

CharityComms

Inspiring Communications at the Heart of Charities

A Beginner's Guide to Media Licensing in the Charity Sector

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Introduction

Following our research into media licensing in the charity sector, it is clear that there is considerable confusion about the licensing system, and the working of the Newspaper Licensing Agency (NLA) and Copyright Licensing Agency (CLA).

The degree to which a charity is informed depends on a variety of factors, based on their particular media monitoring practices and the questions this has led them to ask the NLA or CLA. While these agencies seem happy enough to provide information on issues such as copyright regulation, fee structures, and the kinds of practices that incur greater or smaller charges, you have to go looking for it, and often have to ask them directly to receive an answer. There is no resource that addresses the many questions that charity communications professionals might have on this issue.

At CharityComms, we have developed this 'Beginner's Guide to Media Licensing in the Charity Sector', bringing together the knowledge charities have shared with us and our own dealings with the NLA and CLA. It attempts to provide information and clarity by answering the questions that comms professionals might ask when working out where their charity stands regarding media licensing, and the financial and legal implications of their media monitoring work. It functions as both an FAQs resource and a 'how-to' guide to help charities to understand the system, and get the best deal for themselves out of it.

Providing this resource is just one side of our work addressing the present media licensing regime. Our research reveals considerable dissatisfaction at a system that is expensive, time-consuming, unevenly applied, and which does not sufficiently take into consideration the unique position of non profit organisations and how they use media cuttings. In our role as champion of charity communicators, CharityComms is working to cut a better deal for charities in this area. To keep up-to-date with our campaign please visit www.charitycomms.org.uk/medialicensing

In the meantime, we hope, through this beginner's guide, to arm communicators with the knowledge and confidence to represent their charity in their dealings with the NLA and CLA.

About CharityComms

CharityComms is the professional membership body for charity communicators, led by the sector for the sector. We aim to improve the standard of communications and champion its role in the sector. We seek to represent, support, inspire, connect and inform our members and the wider charity communications community.

CharityComms aims to cater for a range of communications skills within charities and non-profits. This includes internal communications, publications, media relations, marketing, new media, campaigning, public affairs and policy to name a few.

Our services include mentoring, events, best practice guides and research, and online resources including www.charitycomms.org.uk and www.askcharity.org.uk.

For more information visit www.charitycomms.org.uk, or for membership enquiries email lally@charitycomms.org.uk

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1. What is media licensing?

Monitoring media coverage is an important activity for charities.

Most charities collect press clippings from national and local print media and online sources in order to keep a record of any coverage they receive.

However, these sources are protected by copyright law (under the Copyright Designs and Patents Act 1988), and organisations are expected to pay the copyright holders for this use of their materials.

Under the current regulation system, charities, like all other organisations (such as private businesses), are liable to pay a licence fee to allow them to reproduce and copy media coverage and press clippings, either in hard copy or digitally. The two bodies that provide licences are the Newspaper Licensing Agency (NLA) and the Copyright Licensing Agency (CLA).

2. Who is the NLA?

The NLA is the newspaper industry's enforcer of media licensing regulation. It assesses organisations' media monitoring activities to ensure copyright compliance and charge for licences where appropriate.

The NLA is a private company with no statutory status, owned by eight equal shareholders, each a UK national newspaper publisher: Associated Newspapers; Financial Times; Guardian Media group; Independent News and Media; Northern and Shell; News International; Daily Telegraph; Trinity Mirror.

Each year the NLA distributes approximately £22 million to national and regional newspapers in respect of copyright works. In 2009 they licensed cuttings from more than 1,400 titles, and collected licence fees from over 8,000 licensees, representing 150,000 organisations.

In 2010 NLA licences were extended to also cover newspapers' online resources. Its licences cover copying from online editions produced by the publishers it represents. The exception is News International who operates a paywall. The NLA represent NI for all copying of their print editions, but not online editions.

3. ...and the CLA?

The CLA licenses the copying of magazines and trade journals, much in the same way as the NLA does for newspapers.

The CLA operates as an agent for both the Authors' Licensing and Collecting Society Ltd (ALCS) and the Publishers Licensing Society Ltd (PLS). It is owned by these two bodies, and performs collective licensing on their behalf. They represent the owners and licensees of literary and artistic work published in the UK and overseas in negotiating licence terms for reprographics.

4. Do we need to be covered by licences for both the NLA and the CLA?

That depends on your media monitoring work.

If your media monitoring work is limited to only newspapers, or only magazines and trade journals, you may only need to be licensed by the relevant licensing agency. If you monitor both newspapers and magazines you will need both licences.

It is worth remembering that the NLA and CLA do communicate, and if you hold a licence with one, there is every chance of the other chasing you up. In particular, several charities are reporting a current drive by the CLA to contact non licence holders who are on the NLA's books.

5. What activities are covered by the licences?

Depending on your level of cover, licences allow you to do the following without falling foul of copyright legislation:

- Photocopying articles for storing, or passing around the office
- Storing digital copies (for up to 28 days) and distributing these among colleagues
- Emailing scanned content
- Receiving hyperlinks from a licensed press cuttings agency or media monitoring organisation
- Sharing links via a secure intranet

However, the degree to which you are covered for each of these activities depends on the licence you hold. This is negotiated with the NLA and CLA at the time of registration, based on your media monitoring activities.

6. So can I send links to articles to my colleagues?

The NLA are somewhat ambiguous on this. They 'advise' that you should have a licence if doing this, to cover you for whatever your colleagues may do with the articles once they receive them. However, if you are confident that copies won't be made, you do not need the licence.

The CLA say you need to be covered for this despite the fact that most websites openly encourage this practice with prominent 'email this' buttons alongside articles. They emphasise that the terms and conditions (not immediately available on opening or forwarding an article) state that use must be "personal and non-commercial", where commercial means income-generating, thus including charities.

7. We pay a media monitoring organisation/press clippings agency to gather our media coverage. Do we still need to pay for a licence?

In short, almost definitely. The only circumstance in which you do not is if you receive an article, print one copy, delete the file and make no further copies. Otherwise you need to be covered too.

Your media monitoring organisation/press clippings agency will also need to be covered by NLA and CLA licences, but this licence does not mean that your charity is covered.

What's more, as part of their licensing contract, the clippings agency will inform the NLA and CLA of all of their contacts, and will indicate how much press you receive, how many people access it, and about your online activities too. As such, they often alert the agencies to your charity's activities, and charities that use them are more likely to be approached by the licensing agencies.

8. So when our press clippings agency emails us a link to an article, or directs us via their web portal, what can we do with it?

You can open the article once and print one copy of it. This is as if they physically made a cutting for you in hard copy and passed it on to you. This is covered by *their* licence and you do not require one for this activity.

Any further access to the cutting/article requires a licence. For example, if the article is opened more than once (by you or a colleague), if you make more than one copy, or if it is stored on your desktop/server/intranet, you need a licence.

9. What if we receive links through Google Alerts?

Any copying/printing you do from links received through Google Alerts requires a licence. If you or your colleagues only open the links and do not save or print a copy you do not currently need a licence, though the NLA say it is 'advisable' to have one just to be covered in case your colleagues do make copies.

10. And what about if we use social bookmarking sites (eg Delicious)?

Similarly, if you are sharing links in this way, the NLA would 'advise' you to have a licence, just in case. But if you are sure no copies are being made, then you don't need a licence.

11. We have heard about Meltwater's legal battle with the NLA in relation to online content. Does this affect our position in any way?

The NLA are attempting to make the case that, in a business (or charity) environment, simply opening a link should be considered to be a form of copying, requiring a licence. Meltwater are contesting this.

While the judgement remains pending, you should not be paying any fee for sharing links with colleagues, though this may change in the future.

12. Our charity's website contains links to articles from magazines and newspapers. Is this covered?

As long as there are no quotations, no licence is required. You can have the link and the title on your website.

If you are linking to newspaper articles and including any quotations or parts of the text, the NLA expect you to have a separate licence that covers 'external copying' (the Corporate Website Republishing licence, a different licence altogether to the one covering internal copying among colleagues).

The CLA do not represent magazine and journal publishers in this area. Their work deals only with internal copying. As such, CLA licences do not cover the linking of articles on your website. Instead, they say you *should* get the permission of each individual publisher whose work you link to.

13. So, how much does a licence cost?

For the NLA, the basic internal copying licence fee (covering all national newspapers and 5 regional titles) can cost from £158 to £7,459, depending on the size of your organization and your annual turnover. Licence fees also increase with the number of media sources you monitor, and the way you distribute it.

Most charities we have spoken to pay under £2,500, with a significant proportion paying £500 or less. However, we have reports of some larger charities paying upwards of £20,000.

The licence fee itself has several components: there is a basic licence fee which covers occasional copying from national and regional titles and then if required a further fee for frequent and/or digital copying. The 'digital extension' can increase licence fees significantly. There is also an additional fee for storing articles on your desktops/intranet/server (and even then you can only store for 28 days).

The CLA has a standard fee for organisations of 1 to 10 employees (£136.50), and 11 to 50 employees (£414.75). For larger organisations, including charities, the licence fee is based on the number of 'professional employees', which tends to mean managerial roles. For charities the fee is £13.55 per professional employee. If this number does not exceed £414.75, you will pay that much, as this is the minimum licence fee for organisations of that size.

While many charities therefore pay less than £500 for their CLA licence, our research reveals some paying over £7,500.

Unlike the complex NLA licence system, there is only one type of CLA licence which covers any and all copying.

14. We only monitor regional newspapers and no national titles. Is there a licence specifically for local and regional newspapers?

All NLA licences cover national newspapers and a given number of regional titles (the lowest being 5, with the basic licence). There is no licence especially for organisations that only monitor regional and local newspapers. Unfortunately in this situation you would have to pay for a licence that included cover for the national titles you do not monitor.

15. How do the agencies find out about the extent of a charity's media monitoring work?

Basically, it is the charity that tells the NLA and CLA about the extent of their media monitoring and copying activities. The system ultimately relies on the honesty of organisations when applying for a licence.

This matters most in the case of the NLA, for whom greater use means higher fees. They ask new licensees to complete a survey that shows your average use for a two week period. This is then assumed to be consistent throughout the year and your fee is calculated accordingly.

If you use a press clippings service, they may indicate your use to the NLA or CLA too, though it does not seem that this

16. Do charities get any kind of special arrangement?

The NLA offers a discounted Charity Licence to registered UK charities. Like other licences the cost of the licence will depend on your charity's media monitoring activities (i.e. the type and level of copying, storing, and distribution undertaken).

Registered charities receive a discount equivalent to the minimum basic fee, which at the moment stands at £158. This is not made immediately clear on their website or fee list.

This minimum fee is the licence fee for an organisation with 1-5 staff members (N.B. this is total head count rather than full time equivalent), or a turnover below £250,000. Organisations of that size would therefore get a licence for free. This

saving can still be significant for more sizeable charities, for example reducing the fee for a 500 strong charity from £546 to £388.

However, for larger charities with licence fees into the thousands, the impact of this small flat-rate discount may be hardly noticeable.

The CLA does not have a discount for charities. However, its pricing system for organisations over 50 employees places organisations (businesses or charities) in bands based on their economic activity, and charities fall in to the lowest (and cheapest) of these bands.

17. Can they charge us for past monitoring activity?

Unfortunately, they can, and we know of several instances where they do.

Once the NLA or CLA have caught up with an unlicensed organisation that is in breach of copyright law, they can charge them for the new licence PLUS an indemnity for previous unlicensed media coverage activities. They will start from the assumption that you have been monitoring the media at the same level you are telling them you now do so.

Indemnity charges can go as far back as six years in backdated licence fees, though most charities report indemnity charges of no more than 2 years. Still, this can mean an especially big sting, which has not been anticipated in your department's budgeting.

18. Is there any room for negotiation?

Our research among charity sector communications professionals includes several reports of charities negotiating a lower fee once the NLA have made contact with them. Some charities have been successful in this and others have not.

One of the characteristics of the current media licensing system is that it is not evenly applied. Some charities have found their NLA account managers to be more responsive than others. As such it is certainly advisable to attempt to negotiate a lower licence fee, but there is every chance this will be unsuccessful.

19. Should I get in touch with the NLA/CLA to let them know what we're doing?

It seems ill-advised to approach the NLA or CLA, even if you are worried that your charity's activities are in breach of copyright law. There is certainly no financial benefit to doing this, as there is no reason to believe it will affect your ability to negotiate, or the size of the indemnity you will be liable for.

In fact, ignoring the licensing agencies has been one strategy employed by some charities (see below).

20. Is there any way to avoid paying a licence fee?

While the NLA and CLA have been successful in identifying non fee payers, some charities have managed to avoid paying licence fees for the moment.

Some charities have simply ignored correspondence from the licensing agencies and hoped that they would lose interest, and in some cases this has worked, at least for now.

Some charities who use the media monitoring agency Meltwater were advised to hold off paying NLA fees while Meltwater's legal case against them was still unresolved. When these charities told the NLA about this, their fee was suspended, and some have not been reopened.

We must emphasise that these are not long term solutions, particularly given the current drive of both licensing agencies to find offenders and levy fees.

Sadly, the only way in which to legitimately avoid paying a licence fee is to change your media monitoring practices. Despite the clear importance of such activities to many charities' work, several have reported reducing or cutting out media monitoring activities as their budgets would not allow for the additional expense of a licence.

21. Is there any way I can reduce my fee?

As is stated above, some charities have managed to negotiate lower licence fees. It seems that this depends hugely on a combination of tenacity and luck, and it is very difficult to identify a single approach that has been consistently successful in getting results.

There seem to be different ways your licence fee can be calculated, and this too can affect the agreed cost. For most charities, fees are calculated based on their size (staff numbers, or turnover). However, some organisations self audit their media monitoring work, report this to the licensing agencies, and fees are calculated based on this. In our experience, charities that self-audit are prone to overestimating their media use, thereby paying more than they need to.

As such, it is generally advisable to have your fee calculated based on the size of your charity.

22. What if we refuse to pay?

Ultimately, the law is on the side of the licensing agencies, and they can take you to court if you continue to copy copyrighted material without a licence.

This is obviously not something that will look good for charities, and the dispute would almost definitely be in vain, given the law's siding with the licensing agencies on this. As such, we would not recommend refusing to pay once they put the pressure on, especially if they suggest legal action.

23. Is there anything we can do on a more long term basis?

As it stands there is very little charities can do, as the law is on the side of the current system.

As a champion of charity communications professionals CharityComms considers this current regime unacceptable and is developing a campaign to improve the deal received by charities.

For more information on CharityComms's media licensing campaign, or to be added to our list of contacts interested in the campaign, email Jamie Matthews at jamie@charitycomms.org.uk