy, and minimise scanning duplication for HEIs.

R16. CLA should encourage publishers not to opt out works from the CLA repertoire, given that the licence limit of 10% on copying and ownership requirements make it unlikely in practice that the availability and use of the CLA licence will affect primary sales.

R17. CLA should continue to work with CNAC on research to understand the role of the CLA Licence in the higher education sector as the needs of the sector change and scholarly communication evolves.

Appendices

Appendix A – CLA Dataset

In order to distribute revenues from the CLA HE Licence to rightsholders, the CLA collect data from HEIs as to which items they are copying. Copying can take one of three forms: print-to-print (photocopying), print-to-digital (scanning), and digital-to-digital (digital copying). The volume of photocopying is assessed via a royalties data collection exercise. By contrast, all HEIs are required to keep a record of the scanning and digital copying they undertake to support sources of study. Historically, all HEIs had to report this annually via a Digital Copyright Record Form (DCRF), however, to reduce the burden on both HEIs and the CLA, this changed in 2013. From this date, HEIs were divided into three groups with each taking it in turns to make a full return of their digital copying and scanning to the CLA, whilst the other two groups only reported items newly copied for the first time that year. The data is somewhat complicated however by the introduction of the CLA's Digital Content Store (DCS) in 2016/17, and the adoption of the Talis Aspire Digitised Content service (TADC) by some institutions. DCS and TADC allow customers to make full returns to the CLA each year by virtue of their services automatically collecting and storing their copying requests. HEIs can also select items for scanning from a pre-existing database of CLA-licensed content, and if another HEI has already created a digital copy, subsequent HEIs are able to re-use the existing copy.

To support this analysis the CLA supplied the UUK CNAC team with the full distribution dataset for both 2016-17 and 2017-18. This was done under the terms of a data sharing protocol agreed and expressed in clause 7.4 of the HE Licence. The dataset took the form of an Excel work book spreadsheet containing six tabs as follows:

- a. Scanning Reported– All scanning actually reported by institutions in the academic year. This includes a mixture of institutions reporting all scans and some reporting only new scans.
- b. All Scanning Used (Distribution) – A list of scans created by CLA to inform fair distribution of revenues to members. Includes all scanning reported in the academic year as well as scans reported by some institutions in previous years.
- c. Digital Reported – All digital copying actually reported by HEIs in the academic year (as with scanning reported, this is mixture of all digital copies and new digital copies only).
- d. All Digital Used (Distribution) - All digital copying reported in the academic year as well as digital copying reported by some institutions in previous years to help inform the fair distribution of revenues.
- e. All Photocopying– All photocopying reported by the HEIs selected for CLA royalty data collection exercise in the academic year
- f. All Photocopying (Distribution) – All photocopying reported in the academic year via the royalty data collection exercise PLUS reporting from other institutions from previous data collection exercises.

Although according to logic the items in the scanning spreadsheet should always have been from hard copy originals and those on the digital copying spreadsheet should always have been from digital originals, this was not always the case according to the source listed. This may have been human error resulting from the data being self-reported by HEIs. In some cases, when the CLA came to cross-check the reported ISBN or ISSNs with their own sources, an appropriate licensed original could not be found and so it was reallocated (although not always relabelled) into what they saw to

be the correct spreadsheet. As the data is solely used for distributing revenues which do not vary as to whether the original was digital or print, 100% accuracy as to scanning source was unnecessary.

For the purposes of the theme 2 research (use of the CLA Licence), the scanning distribution data was used. This was done because the comparisons undertaken related to scanning volumes, which were not equivalent for the scanning reported data.

For the purposes of the theme 3 research (availability of digital content under licence), it was decided to use the data actually reported by UK HEIs during the reporting year, rather than include items from previous years and used by the CLA for legitimate distribution purposes, but that may or may not have been copied in the reporting year. This was to ensure the data weren't 'skewed' by the partial returns of only newly copied items which, it was thought, might contain proportionally more recent content. It was observed that the majority of institutions listed on the scanning reported spreadsheets (130 out of 217) made a full return anyway, either by virtue of it being their turn to make a return (on the three-year cycle) or by virtue of them being DCS or TADC customers who make full automated returns by default. It was not possible to see on the Digital reported spreadsheet which customers made full or partial returns so all items were used. In addition to this it was possible that some institutions reported in full even though they were only required to report new scans. The Photocopying spreadsheets were not used as they fell outside the scope of the research questions.

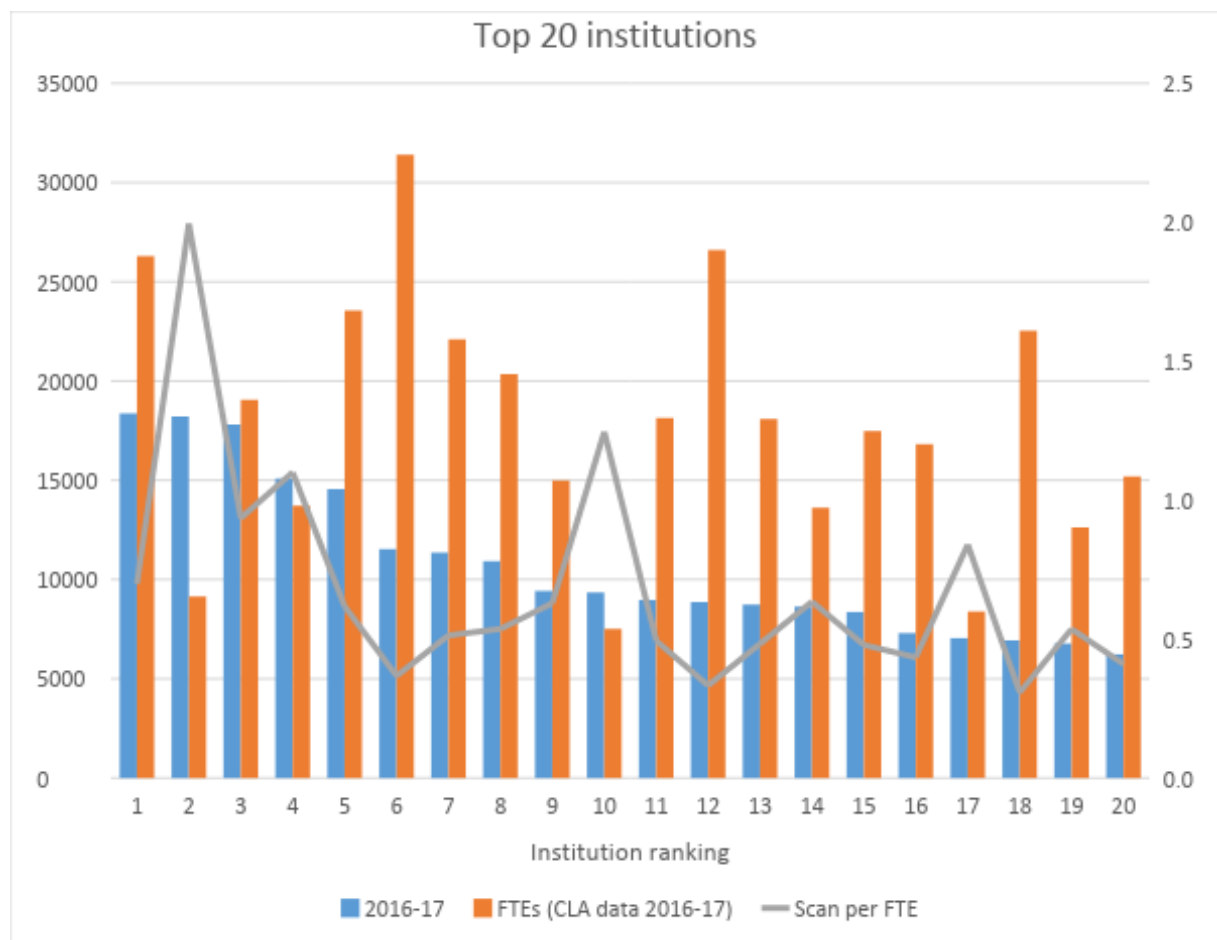
Of the 251,256 records on the scanning reported spreadsheet, 41,744 records (16%) were excluded by virtue of being new returns. This left 209,512 for analysis. The Digital reported spreadsheet contained 13,185 items.

Of the 209,512 records on the scanning reported sheet, a large proportion (19%) had no identifiable ISSN or ISBN (i.e. it had 5/6/7 characters). As an identifiable ISN was important for locating the item in question, those without one were excluded from the study, this left 169,900 records. Of the 13,185 records on Digital Reported a much higher proportion, 13,103 (99%) had an identifiable ISBN or ISSN.

Appendix B: Top 20 institutions scanning 2016-2017 (distribution data)

Ranking	2016-17	FTEs (CLA data 2016-17)	Scan per FTE
1	18,359	26286	0.7
2	18,223	9135	2.0
3	17,816	19047	0.9
4	15,085	13712	1.1
5	14,560	23557	0.6
6	11,538	31416	0.4
7	11,350	22115	0.5
8	10,914	20349	0.5
9	9435	14997	0.6
10	9357	7514	1.2
11	8964	18153	0.5

12	8854	26599	0.3
13	8740	18101	0.5
14	8647	13630	0.6
15	8364	17468	0.5
16	7301	16832	0.4
17	7047	8389	0.8
18	6935	22548	0.3
19	6774	12635	0.5
20	6233	15202	0.4
	214496	357685	0.6



Appendix C: High Level Summary of Question Responses to case study questions

Institution Question	I1 High / High	I2 High / High	I3 High / Low	I4 High / High	I5 High / High	I6 Low / Low	I7 Low / Low	I8 Low / low	I9 Low / Low	I10 Low / Low
Reporting	DCS	Spreadsheet	DCS	DCS	TADC	DCS	DCS	Spreadsheet	DCS	Spreadsheet
RLS	Yes – Leganto	Yes – own	Yes -Leganto	Yes - Aspire	Yes – Aspire	No	Yes - Aspire	No	Not yet!	No
Q1: Acquisition	Two routes but reviewed workflow recently and reading lists go to a dedicated team who decide.	Reading lists checked for core readings by dedicated team. Scans passed to digitisation team	Acquisition team in the library manage reading lists and scanning. Lists come in via RLS or in Word format	Process about to change but currently lists added to Aspire or send in word documents. Also request new books but will be brought together	Checking reading lists identifying core readings for digitisation. Use electronic resources as a preference	Formal and informal process of checking reading lists and purchasing any essential items. Scanned reading service separate. No RLS	Formal and informal processes – using a RLS but also get suggestions other ways and buy items not on the lists	Liaising between librarians and academics, checking reading lists and considering best options. No RLS looking at one	Varying processes in different schools but readings lists go to librarians who make purchasing choices – central budget for teaching materials	Purchasing devolved to different colleges and try to buy what's on reading lists, but struggle to get these. Will look for e-books but printed still very important.
Q2: E-first	Yes but called e-preference as not always practical	For books, if possible, but wouldn't buy journals just for one article.	Not as such, acquire both print and electronic due to accessibility but varies as one department only want E.	Yes, and an e-textbook programme for core / essential readings	We are moving towards it but not e-first as feedback suggests students want print still.	Not at the moment – planning this for a new dept but students prefer print in studies	Not really, it's what's suitable for the course and students. Department s vary. But students get free e-books	Senior staff would say yes, but in practice it doesn't always work for distance learners and other issues.	E-first due to access and space issues. Lots of distance learners.	Not really – print still important as specialist institution
Q3: Licence problems	E-book models not always suitable for multiple use.	E-book models not always suitable for teaching	Some platforms not user friendly.	Yes had lots of problems so deal with publishers direct to	Source e-books via ProQuest which are standard.	The library are ok, but lecturers don't	Jisc licences are standard so that is easy but some e-	Scrutinise licences to check terms but tend to be cautious	Never digitise e-resources – link to them. Using a new	Recommend linking to e-resources but still need to use print

				negotiate textbooks on a dedicated platform. Licences are confusing and need simplifying	Have had DRM problems with other suppliers	understand them at all.	books are single user and not useful. E-books replicate all the bad things of print books!	and check with publishers. Need to find right models for ebooks due to specialist nature.	Ebsco e-book platform which is DRM free and very good.	resources or digitise materials sometimes for aesthetic reasons.
Q3b Open access checking	Not routinely	Don't routinely check but comes up sometimes in their catalogue	Not routinely but they do at open content to reading lists	Don't check routinely, but does come up in discovery platform sometimes	Don't do this routinely as time consuming and not sure it's worthwhile	Don't at the moment but looking to do this.	It's difficult to work out if something is legitimate. Academics sometimes find these!	Not really, just search for journals so unless in DOAJ we wouldn't find it. Guidance would be good	Not for things in stock but we use OA for ILL increasingly provided it is genuine.	Our content is not really available on open access.
Q4: Use of CLA Licence	CLA Licence typically used for all essential readings. Valuable when content not available or licence not suitable	Scan if model not suitable for e-book or if need an art book or similar	Scan if model. Not suitable or not a user friendly platform or for exams	Often for older material not available – it's mainly a back stop position	Digitise if chapters are requested by academics & covered by Licence. Used to get permissions but too time consuming. Still use CCC.	Used if can't purchase an e-book for a core reading.	If they just need one chapter then we use it. Tried the OCBs pilot too. Admin copies is useful too.	Decisions made by library after a series of checks. Don't advertise the service to staff so quite a small service	Use the licence when lecturer wants one chapter for students and it's a large cohort. Not really promoted by academic librarians	Decision to scan made by academics and it's done in departments by admin staff, not in library. Reports sent to library.
Q5: Changing Patterns	Still increasing at the moment and high use. SEPS is	Decreasing due to policy change – not practical to scan	Steady increase in demand and starting to	It's slowing down, make have peaked but could increase	It's increasing after implemented TADC and	Steady for a few years but now declining and less	I can see it is going to increase, but we need better	It's gone down if anything, possibly because we	Declined in last few years, partly due to staff secondment	Increasing massively as attempting to capture more and

	useful but expensive!	everything – staffing levels down	use SEPS as well.	next year as processes are streamlined	mandated use of RLS.	requests coming in.	processes – better quality scans	have more e-resources	but a broader trend	concerned it's a 'jungle' in the VLE
Q6: CLA Audit	It was more than 7 years ago and no experience in current team	No audit in the past	Not in recent living memory!	Yes had an audit and it led to a lot of processes being changed and improved.	A few years ago and it led us to mandate the use of the RLS for compliance.	Not recently	Yes and it had some impact. We improved our guidance and training to raise awareness	No	No	Yes a few years ago and led to reporting being given to library. Audit was helpful to get things moving
Q7: Unreported scanning	Probably not that much as process very good to pick these up	Fairly minimal as they are checking and have a process	Yes but they have a process to pick this up so not a great concern	There is a little bit but there are processes in place to remove and a supportive system in place.	Honestly don't know. Don't have access to the VLE routinely and not in position to police it.	Yes I think there is, but not sure how much. Usually staff misunderstanding.	I don't think it's a big issue, not regularly as we look at Blackboard (don't audit it though)	Yes definitely – library staff have to take things off the VLE all the time. No time for training and advocacy so concerned about the scale	Possibly but if it is happening it is isolated and we have processes in place.	Yes, and probably a lot! We estimated we might be reporting 1 in 7 of the items on the VLE in a report last year.
Q8: Value for Money	Difficult to say, but it covers more than scanning surely!	Probably quite good value at a cost per head but not paid by Library	No, only providing readings for 10% of students at their institution	Very difficult to answer but it is a back up and I'd advise against the price increasing	It's paid centrally not by library and deemed essential. Not bad value but difficult to measure	Difficult to say, but costs a lot more than our e-book budget! We can't do without it.	I haven't considered it – not the library budget, but cost per scan would not be good value!	I can't see us not having one but it's a huge amount and my boss would happily get rid of it	Difficult to say but it's probably not good value.	No it's costing us over £1500 per scan at the moment and concerned we're not

										getting value for money.
Q9: AOB	Good to have a community to discuss things like DCS	CLA Licence doesn't cover all subject equally. SEPS is too expensive.	Would like to see if it could save them money. Would like to pay less!	Make licences easier to understand. Looking to use e-textbooks not digitise more content.	N/A	We'd use the licence more if we had time and resources. I'd like to look at the evidence of how much it might save us.	N/A	May make more use of licence if we move to DCS. Scanning return is lower	Concerned that some institutions are very cautious about copyright so been doing a lot of training to facilitate resource sharing.	Poor quality scans and concerned about accessibility. Won't get a RLS but also concerned about commercial nature of DCS.

Appendix D: Interview Questions used in the case study

1. Could you please explain the process by which you acquire / purchase essential readings to support teaching and learning (chapters from books, journal articles)
 - Who checks reading lists to advise lecturers on availability?
 - What checks do you undertake before deciding to digitise a chapter from a book or an e-journal article?
 - Would you check if e-journal articles or chapters are available on open access or electronically?
2. Do you have an e-first policy? Can you tell me more about how that works? What are the terms of this policy?
3. Do you have any problems understanding e-journal licences / Open access terms when sourcing digital content?
 - Are there any times you might not rely on this type of content and use the CLA Licence? Why might this be? (prompt about DRM)
 - Which sources would you search to investigate open access content? Who does this type of checking?
4. Could you explain the decision-making process when you rely on the CLA Licence to source content?
 - Are there any exceptions to your policy or unusual incidents worthy of mentioning?
 - Do you re-check the reading lists on a regular basis?
5. Have you observed any changes in the patterns of scanning at your institution in the past X years (increasing / decreasing?)
 - Have you any thoughts about what might be leading to these changes
6. Have you been audited by the CLA in the last 5 years and if so did it lead to any changes in policy?
7. Do you think scanning is being undertaken by staff that is not being reported in your CLA Licence?
8. Do you feel the CLA Licence represents good value for money for your institution and why do you say that?
9. Is there anything else noteworthy that might inform our research?

Appendix E: Questions asked during workshop

1. How do you ensure you purchase information resources needed for teaching and learning purposes?
2. Are the licences, models and platforms suitable for teaching purposes?
3. What role does the CLA Licence play when sourcing content for teaching and learning purposes?
4. Have you observed any changing patterns in relation to your use of the CLA Licence?
5. Do you anticipate any changes in your use of the CLA Licence in coming years?
6. Is there anything that might lead to any changes in how content is sourced for teaching purposes?
7. Do you routinely check for open access versions of readings?
8. Do you have a sense that the CLA Licence represents good value for money for your institution?

Appendix F: References for the international study

Reports

- IFLA (2018) [Background Paper on Extended Collective Licensing](#) – IFLA.
- Nobre, T. (2018) [Communia report - Final Report](#) COMMUNIA International Association of the Digital Public Domain.
- Seng, Prof Daniel (2017) [Updated Study And Additional Analysis Of Study On Copyright Limitations And Exceptions For Educational Activities](#) (Seng Report) WIPO.
- Standing Committee on Copyright and Related Rights - Nineteenth Session (2019) [STUDY ON COPYRIGHT LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL ACTIVITIES in North America, Europe, Caucasus, Central Asia and Israel](#) Geneva.
- Yakovleva, S. (2018) [Literature review on the use of licenses in library context, and the limitations this creates to access to knowledge](#) IFLA Report

Articles/guides

- Congleton, Robert J. and Yang, Sharon Q. (2018) [Comparative Study of Education Exemptions to Copyright in the United States & Europe](#). Athens Journal of Law, Vol. 3, (1), pp 47-60.
- Cross W M, "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship," Law Library Journal (2012) 104:2.
- Gervais, Daniel. (2010) Collective Management of Copyright and Related Rights.
http://www.tripsagreement.net/wp-content/uploads/2014/04/Gervais_9789041127242_Ch-01_Daniel-Gervais.pdf
- Henderson, S., McGreal, R., & Vladimirsch, V. (2019). [Access Copyright and Fair Dealing Guidelines in Higher Educational Institutions in Canada: A Survey](#) The Canadian Journal of Library and Information Practice and Research, 13(2).
- Liber Europe (2016) [Limitations and Exceptions in EU Copyright Law for Libraries, Educational and Research Establishments: A Basic Guide](#)
- Liu, Wenqi (2012) [Models for Collective Management of Copyright from an International Perspective: Potential Changes for Enhancing Performance](#) Journal of Intellectual Property Rights, Vol.17, pp 46-54.

Legislation

- Australian Copyright Act (1968)
- Copyright Act of Canada (1997)
- [Copyright, Designs and Patents Act \(1988\)](#)
- Finland Copyright Act (1961)
- Indian Copyright Act (2012)
- [Israel Copyright Act \(2007\)](#)
- Sweden Copyright Act (1960)
- [The US Copyright Act \(1976\)](#)

Websites

- [Bonus Copyright Access \(website\)](#) Swedish CMO.
- [The Copyright Clearance Center \(website\)](#)

Appendix G: Summary Table comparing countries

Country	Legislative solution for education	Collective management organisation (CMO)	Cost per FTE of CMO Licence (where known)	Key rights provided by CMO Licence	Extent Limits under CMO Licence
UK	<p>Copyright exceptions under the Copyright Designs and Patents Act (1988) designed for educational use:</p> <p>s32. Illustration for instruction</p> <p>s33. Anthologies for educational use</p> <p>s34. Performing, playing or showing work in course of activities of educational establishment</p> <p>s35. Recording by educational establishments of broadcasts</p> <p>s36. Copying and use of extracts of works by educational establishments</p>	The Copyright Licensing Agency (CLA)	The cost per FTE Student of the CLA Higher Education Licence is currently (March 2019) £7.34 + VAT.	Copying for classroom purposes in print or digital formats.	<p>The current extent limits are 10%, or one chapter of a book or one article per journal issue, whichever is greater.</p> <p>The CLA also provides a Second Extract Permissions Service (SEPS), which is separate to the main licence and allows an organisation to request an additional extract, i.e. another 10% or an additional book chapter or journal article.</p> <p>Rights holders must opt in to this, and the pricing is variable and charged per page, per student, with an additional flat service fee of £4 per transaction.</p>

	s36A. Lending of copies by educational establishments				
USA	<p>Section 107 of the US Copyright Act (1976) provide the key exception of 'Fair Use'.</p> <p>The application of the 'fair use' exception is now standard best practice within education in the USA.</p>	Copyright Clearance Center.	N/A	N/A	N/A
Canada	<p>The Canadian Copyright Act (1985) has a fair dealing exception which is similar to that of the UK.Education exceptions include:</p> <p>s29.4. Reproduction for instruction</p> <p>s29.5. Performances</p> <p>s29.6. News and commentary</p> <p>s29.7. Reproduction of broadcast</p> <p>s29.8. Unlawful reception</p> <p>s29.9. Records and marking</p>	Canadian Copyright Licensing Agency (Access Copyright)	N/A	<p>Day to-day copying distributed by handout or email as part of the 'Choice' licence.</p> <p>'Premium' licence covers uploading of material to a secure network or VLE (Virtual Learning Environment), as well as the creation of print and digital course collections (i.e: course packs).</p>	<p>Under the 'Choice' licence instructors, staff and students can copy up to 20% of a covered title for handouts and email attachments, and up to 25% for pay-per-use copying, including for course packs and digital uploads.</p> <p>The 'Premium' licence permits faculty, staff and students to copy up to 20% of individual titles in Access Copyright's repertoire of published works. The 'Premium' licence also offers pay-per-use copying from 20% to 25% of a repertoire title.</p>

	s30. Literary collections				
Australia	<p>Australian Copyright Act (1968)</p> <p>There are ‘fair dealing’ exceptions that allow copying by universities. These include:</p> <p>s40. Fair dealing for research and study</p> <p>s41. Fair dealing for the purpose of criticism and review</p> <p>s41A. Fair dealing for the purpose of parody and satire.</p>	The Copyright Agency	\$35.64 AUS per FTE (approx. £20 GBP).	The education licence permits teachers to copy and share text, images and print music (from any format) without permission from the rightsholder, providing they use is for educational purposes, and they work for an educational institution that is covered by payment arrangements with the Copyright Agency. ☐	No more than 10% of a book/journal’s pages or 1 chapter/article if it’s longer than 10% of the pages. There is no need for the university to own the work to make a copy, like in the UK.

	Australian law also has s200AB which is a flexible dealing for certain purposes.				
Sweden	The ECL-provisions in the Swedish Copyright Act (1960) Article 42 c allows higher education institutions to negotiate contracts with representative organizations rather than with each individual author or publisher.	BONUS Copyright Access.	€21 per FTE (approx. £18 GBP).	Teachers and students can copy works both digitally and in analogue, for educational purposes, by downloading, printing out, scanning, photocopying, reproducing for teaching slide presentations e.g. PowerPoint. Audio and moving images are not covered.	The BONUS licence utilises the 15/15 rule. This means that generally students and staff can only copy up to 15% of a single publication, or 15 pages, whichever is the lower.
Finland	Copyright Act 1961 Section 14 (821/2005) - covers the use of works for educational activities and scientific research (607/2015) including works covered by ECL.	Kopiosto	N/A	<ol style="list-style-type: none"> 1. Reproduction by photocopying 2. Reproduction for use in educational activities or scientific research 3. Communication to the public by means other than TV or radio for use in educational activities or scientific research. Additional uses can be licensed separately, which must be done by a CMO who is representing that 	<p>Photocopying: 20 pages or 50% per publication.</p> <p>Scanning: 20 pages or 20% per publication.</p>

				rights holder	
Italy	<p>Art. 70 of the Italian Copyright Act (1941) states that the summary, summons or reproduction of pieces or parts of the work and their communication to the public are free if made for critical or discussion use, within the limits justified by these purposes and provided they do not constitute competition for the use economic of the work; if carried out for the purposes of teaching or scientific research, the use must also take place for illustrative purposes and for non-commercial purposes.</p> <p>In the anthologies for school use the reproduction cannot exceed the measure determined by the regulation, which establishes the modality for the determination of the fair compensation.</p> <p>The free publication of images and music with low resolution, for educational or scientific use, is allowed through internet if the use is not for profit.</p>	Società Italiana Autori ed Editori (SIAE)	N/A	<p>Art. 68 of the Italian Copyright Act (1941) provides that for photocopying in university libraries (to the extents permitted) fees are paid, through SIAE, to the entitled parties (authors and publishers) in a lump sum and according to the agreements signed by SIAE together with the concerned trade associations.</p>	<p>The agreements depend on the type of university and numbers of students. Photocopies of protected works existing in the libraries can be made for personal use only and within the limit of 15% of each book or periodical magazine issue, advertising pages excepted. If the works in the same library are rare and outside publishing catalogues, it is possible to overcome the 15% limit and to photocopy works wholly.</p>

India	The Indian Copyright Act (1957) allows ‘the reproduction of any work... by a teacher or a pupil in the course of instruction’ (s.52(1)(i)(i)). There is a fair dealing clause contained within s.52(1)(a).	The Indian Reprographic Rights Organisation (IRRO)	N/A	The Indian Reprographic Rights Organisation (IRRO) are a collective society that administers a blanket licence for reprographic copying of literary works. Section 33(1) of the Act also states that a copyright society can issue/grant licenses for literary, artistic, cinematographic works etc.	<p>The licensee must own an original and/or copyright fee-paid of any licensed material it copies or scans under the terms and conditions of the license.</p> <p>Licensee can make copies for the number of students on a course of study as a course pack only, and not copy more than 15% or 1 chapter of any publication per year.</p> <p>Copies may be used for training of authorized persons – provided that the licensee does not receive any form of remuneration.</p>
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