

[FOR IMMEDIATE RELEASE]

Press statement: NLA pushes for clarity on web licensing with High Court action

The Newspaper Licensing Agency (NLA) today started a High Court action aimed at resolving legal issues affecting its web licensing scheme.

NLA managing director, David Pugh, said: “We believe that clarity on all aspects of our web licences needs to be achieved as quickly and unambiguously as possible. The Copyright Tribunal will rule on the commercial aspects of NLA web licensing – and we welcome and support that process – but the High Court is the proper place to decide on the legality of our web licences.

“The web licences launched in January followed 18 months of consultation with the media monitoring industry. More than 280 companies using newspaper web content commercially have already taken licences. All of the major aggregators are now licensed but one is not. Meltwater, supported by the Public Relations Consultants Association (PRCA), has instead referred our licences to the Copyright Tribunal, which will meet to review their terms in February 2011.

“The objective of the action we have initiated today is to achieve as swift and complete a resolution as possible for all parties – publishers, media monitoring companies and their clients. By seeking legal clarity on aggregator and end-user licences, the NLA aims to support the Copyright Tribunal process and end uncertainty in the market.”

The NLA is seeking a ruling on whether aggregators can copy and distribute online newspaper content and if end-users can receive and use that content. The two counterparties are Meltwater News, an aggregator, and the PRCA, a representative body of the PR industry, who are also parties to the Copyright Tribunal process.

Background

- Licensing for digital newspaper content began on 1 January 2010.
- Web licensing will begin to give content owners a fair albeit modest share of revenue made from their copyrighted content by commercial organisations.
- It applies only to paid-for services to businesses. No free-to-consumer service is affected.
- Invoicing for end users has been suspended pending the outcome of the Copyright Tribunal review. Back-dated charging will apply if the NLA is successful.

Notes to editors:

The NLA is owned by the 8 national newspaper publishing houses and generates B2B revenues for 1,300 national and regional publishers through licensing use of their content by press cuttings agencies (PCAs) and their client companies. Please see www.nla-web.co.uk for more information.

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Explanatory note: NLA High Court action re web licensing

Summary

Meltwater News, supported by the PRCA as an ‘intervener’, has referred the NLA’s web licensing scheme to the Copyright Tribunal, arguing that the scheme is unreasonable.

The Copyright Tribunal process is lengthy and is unlikely to be resolved until February 2011. Crucially, it is doubtful whether the Copyright Tribunal has jurisdiction over the terms of law governing aggregator and end user licences.

The NLA has therefore decided to seek a High Court ruling to create legal clarity.

Why the NLA is making an application to the High Court

The Copyright Tribunal’s jurisdiction is over commercial aspects of copyright licences; points of law are decided in the High Court.

In its ruling of February 25, the Copyright Tribunal raised questions as to whether it was able to rule on some of the substantive points of law raised in Meltwater’s submission, specifically whether end-user licensing *per se* is required. See for example the following paragraphs from the Copyright Tribunal’s decision:

Paragraph 48: “All the Copyright Tribunal can decide is the *reasonableness* [our emphasis] of the terms of a licence”

Paragraph 53: “this reference may involve questions which at first sight are ones the Copyright Tribunal cannot answer directly”.

The ruling also states that the Tribunal was uncertain whether it had the power to refer these matters of law to the High Court itself.

Paragraph 51: “As we understand the matter, however, although the predecessor of the Copyright Tribunal had the power to refer questions [to the High Court]... such a power was not conferred on the Copyright Tribunal”.

It is therefore uncertain whether:

- the Copyright Tribunal has jurisdiction over aspects of the Meltwater references
- and if not, whether it can refer the issue to the High Court itself.

To avoid the danger of the Copyright Tribunal being able only to rule on the commercial aspects of the Meltwater complaint and not the points of law – delaying resolution of the process further – the NLA has decided to apply to the High Court itself.

What the NLA is seeking from the High Court

The NLA has asked the High Court to rule on:

- whether aggregators require a licence to copy content and distribute it as part of a paid-for media monitoring service
- whether end users (such as PR agencies) require a licence to receive that content and use it for commercial purposes.

In order to get such a ruling the NLA has issued proceedings against Meltwater, an aggregator, and the PRCA, an end-user and representative body for PR agencies. Meltwater initiated the Copyright Tribunal proceedings and the PRCA made a formal intervention in support of Meltwater.

On the issue of end-user licensing, the NLA is seeking a legal ruling but no compensation. This is known as 'declaratory relief'. The NLA hopes the PRCA will welcome its efforts to achieve as swift and complete a resolution as possible and to examine, as they also desire, the position of end-user licences in law.

Against Meltwater, the NLA is seeking a legal ruling on the legality of the aggregator licence. If Meltwater still refuses to take a licence after such a ruling, the NLA will ask for an injunction.

What happens next

The NLA issued proceedings on 24 May. The defence has one month to respond with its case (this can be extended by one further month).

Given all parties' desire for a legal ruling on these issues, the NLA is hopeful that all can agree to as fast a timetable as possible.

If the High Court rules before the Copyright Tribunal meets in February, this will establish a firm legal footing for the Copyright Tribunal to decide on the commercial aspects of web licences.